

COMMONWEALTH CENTRE

Proffer Statement

January 30, 2007
Revised February 14, 2007
Revised March 13, 2007
Revised April 12, 2007
Revised May 25, 2007
Revised August 10, 2007
Revised September 14, 2007
Revised September 27, 2007

RZ 2006-SU-025

Pursuant to Section 15.2-2303(A), Code of Virginia (1950, as amended) and Sect. 18-204 of the Zoning Ordinance of Fairfax County (1978, as amended), the property owner, for itself and its successors and/or assigns (hereinafter collectively referred to as the "Applicant"), hereby proffers that the development of the parcels under consideration and shown on the Fairfax County Tax Maps as Tax Map 44-1((1)) 6, 6B, 6C and 6D, along with the 3.21 acres of public right-of-way to be abandoned/vacated ("Newbrook Drive") (collectively, the "Property"), shall be in accordance with the following conditions if, and only if, Rezoning application RZ 2006-SU-025 (the "Application") is granted as proposed. If approved, these proffers ("Proffers") supersede all previous proffers applicable to the Property. In the event that this Application is denied, these Proffers shall be immediately null and void and of no further force or effect, and the proffers previously accepted by the Board of Supervisors with RZ 78-S-063, as amended, for a portion of the Property will remain in effect.

GENERAL

1. **Conceptual Development Plan.** The Property shall be developed in substantial conformance with the Conceptual Development Plan ("CDP") and Final Development Plan ("FDP") dated May 2006 as revised through September 2007, and prepared by Burgess & Niple, consisting of 20 sheets (collectively, the CDP/FDP is the "Development Plan").

A. **Removal of a Portion of Property from RZ 78-S-063.** The Property shall be deleted from any and all proffered conditions approved by the Board of Supervisors pursuant to RZ 78-S-063, as amended, and the Generalized Development Plan ("GDP") prepared by Long, Brown and Associates, dated January 1985 and revised through August 1985, and any and all amendments thereto except this PCA 78-S-063-5.

B. **CDP Elements.** Notwithstanding that the Development Plan is presented on twenty (20) sheets and defined as both the CDP and the FDP in this Proffer 1, it shall be

understood that the CDP shall be the entire plan shown on Sheet 4 relative to the points of access, the maximum square footage of permitted development on the Property, the minimum required open space, the general location and arrangement of the buildings on the Property, the area of the Flatlick Branch Dedication Area (as defined in Proffer 21 herein) and the peripheral setbacks from the property lines (collectively, the "CDP Elements"). The CDP Elements shall also include the uses set forth in Proffer 5, except as modified therein. The Applicant reserves the right to request approval from the Planning Commission of a Final Development Plan Amendment ("FDPA") pursuant to Section 16-402 of the Zoning Ordinance for elements other than the CDP Elements for all or a portion of the Property and the Development Plan, provided such FDPA is in substantial conformance with the CDP and these Proffers.

2. Minor Modifications. Minor modifications to the Development Plan may be permitted when necessitated by sound engineering or that may become necessary as part of final site design or engineering, pursuant to Section 16-403(4) of the Zoning Ordinance. Building footprints may be decreased or adjusted, so long as (a) the maximum square footage of Principal and Secondary Uses are not exceeded; (b) the minimum proposed open space tabulation provided on the CDP is not reduced; (c) the building heights for each building are not increased beyond the heights identified on the Development Plan and Proffer 7 herein; (d) the limits of clearing and grading are not reduced beyond what is permitted by these Proffers; (e) no additional surface parking is provided beyond what is reserved on the Development Plan and Proffer 8 herein; and, (f) the development otherwise is in substantial conformance with these Proffers and the Development Plan.

PROPOSED DEVELOPMENT

3. Declaration/Owners Associations.

A. Establishment. To the extent not previously established on the Property, the Applicant shall cause the recordation of a declaration establishing an umbrella property owners' association (the "UOA") for the Proposed Development (as defined herein). Such association(s) shall be formed prior to the issuance of the first Nonresidential Use Permit ("Non-RUP") for development in Land Bay B, C and/or D, whichever occurs first. The UOA documents (including budgets provided in any offering or sale materials) shall specify the various proffer and maintenance obligations set forth in these Proffers. Purchasers shall be advised in writing of these obligations, and other restrictions, prior to entering into a lease/contract of sale property in the Proposed Development.

B. TDM Obligations. All tenants, owners, employers and employees working, operating a business or owning property within the Property shall be advised of the TDM Plan described in Proffer 23. All UOA members shall be informed of any funding and operational obligations resulting from the application of these Proffers prior to entering into a lease/contract of sale, and all such obligations shall be included in UOA documents.

4. Proposed Development.

A. Overview of Proposed Development. The development proposed with this Application includes: (a) three (3) existing or site plan-approved office buildings on Land Bay A

containing an approximate total of 493,035 s.f.; (b) two (2) office buildings with ground-level support retail on Land Bay B and containing an approximate total of 117,000 s.f.; (c) two (2) hotels with stand-alone and support retail on Land Bay C and containing an approximate total of 221,400 s.f.; and (d) three (3) office buildings on Land Bay D containing an approximate total of 583,465 s.f. The Proposed Development is summarized as follows:

Proposed Development

Principal Use – Office	Maximum 1,126,500 s.f.
Secondary Use - Hotels	Maximum 212,000 s.f.
Secondary Uses/Retail	Maximum 76,400 s.f.
TOTAL:	Up to 1,414,900 s.f.

- (1) The Applicant reserves the right to modify 25,000 s.f. of the Principal Use and Secondary Uses/Retail shown on Sheet 2 of the Development Plan and set forth in this Proffer by substituting additional Office square footage for Secondary Uses/Retail or additional Secondary Use/Retail for office without the need to secure approval of a Proffered Condition Amendment (“PCA”) or an FDPA, provided that the maximum total square footage of the Proposed Development does not exceed 1,414,900 square feet, no retail square footage is added beyond the square footage identified on the Development Plan and in these Proffers, and such modifications are otherwise in substantial conformance with the CDP and these Proffers.
- (2) **Cellar Space.** The Applicant reserves the right to utilize the cellar(s) of buildings in the Proposed Development (“Cellar Space”) for Principal and Secondary Uses, provided that (a) the maximum total square footage of Cellar Space dedicated to Principal and Secondary Uses shall not exceed 40,000 s.f., and (b) the Applicant shall be required to provide parking for the Cellar Space in accordance with the requirements of Article 11 of the Zoning Ordinance, as qualified by these Proffers. Accessory Uses located in the Cellar Space shall not count against the maximum total square footage of Cellar Space allowed for Principal and Secondary uses. The Applicant reserves the right to allocate the maximum total square footage of Cellar Space among any of the buildings of the Proposed Development.
- (3) **Phasing.** The Applicant reserves the right to submit a single site plan for the Proposed Development but to develop the Property in phases. The Applicant may be permitted to construct each phase, or portion thereof, in any order/sequence the Applicant determines reasonable based on market conditions, including the establishment of surface parking in advance of structured parking in Land Bay D, provided such development otherwise is in substantial conformance with the Development Plan and these Proffers.





5. Mix of Uses. The Proposed Development may include the following uses, subject to Proffer 4 herein:

A. Principal Uses: Offices and related uses.

B. Secondary Uses:

- Business service and supply service establishments;
- Eating establishments;
- Establishments for scientific research, development and training where assembly, integration and testing of products in a completely enclosed building is incidental to the principal use of scientific research, development and training;
- Financial institutions;
- Garment cleaning establishments, with no processing on-site;
- Hotels, motels;
- Personal service establishments;
- Public uses;
- Repair service establishments;
- Retail sales establishments;
- Accessory uses and accessory service uses as permitted by Article 10;
- Drive-in banks (only as shown on the CDP/FDP);
- Drive-through pharmacies (only as shown on the CDP/FDP);
- Fast food restaurants, without drive-through windows;
- Quick-service food stores;
- Billiard and pool halls;
- Health clubs;
- Medical care facilities;
- Private clubs and public benefit associations; and,

- Veterinary hospitals, without boarding or kennel facilities.

6. Secondary Uses. Additional Principal and Secondary Uses not listed in Proffer 5 above may be permitted with the approval of an FDPA (or, as applicable, a special exception ("SE") or special permit ("SP")), but without the requirement to secure approval of a PCA, if such uses are deemed to be in substantial conformance with the Development Plan and these Proffers. Secondary Uses may be designed and constructed (a) as Cellar Space in accordance with Proffer 4 herein, (b) on the ground-floor levels of office/hotel buildings in Land Bays A, B, C and D and (c) as stand-alone uses in Land Bays B and C, all as shown on the Development Plan; provided, however, that the Applicant shall be required to secure approval of an FDPA for any additional buildings or structures not shown on the Development Plan.

7. Building Heights. Building heights for each building in the Proposed Development shall not exceed the maximum building heights shown on Sheet 4 of the Development Plan and as set forth below. Building height shall be measured in accordance with the provisions of the Fairfax County Zoning Ordinance. Notwithstanding the foregoing, however, nothing shall preclude the Applicant from constructing buildings to a lesser building height than that which is represented on the Development Plan, provided the configuration of building footprint remains in substantial conformance with those shown on the Development Plan.

Land Bay A	Buildings 1-3	75 feet max.
Land Bay B	Buildings 1-2	55 feet max.
Land Bay C	Hotel 1	60 feet max.
	Hotel 2	100 feet max.
	Secondary Use Building	30 feet max.
Land Bay D	Building 4	100 feet max.
	Building 5	150 feet max., as measured from finished average grade.
	Building 6	100 feet max.

8. Parking.

A. Zoning Ordinance Requirements. Parking shall be provided in accordance with the parking requirements of Article 11 of the Fairfax County Zoning Ordinance, as determined by the Department of Public Works & Environmental Services ("DPWES"), for the uses within the Proposed Development. The Applicant reserves the right, however, to provide parking spaces in the Proposed Development in addition to the total number of parking spaces shown on Sheet 4 of the Development Plan to the extent necessary to accommodate Secondary Uses established on the Property that could result in a higher parking requirement than is shown on the

Development Plan (e.g., eating establishments), provided that any parking spaces provided in addition to those shown on Sheet 4 of the Development Plan shall be located in the parking structure to be established on Land Bay D and that the Building Heights and overall square footage set forth in Proffers 7 and 4, respectively, are not exceeded.

i. **Future Parking Reductions.** Given (i) the character of the Proposed Development as a mixed-use development and (ii) the TDM Plan detailed in Proffer 23 herein, the Applicant shall in good faith evaluate, and may pursue, a shared parking agreement and/or parking reduction for the Proposed Development, as may be permitted by the Fairfax County Zoning Ordinance and approved by the Board of Supervisors. If, however, the Applicant pursues a parking reduction and such reduction results in the construction of fewer surface parking spaces than those shown on the Development Plan, the Applicant shall provide additional landscaping in lieu of those parking spaces in substantial conformance with the Landscape Plan submitted pursuant to Proffer 20 herein.

TRANSPORTATION IMPROVEMENTS

9. **Dedication of Public Right-of-Way.** As part of the first site plan approval for the Proposed Development following approval of this Application or upon written request by Fairfax County, whichever occurs first, the Applicant shall dedicate in fee simple to the Board of Supervisors all remaining right-of-way on Westfields Boulevard/Walney Road not previously dedicated for the public road improvements to be constructed on and serving the Property (the "Dedication Areas"), as reflected on the Development Plan. Notwithstanding the foregoing, however, upon demonstration by the Applicant that, despite diligent efforts or due to factors beyond the Applicant's control, the required dedications will be or have been delayed (such as the inability to secure necessary permission for utility relocations or VDOT approval for traffic signals) beyond the time set forth in these Proffers, the Zoning Administrator may agree to a later date for dedication of such right-of-way and for the construction of required road improvements.

10. Road Improvements.

A. **Westfields Boulevard.** The Applicant shall construct and place into operation the following improvements to the portion of Westfields Boulevard fronting the Property, as more particularly shown on Sheets 4 and 18 of the Development Plan (collectively, the "Westfields Boulevard Improvements"). The Westfields Boulevard Improvements shall be constructed to a standard as may be approved by VDOT.

i. **Westbound Through Lane.** The Applicant shall construct a third westbound travel lane along the Property's frontage on Westfields Boulevard between the intersections of Park Meadow Drive and Newbrook Drive (the "Westfields Lane"). The Westfields Lane shall be designed to operate as a shared through and right-turn lane from westbound Westfields Boulevard onto northbound Park Meadow Drive. The Westfields Lane improvements shall include the removal and/or modification of the two existing channelizing islands (the "Porkchops") located on the north side of Westfields Boulevard at its intersection with Park Meadow Drive, and any modification to any existing traffic signals abutting the Property necessitated by such removal. The Applicant reserves the right to escrow funds with

FCDOT and VDOT in lieu of constructing the Westfields Lane, if approved by FCDOT and VDOT, which escrow amount shall be determined by DPWES and VDOT and posted by the Applicant prior to the approval of the first site plan for development of Land Bay B, C or D, whichever occurs first. Should the Applicant elect to construct the Westfields Lane, and not exercise its right to escrow funds in lieu thereof, construction of the Westfields Lane shall be completed and opened to through traffic (but not necessarily accepted by VDOT for maintenance) no later than the issuance of the first Non-RUP for development in Land Bay B, C, or D, whichever occurs first.

ii. **Eastbound Left-Turn Lanes.** The Applicant shall provide (a) dual, channelized left-turn lanes from eastbound Westfields Boulevard onto northbound Park Meadow Drive, and (b) dual left-turn lanes from eastbound Westfields Boulevard onto northbound Newbrook Drive, as more particularly shown on the Development Plan (the "Eastbound Left-Turn Lanes.") Subject to VDOT approval, the portion of the Eastbound Left-Turn Lanes at Park Meadow Drive shall include construction of a raised median within the right-of-way of Westfields Boulevard in order to separate turning vehicles from through vehicles and to preclude left-turns from northbound Route 28 onto northbound Park Meadow Drive. Subject to VDOT approval, the portion of the Eastbound Left-Turn Lanes at Newbrook Drive may be accomplished through striping within the existing right-of-way. The Applicant shall also modify the traffic signal timings for the Eastbound Left-Turn Lanes based on VDOT's determination that such adjustments are needed. The Eastbound Left-Turn Lanes, including any signal timing adjustment, shall be completed and opened to through traffic (but not necessarily accepted by VDOT for maintenance) prior to the issuance of the first Non-RUP for development in Land Bay B, C, or D, whichever occurs first.

iii. **Pedestrian Crosswalks.** Subject to VDOT approval, the Applicant shall install pedestrian crosswalk striping, a pedestrian refuge area and audible pedestrian countdown signals (if not already existing and if approved by VDOT) across Westfields Boulevard at the existing traffic signal at the intersection of Westfields Boulevard and Park Meadow Drive and the intersection of Westfields Boulevard and Newbrook Drive, as shown on the Development Plan (collectively, the "Pedestrian Crosswalks"). The Pedestrian Crosswalks shall be completed prior to the issuance of the first Non-RUP for development in Land Bay B, C, or D, whichever occurs first.

iv. **Modification of Traffic Islands.** Subject to VDOT approval and the receipt of all necessary off-site rights-of-way and easements, the Applicant shall modify the existing traffic islands and the location/timing of the existing traffic signals on the south side of eastbound Westfields Boulevard at its intersection with Park Meadow Drive as necessary in order to facilitate an eastbound shared right-through lane, no later than the issuance of the first Non-RUP for development in Land Bay B, C, or D, whichever occurs first. If the Applicant is unable to bring about the dedication of the necessary rights-of-way and easements, then the Applicant shall request the Board of Supervisors to condemn the necessary land and/or easements. In the event the necessary right-of-way and/or easements cannot be acquired voluntarily, and the County chooses not to exercise its right of eminent domain, the Applicant is then released from any portion of any proffer requiring such acquisition. In the event the County elects to defer its exercise of eminent domain, then Applicant's proffer requiring such acquisition shall likewise be deferred. Notwithstanding the foregoing, however, upon demonstration by the

Applicant that, despite diligent efforts or due to factors beyond the Applicant's control, the required modifications have been delayed (such as the inability to secure off-site rights-of-way or VDOT approval) beyond the required times set forth above, the Zoning Administrator may agree to a later date for dedication/completion of the modification(s).

B. Newbrook Drive.

i. Abandonment/Vacation of Public Right-of-Way. Prior to any plan or plat approval for Land Bay B, C or D of the Proposed Development, the Applicant shall petition and obtain approval from the Board of Supervisors for the abandonment/ vacation of the existing public right-of-way of Newbrook Drive, north of Westfields Boulevard in the area more particularly shown on the Development Plan (the "Abandonment Area"). The Applicant hereby waives any right to claim or assert (i) a vested right in any plan approved under the assumption of accomplishment of such vacation and/or abandonment, or (ii) a taking or any other cause of action that otherwise may have arisen out of a Board decision to deny in whole or in part the right-of-way vacation and/or abandonment request. In the event that the Board does not approve the vacation and/or abandonment, the Applicant shall secure approval of a PCA to remove the Abandonment Area from this Application and these Proffers.

ii. Construction of Newbrook Drive. The Applicant shall construct and place into operation the proposed Newbrook Drive through the Property connecting to Westfields Boulevard in the general locations and configuration (including turn lanes and medians) shown on the Development Plan ("Newbrook Drive"). Newbrook Drive shall be designed and maintained as a private street and constructed in accordance with the sections shown on Sheets 4 and 18 of the Development Plan. Provided that the Board of Supervisors has approved its abandonment as a public street, the Applicant may install one or more speed table(s) or similar traffic control mechanisms across Newbrook Drive at locations determined by the Applicant and approved by DPWES to facilitate pedestrian crossings of Newbrook Drive. The Applicant reserves the right (but shall not be obligated) to install reinforced concrete or similar material on those portions of Newbrook Drive over which transit buses may be expected to travel. Subject to the Board of Supervisors' abandonment of the right-of-way for Newbrook Drive, the Applicant shall grant easements for County inspection and emergency vehicles, buses and transit vehicles over and across Newbrook Drive as part of site plan approval for the construction of Newbrook Drive. Newbrook Drive may be completed in phases concurrent with the development of adjacent land bays; provided, however, that the full length of Newbrook Drive through the Property shall be completed and opened to through traffic prior to the issuance of the Non-RUP representing more than 500,000 s.f. of the Proposed Development.

iii. Signage to Westfields Boulevard. The Applicant shall provide and maintain on-site signage which directs vehicles destined for southbound Route 28 and westbound Westfields Boulevard to exit Newbrook Drive at its eastern intersection with Westfields Boulevard in order to limit weaving movements along westbound Westfield Boulevard. Such signage shall be designed in accordance with the Development Guidelines associated with Westfields, the International Corporate Center at Dulles, dated September 1988 and revised June 1989 and August 1990, as amended, and shall be installed no later than the issuance of the first Non-RUP for development in Land Bay B, C, or D, whichever occurs first.

C. Main Street. The Applicant shall construct and place into operation the proposed streets that connect the eastern and western sections of Newbrook Drive within the Property and bisecting Land Bays B and C, as more particularly shown on the Development Plan (collectively, the "Main Street"). The Main Street shall be designed and maintained as a private street and constructed in accordance with the sections shown on Sheet 4 of the Development Plan, including the use of parallel street parking. Subject to approval of FCDOT, the Applicant may install one or more speed tables or similar traffic control mechanisms across Main Street to facilitate pedestrian crossings of the Main Street near the Plaza (as defined in Proffer 12 herein). Easements for County inspection and emergency vehicles, as well as County buses and transit vehicles, over and across Main Street shall be granted as part of site plan approval for the construction of Main Street. Main Street may be completed in phases concurrent with the development of adjacent land bays; provided, however, that Main Street shall be completed and opened to through traffic prior to the issuance of the Non-RUP representing more than 200,000 s.f. of development in Land Bays B and/or C. The Applicant reserves the right to provide a different name for the Main Street as part of site plan approval for the Proposed Development.

D. Adjust Traffic Signal Timing. Prior to the issuance of the Non-RUP representing more than 1.4 million s.f. of the Proposed Development, the Applicant shall submit to VDOT an analysis of the existing and new traffic signals located at the Park Meadow and Newbrook Drive entrances to the Property along Westfields Boulevard to determine whether adjustments to the signal timings of one or both of the existing traffic signals serving the Property would improve or enhance circulation through the intersections analyzed. The signal timing study shall include updated traffic counts based on the occupancy of the Proposed Development as of the date of the study. In the event VDOT determines that adjustments to the signal timing are warranted, then the Applicant shall make such adjustments within 120 days of VDOT approval, but in no event later than bond release for the Proposed Development.

E. Bus Shelter. The Applicant shall install two (2) bus shelters (the "Bus Shelters") on the Property in the general locations shown on Sheet 2 of the Development Plan or as otherwise approved by FCDOT as part of site plan approval for Land Bay B, C or D for the Proposed Development. The design and materials of the Bus Shelter shall be of similar size and quality to those of a typical bus shelter installed elsewhere in Fairfax County and shall include benches and trash receptacles. The Applicant shall be responsible for the general maintenance and upkeep of the Bus Shelter, including trash removal.

F. Westfields Boulevard Trail. The Applicant shall construct an eight foot (8') asphalt trail along the Property's frontage on westbound Westfields Boulevard/Walney Road in the general location shown on the Development Plan (the "Westfields Trail"). The Westfields Trail shall be located within an ten foot (10') public access easement to be granted to Fairfax County as part of site plan approval for each portion of the Westfields Trail. The Westfields Trail shall be constructed prior to issuance of the first Non-RUP for the first building constructed in Land Bay B, C or D.

G. Westfield Boulevard/Walney Road Signage. As part of the first site plan approval for the first building in Land Bay B, C or D, or upon demand by Fairfax County, whichever is first, the Applicant shall dedicate in fee simple to FCDOT a five foot (5') easement for public street purposes along the Property's frontage on Westfields Boulevard/Walney Road

("the Sign Easement"). The Applicant shall be permitted to include language in the Sign Easement requiring that any overhead or over-hanging street signs shall be submitted to the Westfields Architectural Review Board for review and comment prior to construction thereof.

H. Contribution for Westfields Boulevard Widening Prior to the first site plan approval for the first building in Land Bay D or upon request by Fairfax County pursuant to a scheduled and otherwise funded road improvement project, the Applicant shall establish an escrow account with Fairfax County and contribute funds covering the cost of materials for pavement, curb and gutter and related facilities for the future widening of Westfields Boulevard/Walney Road to a four-lane divided section along the Property's frontage east of existing Walney Road (the "Widening"). The escrow amount shall be determined by DPWES without consideration for the cost for mobilization, grading or flood plain mitigation associated with the Widening, if any. The Applicant also shall dedicate right-of-way and any ancillary easements to Fairfax County, at no cost, to permit the construction of the Widening. Such right-of-way/easements shall be provided at the time of the first site plan approval for Land Bay D, or upon demand, whichever occurs first.

ARCHITECTURAL DESIGNS AND SITE AMENITIES

11. Building Design and Materials. Subject to approval of the Westfields Business Owners Association and pursuant to the Development Guidelines described in paragraph A of this Proffer, the general architectural design of the Proposed Development is as shown on Sheet 10 of the Development Plan (the "Conceptual Elevations"). The Conceptual Elevations may be modified by the Applicant as part of final engineering and building design, provided that such modifications are in general conformance with and provide a similar quality of design as that shown on the Development Plan. Building materials for the Proposed Development, as generally reflected on the Conceptual Elevations, shall be selected from among the following: brick, masonry/stone, aluminum, glass, steel, split-face block and pre-cast panels, provided that final architectural details and accents may include other materials. Balconies, awnings, storefronts and other architectural details may be provided so long as such features do not extend more than eight (8) feet beyond the building footprints shown on the Development Plan, and provided that the streetscape features and dimensions are maintained.

12. Public Plaza. The Applicant shall construct a public plaza (the "Plaza") to be located between Buildings 1 and 2 on Land Bay C and bisecting the northern leg of the Proposed Main Street, as more particularly shown on Sheets 4 and 9 of the Development Plan. The Plaza shall include landscaping, hardscape areas (such as concrete walkways with brick pavers, stonework, etc.), benches, seating areas and similar passive recreation amenities. The Plaza also shall include a focal point feature to be selected by the Applicant, such as a fountain, public art or similar amenity that will serve as a defining entry feature for the Proposed Development. The Plaza shall be functionally complete (benches, landscaping and lighting installed) and open for use (subject to minor adjustments and punch-list items) prior to the issuance of the first Non-RUP for the Secondary Uses to be established in Land Bay C.

13. Streetscaping. Streetscape improvements and plantings shall be provided as indicated on the Development Plan. Notwithstanding the foregoing, the Applicant reserves the right, in consultation with the Zoning Administrator, to shift the location of street trees along the

proposed Newbrook Drive and Main Street to accommodate final architectural design, utilities and layout considerations, so long as such modifications are in substantial conformance with the Development Plan and subject to Urban Forest Management ("UFM") approval.

14. Bicycle Racks. The Applicant shall install bicycle racks throughout the Proposed Development (collectively, the "Bike Racks") in locations and type as determined by the Applicant and approved by FCDOT as part of site plan approval for Land Bay B, C or D for the Proposed Development. The Bike Racks shall collectively accommodate parking for at least ten (10) bicycles in each office building constructed in Land Bays A and D and at least twenty-five (25) bicycles on Land Bays B and C. Bike Racks serving the office buildings shall be located under cover to protect them from the elements. The Bike Racks may be installed in phases concurrent with the issuance of a Non-RUP for the building to which the proposed Bike Rack is immediately adjacent; provided, however, that all of the required Bike Racks for each land bay (as indicated on the site plan for such portion of the Proposed Development) shall be installed prior to the issuance of the final Non-RUP for the last building to be completed on that land bay.

15. Pedestrian/Bicycle Circulation. In combination with the Streetscape improvements identified in Proffer 14 above, the Applicant shall provide sidewalks of varying widths and crosswalks throughout the Property and at key intersections of the Proposed Development, as indicated on the Development Plan. The sidewalks shall be constructed concurrent with the development of the Property. All onsite sidewalks not located in public rights-of-way shall be maintained by the Applicant and/or UOA. Sidewalk improvements located within existing or proposed right-of-way shall be as approved by VDOT.

16. Flatlick Branch Trail System. The Applicant shall construct a regional, asphalt pedestrian trail (the "Pedestrian Trail") within a portion of the Flatlick Branch Dedication Area (as defined in Proffer 21 herein) and within the existing ten-foot (10') sanitary sewer easement located in Land Bay A and running east towards Land Bay D of the Property, as more particularly shown on the Development Plan. The Applicant shall maintain the portion of the trail located on its Property and outside of the Flatlick Branch Dedication Area (as defined in Proffer 21 herein). The Pedestrian Trail shall be a Type I Asphalt Trail with a minimum width of eight feet (8'). The Pedestrian Trail is shown on Sheet 2 of the Development Plan and labeled thereon as "Pedestrian Trail" and "Pond Access and Pedestrian Trail." The exact location of the Pedestrian Trail shall be determined as part of site plan approval for the Proposed Development in consultation with DPWES and Fairfax County Parks Authority ("FCPA"). The Pedestrian Trail shall be completed and available for use by the public prior to the issuance of the Non-RUP representing more than 750,000 s.f. of the Proposed Development.

17. Lighting. All lighting shall be in conformance with Part 9 of Article 14 of the Fairfax County Zoning Ordinance. The maximum height of any freestanding light fixtures shall be eighteen feet (18') above grade, as measured from grade to the top of the fixture. Building mounted security lighting shall utilize full cut-off fixtures with shielding such that the lamp surface is not directly visible.

18. Signage. Signage for the Property and the Proposed Development shall be provided in accordance with the requirements of Article 12 of the Zoning Ordinance and the Westfields

Development Guidelines or pursuant to a Comprehensive Sign Plan approved by the Westfields Architectural Review Board and the Planning Commission.

STORMWATER MANAGEMENT/ENVIRONMENTAL FEATURES

19. Stormwater Management Master Plan. Prior to site plan approval for the first building to be constructed in Land Bay C of the Proposed Development, the Applicant shall submit to and obtain approval from DPWES of a Stormwater Plan for the Proposed Development (the "Stormwater Plan"). The Stormwater Plan shall include strategies for addressing both water quality and water quantity management issues, including detailed mitigation measures to be implemented as part of construction. Following approval by DPWES of the initial Stormwater Plan, the Applicant thereafter shall submit an updated Stormwater Plan to DPWES for approval concurrent with subsequent site plan submissions for the Proposed Development. These updated plans shall include any modifications to the stormwater detention or stormwater quality treatment program since the initial approval of the Stormwater Plan. The Applicant shall construct stormwater quality and stormwater quantity impact mitigation measures in accordance with the Stormwater Plan (and each subsequent revisions thereto) with the Proposed Development, such that the runoff reductions outlined below shall be achieved.

A. Stormwater Management Goals. Using a series of (i) stormwater management wet ponds, (ii) bioretention facilities and (iii) structural and non-structural BMPs, the Stormwater Plan shall demonstrate that, after the full build-out of the Proposed Development, there is no net increase in the combined peak rate of stormwater discharge from the Property based on a comparison of the conditions of the Property before it was developed and the conditions of the Property upon completion of the Proposed Development. This Proffer shall apply to the sum of all stormwater discharge coming from the Property as a whole, but not as a standard reduction at each individual discharge location on the Property (meaning that the discharge at individual locations may vary, so long as the overall reduction goal is achieved).

B. Best Management Practices/Low Impact Development. The Applicant shall, as part of the Stormwater Plan, incorporate low impact development ("LID") techniques and other Best Management Practices ("BMP") into the Proposed Development in order to improve water quality associated with stormwater runoff from the Property. Using structural and non-structural BMPs, such as sand filters, storm filters, Filterra devices, bioretention basins, Plaza landscaping, grass swales or a combination thereof, the Stormwater Plan shall demonstrate that there is a combined fifty percent (50%) reduction in phosphorous loading from the Property based on a comparison of the conditions of the Property upon completion of the Proposed Development (including the BMP/LID features) and the conditions of the Property prior to construction of the Proposed Development. In the event that either the Applicant or DPWES deems it necessary to substitute another BMP/LID strategy for one of those listed above, the Applicant shall identify an alternate strategy acceptable to both parties and, if necessary, will seek administrative approval from the Zoning Administrator pursuant to the provisions of Sect. 16-403 of the Zoning Ordinance.

C. Maintenance Responsibility. Prior to site plan approval for the first building to be constructed in Land Bay B, C, or D of the Proposed Development, the Applicant shall execute an agreement with the County in a form satisfactory to the County Attorney (the "SWM

Agreement”) providing for the perpetual maintenance of all of the elements of the Stormwater Plan serving the area of the site plan proposed, including the BMP and LID devices and detention facilities (collectively, the “SWM Facilities”), as applicable. The SWM Agreement shall require the Applicant (or a successor UOA) to contract with one or more maintenance/management companies to perform regular routine maintenance of the SWM Facilities and to provide a maintenance report annually to the Fairfax County Maintenance and Stormwater Management Division of DPWES. The SWM Agreement also shall address easements for County inspection and emergency maintenance of the SWM Facilities to ensure that the facilities are maintained by the Applicant in good working order. The UOA documents for each building in the Proposed Development shall specify the maintenance responsibilities of the owners under the SWM Agreement.

20. Landscape Plan.

A. Detailed Landscape Plans. As part of each site plan submission for the Proposed Development, the Applicant shall submit to Urban Forest Management of DPWES (“UFM”) for review and approval a detailed landscape and tree cover plan (each a “Landscape Plan”) illustrating the plantings and other features to be provided with the Proposed Development, including streetscapes, plazas and other features, and which shall include, among other things:

- i. A statement reiterating that all landscaping areas shall be irrigated;
- ii. Design details for tree wells and other similar planting areas above structures and along streets;
- iii. Composition of the planting materials used where plantings are to be located within or on top of structures and other methods to be used to insure the viability of the proposed plantings; and
- iv. Other information that may be requested by UFM.

Such Landscape Plan shall be consistent with the quality and quantity of plantings and materials shown on Sheet 6 of the Development Plan and shall include the use of additional shade trees as determined by the Applicant. Adjustments to the type and location of vegetation and the design of the Plaza and streetscape improvements and plantings shall be permitted in consultation with DPZ and UFM if determined to be in substantial conformance with the Development Plan.

B. Plaza Landscaping. As provided above, in order to (1) incorporate into otherwise impervious areas of the Property a soil matrix and plantings intended to provide stormwater pollutant removal; (2) reduce the heat island effect; and (3) naturalize and add aesthetically-pleasing elements, the Applicant shall install landscaping and other materials on the Plaza (“Plaza Landscaping”) as more particularly shown on the Development Plan, and shall install all of the Plaza Landscaping at one time. Shade trees having a minimum 2-½ inch caliper shall be installed within the Plaza area as shown on Sheet 6 of the Development Plan. Additional details concerning the plantings and design elements of the Plaza shall be included on the Landscape Plan that will be submitted pursuant to this Proffer.

C. Planting Strips. The Applicant shall install street trees consistent with the streetscape plans included on the Development Plan and with the requirements of the Public Facilities Manual ("PFM") For tree plantings that do not meet the minimum planting area required by the PFM, the Applicant shall provide a minimum of 130 square feet of surface area of structural soil for Category 4 shade trees and 90 square feet of surface area of structural soil for Category 3 shade trees, as such trees are identified in the PFM. The structural soil shall have a minimum width of 8-feet and a minimum depth of 36-inches and such planting areas shall be interconnected to the extent feasible, as determined by UFM. Prior to site plan approval for the first building to be constructed in Land Bay C of the Proposed Development, the Applicant shall provide written documentation to UFM, including written confirmation from a certified arborist and/or landscape architect verifying installation of the structural soil consistent with the requirements of this Proffer.

D. Tree Planting along the EQC Border. In order to compensate for trees displaced at the northwest corner of the Property due to implementation of the Stormwater Plan, the Applicant shall plant a minimum twenty (20) additional trees of at least 1-1/2 inch caliper along the western border of the Environmental Quality Corridor ("EQC") to supplemental the existing vegetation in the EQC (the "EQC Trees"), as shown on the Development Plan. The EQC Trees shall be included on the Applicant's Landscape Plan, subject to UFM approval, and installed prior to the issuance of the first Non-RUP for development in Land Bay D.

21. Dedication of Flatlick Branch to Park Authority. In recognition of the Property's location within a Water Supply Overlay District, and to protect Flatlick Branch from the encroachment of development, the Applicant shall dedicate to the FCPA approximately 20 acres of Property located within the limits of the EQC for Flatlick Branch, as more particularly shown on the CDP (the "Flatlick Branch Dedication Area"), for use as recreation facilities and open space. Dedication of the Flatlick Branch Dedication Area shall be accomplished upon completion of that portion of the Flatlick Branch Trail System to be located in the Flatlick Dedication Area, but in no event later than final bond release for the Proposed Development. The Applicant reserves the right to receive credit under the Stormwater Plan for dedicating land area within the floodplain against the water quality improvement/BMP requirements for the Proposed Development, if approved by DPWES, and, if approved, such credit may occur as each phase of the dedication is completed.

22. Limits of Clearing. The Applicant strictly shall adhere to the Limits of Clearing ("LOC") and shall not encroach upon the EQC and Resource Protection Area ("RPA") located along the eastern boundaries of Land Bays C and D, as shown on the Development Plan. However, minor adjustment of the LOC at time of final design and engineering and the location of proposed utilities, located in the least disruptive manner possible, may be permitted pursuant to Section 16-203 and Section 18-204 of the Zoning Ordinance if determined to be necessary by DPWES. The Applicant shall use its best efforts to mitigate adverse impacts, such as sedimentation, excessive clearing of vegetation and erosion, on the Flatlick Branch Dedication Area as a result of constructing the Proposed Development. The Director of DPWES shall review and approve all plans for work within the Flatlick Branch Dedication Area pursuant to the policy for protection of the Flatlick Branch Dedication Area.

TRANSPORTATION DEMAND MANAGEMENT

23. Transportation Demand Management. This Proffer sets forth a program for a transportation demand management plan (the "TDM Plan") that shall be implemented by the Applicant, and subsequently, as appropriate, the UOA, to encourage the use of transit, other high-occupant vehicle commuting modes, walking, biking and teleworking, all in order to reduce automobile trips generated by the Proposed Development.

A. TDM Goal. TDM strategies, as detailed below, shall be utilized by the Applicant in order to reduce the A.M. and P.M. peak hour trips by a minimum of fifteen percent (15%) from the total number of vehicle trips that would be expected from full build-out of the 1,414,900 s.f. in the Proposed Development (the "Baseline Trips") based on the Institute of Traffic Engineers (ITE) Trip Generation Manual, 7th Edition (the "TDM Goal"). In the event the Applicant constructs less square footage as part of the Proposed Development, then the Baseline Trips shall be calculated as if the full 1,414,900 s.f. of the Proposed Development actually had been constructed as reflected on the Development Plan. Owners, tenants and employees of the Proposed Development shall be advised of the TDM Goal and the TDM strategies by the PM (as defined in this Proffer) through the annual dissemination of written materials summarizing the availability of the TDM strategies.

B. Program Manager. Within one hundred and twenty (120) days of final, unappealable approval of this Application or issuance of the first non-RUP for the Proposed Development, whichever is later, the Applicant (and thereafter, as applicable, the UOA) shall designate an individual to act as the Program Manager ("PM") for the Property, whose responsibility will be to implement the TDM strategies, with on-going coordination with FCDOT. The PM duties may be a part of other duties assigned to the individual(s). The Applicant shall notify FCDOT within ten (10) days of the designation and thereafter shall do the same within ten (10) days of any change in such appointment. Within three (3) months following approval of the first building permit for Land Bay B and/or C, the Applicant shall begin to calculate the Baseline Trips described in Proffer 23A herein.

C. TDM Plan. In order to meet the TDM Goals set forth in this Proffer, the Applicant shall implement the TDM Plan. A draft copy of this plan shall be provided to FCDOT for review and comment prior to the issuance of the first building permit for the Proposed Development following approval of this Application. Should FCDOT seek modifications to the TDM Plan, the Applicant shall work in good faith with FCDOT and shall amend the TDM Plan as mutually agreed to by the Applicant and FCDOT. If FCDOT does not comment on the TDM Plan within sixty (60) days following its submission, the TDM Plan shall be deemed approved. Once the TDM Plan is approved by FCDOT, the Applicant shall implement the TDM Plan. Because the TDM Plan represents the strategy to be employed by the PM to meet the TDM Goal, the TDM Plan may be amended from time to time, subject to approval of FCDOT, without the requirement to secure a PCA; provided, however, that the TDM Goal shall not be amended absent approval of the Board of Supervisors. The TDM Plan and any amendments thereto shall include provisions for the following with respect to the Proposed Development:

i. Requirement that each lease/sublease in the Proposed Development include a requirement for the tenant to disseminate information about transit services available to the Property, including Metro maps, schedules and forms, as well as ride-sharing and other relevant transit options, to employees, subtenants and, as applicable, on-site consultants;

ii. Coordination/Assistance with existing/established vanpool and carpool formation programs, including the Dulles Area Transportation Association ("DATA"), the Fairfax County Department of Transportation Ride Share, as well as other ride matching services and the adjacent office buildings and homeowners associations and established guaranteed ride home programs;

iii. Dedicated parking spaces on the Property for vanpools and car-sharing vendors not otherwise addressed herein will be provided at convenient locations so as to encourage vanpool usage and car-sharing;

iv. Dedication of three (3) parking spaces for vehicle/car sharing program(s), subject to agreement with third-party vendor(s) (such as ZipCar/FlexCar);

v. Establishment of a phasing strategy, coordinated with FCDOT as provided herein, to address which TDM strategies are implemented at what time;

vi. Installation of bicycle racks per Proffer 14 herein, shower facilities and similar amenities in each office building constructed in Land Bays A and D in order to encourage tenants and employees to use alternate means of transportation to work; and

vii. Other programs as determined by the PM in consultation with FCDOT.

D. TDM Account. Concurrent with the designation of the PM, the Applicant shall establish and fund a TDM account (the "TDM Account") in the initial amount of Fifty Thousand dollars (\$50,000.00). Funds in the TDM Account shall be utilized by the PM each year to implement the TDM strategies and up to fifty percent (50%) may be used to pay for the PM's services, provided however that the percentage of the TDM Account used to pay for the PM's services shall not exceed the percentage of time the PM spends implementing the TDM strategies each year. The TDM Account shall be managed by the PM. As applicable, a line item for further funding of the TDM Account shall be included in the annual UOA budget upon the establishment of the UOA. The UOA documents shall provide that the TDM Account shall not be eliminated as a line item in the UOA budget, and that funds in the TDM Account shall not be utilized for purposes other than to fund implementation of the TDM Plan or to pay the PM. In the event that the TDM Account is drawn upon, then the TDM Account shall be replenished until the TDM Account achieves a balance of Fifty Thousand Dollars (\$50,000.00). The PM shall consult with FCDOT to develop and implement the initial TDM strategies.

E. Monitoring.

i. Exactly one (1) year following the issuance of the final Non-RUP on the Property, the effectiveness of the TDM Plan shall be evaluated using surveys and/or traffic counts prepared by the PM and approved by FCDOT. The Applicant shall coordinate with FCDOT, and FCDOT shall approve, the scope of the traffic counts. All costs exclusive of those of the PM, such as the employment of a traffic consultant, associated with undertaking the traffic study shall be funded outside the TDM Account. The Applicant shall use the results of the surveys and traffic counts to determine if the TDM Goal has been met and shall submit this information to FCDOT for review and approval. If FCDOT has not responded within sixty (60) days, the survey and count data for that year shall be deemed approved. Similar TDM surveys

shall be conducted annually thereafter for an additional two (2) years following the initial survey. Neither the Applicant's tenants nor adjacent property owners shall be notified of the date and time of the surveys and/or traffic counts. If the TDM surveys show that the trip reduction objective is being met after a total of three (3) annual surveys, the Applicant shall proceed with the TDM strategies as implemented and shall provide such surveys as may be requested by FCDOT, but not more often than once every three (3) years thereafter.

ii. In the event any TDM survey and traffic count indicates that the TDM Goal has not been met, the Applicant shall meet with FCDOT to review the strategies in place and to develop modifications to the TDM strategies, adopt additional TDM strategies and/or conduct additional traffic counts, as deemed appropriate by FCDOT, that will facilitate meeting the TDM Goal. If the TDM Goal is not met for two (2) consecutive surveys and traffic counts, then the Applicant, or successor condominium association, shall contribute five cents (\$0.05) per square foot of the Proposed Development then-constructed on the Property (up to a maximum \$50,000.00) to the TDM Account to be utilized on supplemental TDM strategies approved in cooperation with FCDOT. The TDM Goal, the TDM strategies and potential for such TDM penalty shall be disclosed in the UOA documents.

24. Inflationary Adjustment of Contributed Funds. Any funds contributed for transportation improvements shall be subject to annual inflationary adjustments from the date of approval of this Proffer Condition Amendment request utilizing the Consumer Price Index-Urban ("CPI-U").

MISCELLANEOUS

25. Advance Density Credit. Advanced density credit is reserved consistent with the provisions of the Fairfax County Zoning Ordinance, for all eligible dedications described herein or as may be required by Fairfax County or VDOT pursuant to the PFM, at the time of site plan approval for the Property.

26. Utility Locations. To the extent possible and as permitted by the applicable utilities companies, the Applicant shall place all utilities serving the Property underground. Upon request by the Applicant, the Zoning Administrator may waive/modify the requirement to place utilities underground without approval of a PCA upon a determination that such requirement (a) is infeasible or impractical or (b) would require the Applicant to secure easements or consents from third-parties that, despite having been diligently pursued by the Applicant, are not available.

27. Severability. Pursuant to Section 18-204 of the Zoning Ordinance, any portion of the Property may be the subject of a PCA, FDPA, FDP, SE or Special Permit ("SP") without joinder and/or consent of the owners of the adjacent Properties, provided that such PCA, FDPA, FDP, SE or SP does not materially adversely affect the other Properties. Previously approved zoning applications applicable to the balance of the Property that is not the subject of such a PCA, FDPA, FDP, SE or SP shall otherwise remain in full force and effect.

28. Successors and Assigns. These Proffers will bind and inure to the benefit of the Applicant and his successors and assigns. Each reference to "Applicant" in this proffer

statement shall include within its meaning and shall be binding upon Applicant's successor(s) in interest and/or developer(s) of the site or any portion of the site.

29. Counterparts. These Proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, and all of which taken together shall constitute but one and the same instrument.

COMMONWEALTH CENTRE INVESTORS, LLC
Owner of Tax Map # 44-1 ((1)) 6, 6B, and 6C

By: _____

Barry Howard

Chairman of the Board

COMMONWEALTH CENTRE INVESTORS II, LLC
Owner of Tax Map # 44-1 ((1)) 6D

By: _____

Barry Howard

Chairman of the Board

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA
A body corporate and politic
Title Owner of Portion of Newbrook Drive

By: A H Griffin

Name: Anthony H. Griffin

Title: Fairfax County Executive



FINAL DEVELOPMENT PLAN CONDITIONS

FDP 2006-SU-025

September 26, 2007

If it is the intent of the Planning Commission to approve Final Development Plan FDP 2006-SU-025, to permit mixed use development, on property located at Tax Map 44-1 ((01)) 06, 6B, 6C, 6D and right-of-way for Newbrook Drive, to be vacated, staff recommends that the Planning Commission condition the approval by requiring conformance with the following development conditions.

1. A Phase I archaeological survey shall be conducted on portions of Land Bays B, C, D, and/or E of the property within boundaries established by the Park Authority's Cultural Resource Management and Protection Section (CRMPS), with comment by the applicant. Such study or studies shall utilize a scope of work provided by CRMPS and shall be completed prior to any land disturbing activities within the study area. If any archaeological resources are found in the Phase I survey and it is deemed appropriate by CRMPS, Phase II assessment shall be done, using a scope of work provided by CRMPS. If any sites are determined to be significant by CRMPS, then either they will be left undisturbed or Phase III data recoveries shall be performed in accordance with a scope provided by CRMPS. Any areas disturbed which are outside of the proffered limits of clearing shall be restored as approved by Urban Forest Management, DPWES. Any Phase III scopes will provide for public interpretation of the results. Draft and final archaeological reports produced as a result of Phase I, II and/or III studies shall be submitted for approval to CRMPS.
2. Prior to any land disturbing activities in Land Bay D, an archaeological study shall be conducted in the area adjacent to the cemetery to determine if burials extend beyond the modern cemetery boundaries shown on the CDP/FDP. The scope of this study shall be coordinated with the Park Authority's Cultural Resource Management and Protection Sections (CRMPS). Any areas beyond the current, known limits of the cemetery in which human remains are found shall be included in the cemetery for the purposes of this condition, and shall be treated in accordance with applicable state law. The discovery of human remains is subject to the provisions set forth in the Virginia Antiquities Act, Code of Virginia 10.1-2305.

The cemetery (including any additional burial sites around the periphery) may be relocated as noted on the CDP/FDP in accordance with all applicable state laws. If the cemetery remains on the property, to protect the cemetery during construction activities, prior to the initiation of clearing

and grading on Land Bay D, temporary chain-link fencing shall be installed around the perimeter of the cemetery. This fencing shall consist of 6-8 foot tall 14-gauge welded wire with 10-12 foot wide panels, attached to steel posts that can be clamped together and set in concrete block "foundations." Said temporary fencing shall remain in place until completion of construction in the immediate area, when the Applicant shall provide around the cemetery a 4 foot tall, decorative metal fence, landscaping around the perimeter and a fiberglass imbedded historical marker commemorating the cemetery. A public access easement shall be provided to the cemetery, and the cemetery shall be maintained by the Applicant, which obligation shall be provided for in the appropriate documents.

CONCEPTUAL DEVELOPMENT PLAN CONDITIONS

RZ 2006-SU-025

October 12, 2007

If it is the intent of the Board of Supervisors to approve RZ 2006-SU-025 and the associated Conceptual Development Plan, on property located at Tax Map 44-1 ((1)) 6, 6B, 6C, 6D and a portion of right-of-way for Newbrook Drive (to be vacated), staff recommends that the Board of Supervisors condition the approval by requiring conformance with the following development condition.

1. Prior to dedication of the Flatlick Branch Dedication Area to the Fairfax County Park Authority (FCPA), the applicant shall take corrective action as necessary in accordance with PFM 2-1102.4B, as determined by FCPA.

