

PROFFERS

DULLES CENTER, LLC

PCA 2003-HM-004

September 12, 2007

Pursuant to Section 15.2-2303(a) Code of Virginia, 1950, as amended, Dulles Center, LLC, (hereinafter referred to as the "Applicant"), for itself, successors and assigns in PCA 2003-HM-004, filed for property identified as Tax Map 16-3 ((1)) 6A, 6B and 36 and portions of Old Centreville Road to be vacated/abandoned (hereinafter referred to as the "Application Property") hereby proffers the following, provided that the Board of Supervisors approves an amendment to proffered conditions in conjunction with a Conceptual/Final Development Plan (CDP/FDP) for commercial development. These proffers shall replace and supersede any previous proffers approved on the Application Property.

1. CONCEPTUAL/FINAL DEVELOPMENT PLAN –

- a. Subject to the provisions of Section 16-402 of the Fairfax County Zoning Ordinance (hereinafter referred to as the "Zoning Ordinance"), development of the Application Property shall be in substantial conformance with the CDP/FDP, consisting of eleven sheets prepared by Charles P. Johnson & Associates, Inc. dated May 10, 2007, and revised through July 30, 2007.
- b. Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, minor modifications to the CDP/FDP may be permitted as determined by the Zoning Administrator. The Applicant reserves the right to make minor adjustments to the layout, internal lot lines, and locations of the proposed buildings at time of site plan submission based on final building footprints, utility locations, and final engineering design, provided that such does not materially decrease the amount and location of open space, tree save areas, or distance to peripheral lot lines.
- c. Notwithstanding that the CDP/FDP is presented on eleven sheets and said CDP/FDP is the subject of Proffer 1a. above, it shall be understood that the CDP shall be limited to the points of access, location and amount of open space, limits of clearing and grading, uses, and the total number and general location of buildings. The Applicant has the option to request Final Development Plan Amendments ("FDPAs") for elements other than CDP elements from the Planning Commission for all of, or a portion of, the CDP/FDP in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance.

- d. **Maximum Intensity and Permitted Uses.** A maximum intensity for the site shall be a 0.63 FAR. The primary uses shall include retail sales establishments, hotels, motels, offices, financial institution with a drive-through, and eating establishments without a drive-through; however, the following principal and secondary uses may also be included within retail/office/eating establishment and hotel building:

1. **Business and Supply Service Establishment**
2. **Garment Cleaning Establishment (no on-site processing)**
3. **Personal Service Establishment**
4. **Public Uses**
5. **Repair Service Establishment**
6. **Accessory Uses and Accessory Services Uses**
7. **Fast Food Restaurants (not drive-through)**
8. **Health Clubs**
9. **Community Uses**
10. **Private Clubs and Public Benefit Associations**
11. **Private Schools of Special Education**

2. **TRANSPORTATION –**

- a. **Subject to Virginia Department of Transportation (VDOT) and Department of Public Works and Environmental Services (DPWES) approval, Applicant shall dedicate and convey in fee simple to the Board of Supervisors variable right of way up to a width of seventy-eight (78) feet from the existing centerline of Centreville Road along the Application Property's frontage as shown on the CDP/FDP. Dedication shall be made in fee simple to the Board of Supervisors, at no cost, at the time of first site plan approval, or upon demand from either Fairfax County or VDOT, whichever shall first occur.**
- b. **Subject to VDOT and DPWES approval, Applicant shall dedicate and convey in fee simple to the Board of Supervisors variable right of way up to a width of sixty-three (63) feet from the existing centerline of Coppermine Road along the Application Property's frontage as shown on the CDP/FDP. Dedication shall be made in fee**

simple to the Board of Supervisors, at no cost, at the time of first site plan approval, or upon demand from either Fairfax County or VDOT, whichever shall first occur.

- c. Applicant shall construct frontage improvements to the Coppermine Road frontage as shown on the CDP/FDP. Coppermine Road improvements shall include two left turn lanes onto northbound Centreville Road, one through eastbound lane, a combined eastbound through and right turn lane onto southbound Centreville Road, two through westbound lanes, and right and left turn lanes into the Coppermine Road entrance subject to VDOT approval. Applicant shall extend Coppermine Road improvements along the frontage of Tax Map 16-3 ((1)) 7 as depicted on the CDP/FDP. Prior to construction of improvements, the Applicant shall receive approval of a study scope from VDOT and submit a traffic impact analysis for Coppermine Road to VDOT. A copy of the approved scope and traffic impact analysis shall be submitted to the Fairfax County Department of Transportation (FCDOT) for information. Following VDOT review of the study, the Applicant shall implement VDOT recommendations in its final road improvement design, without the necessity of an amendment to these proffers or the CDP/FDP, so long as such improvements are in substantial conformance with the CDP/FDP, or located entirely within the public right-of-way. Said improvements shall be completed prior to the issuance of the first Non-Residential Use Permit (Non-RUP) for the Application Property.
- d. Subject to VDOT and DPWES approval, Applicant shall construct a two hundred (200) foot right turn lane plus a one hundred (100) foot taper along the Application Property's Centreville Road frontage measuring a total of approximately three hundred (300) feet within the dedicated right of way as shown on the CDP/FDP. Said improvements shall be completed prior to the issuance of the first Non-RUP for the Application Property.
- e. Applicant shall construct the access to Centreville Road as right in and right out, as shown on the CDP/FDP. The Applicant shall install signs on the Application Property directing traffic heading to northbound Centreville Road to the Coppermine Road/Centreville Road intersection. The Applicant shall conduct a study of the right in and right out access at Centreville Road to evaluate the safety and operation of the entrance six (6) months after the Non-RUP is issued for either the hotel or the retail building (whichever occurs first), and again six (6) months after the first Non-RUP for the other building (unless both buildings are occupied at the time of the first study, in which case only one study will be required.) The parameters of said study, or studies, shall be discussed with and approved by VDOT and FCDOT prior to its submittal. The Applicant shall implement safety measures as recommended by VDOT, which may include a restriction of the access to entrance only, as appropriate, and without the necessity of an amendment to these proffers or the CDP/FDP, so long as such measures are in substantial conformance with the CDP/FDP.

- f. As shown on the CDP/FDP, Applicant shall construct a (10) foot wide concrete trail along the Application Property's Centreville Road frontage within the right-of-way.
- g. Applicant shall construct a five (5) foot wide concrete sidewalk along the Application Property's Coppermine Road frontage within the dedicated right of way as shown on the CDP/FDP. Said sidewalk shall be constructed prior to the issuance of the first Non-RUP for the Application Property.
- h. Subject to the approval of VDOT, the Applicant shall install a "No U-Turn" sign on the southbound side of the intersection of Centreville Road and Coppermine Road. If approved by VDOT at time of the site plan, the Applicant shall install the sign prior to the issuance of the first Non-RUP for the Application Property.
- i. Applicant shall construct an eight (8) foot wide asphalt trail from Centreville Road to the western property line as generally shown on the CDP/FDP to connect to the trail proposed with RZ 2002-HM-035. Said improvements shall be completed prior to the issuance of the Non-RUP for the hotel.
- j. Applicant shall discontinue/abandon/vacate a portion of Old Centreville Road and shall privately maintain any portion of Old Centreville Road that continues to be right-of-way as shown on the CDP/FDP. In conjunction with this process, the Applicant shall work with the property owner of the parcel identified among the Fairfax County tax records as 16-3 ((1)) (7) (Parcel 7) to secure the dedication of right-of-way to the prescriptive centerline of Old Centerville Road. At time of such dedication along the frontage of Parcel 7, the Applicant shall enter into a maintenance and hold harmless agreement to define Applicant's maintenance responsibilities for the dedicated area and indemnify Fairfax County, VDOT and any adjacent property owners against liability for actions in the right-of-way.

If portions of the right-of-way are discontinued/abandoned/vacated as appropriate by the Board of Supervisors, Applicant shall develop these areas as shown on the CDP/FDP. Should the County not approve the discontinuance/abandonment/vacation, or if the dedication of right-of-way from Parcel 7 does not occur, a Proffered Condition Amendment/Final Development Plan Amendment shall be obtained. The Applicant hereby waives any right to claim or assert (i) any vested right in any plan approved under the assumption of accomplishment of such discontinuance/abandonment/vacation and dedication of right-of-way from Parcel 7, 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 discontinuance/abandonment/vacation request.

- k. Applicant shall contribute the sum of twenty thousand dollars (\$20,000.00) at time of a first site plan approval for the Applicant Property to DPWES for the installation of

bus shelter in the vicinity of the Application Property and shall maintain said shelter if adjacent to the Application Property.

- l. If warranted, the Applicant shall modify the existing traffic signal at the intersection of Centreville Road and Coppermine Road to accommodate the traffic generated by proposed development, subject to the approval of VDOT. Said modifications may include the retiming of the signal and/or the relocation of signal poles, as necessary. Said modifications shall be completed prior to the issuance of the first Non-Residential Use Permit for the Application Property.
- m. If applicable warrants have been met, and subject to VDOT approval, Applicant shall install a traffic signal at the Application Property's access to Coppermine Road. If required by warrants, said traffic signal shall be installed prior to the issuance of the first Non-Residential Use Permit for the Application Property.
- n. If not already installed, the Applicant shall add pedestrian countdown signals and crosswalks at the signalized intersection of Centreville Road and Coppermine Road at each leg of the intersection, subject to VDOT approval. Said improvements shall be installed prior to the issuance of the first Non-RUP for the Application Property.
- o. Applicant reserves density credit as may be permitted by the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance for all dedications described herein and as may be reasonably required by Fairfax County or VDOT whether such dedications occur prior to or at time of site plan approval.
- p. Subject to the approval of Dominion Resources, successor in interest to VEPCO, Applicant may locate parking underneath the existing electric power easement, as shown on the CDP/FDP.
- q. Interparcel public access shall be provided to Tax Map 16-3 ((1)) 7, in the general location depicted on the CDP/FDP.
- r. Shower stalls and lockers shall be provided in the hotel for hotel employees.
- s. An inverted U-style bicycle parking rack, or other type as approved by FCDOT, shall be provided adjacent to the bank building, and three racks each shall be provided at the retail building and hotel. Said racks shall be installed prior to the issuance of a Non-RUP for each building.
- t. Prior to the issuance of any Non-RUP, the Applicant shall demonstrate to DPWES that adequate parking is provided in accordance with the CDP/FDP and to serve all uses on the Application Property. Should adequate parking not be available, the proposed uses shall be modified to meet minimum parking requirements.

- u. Upon demonstration by the Applicant that, despite diligent efforts, the transportation improvements described herein have been delayed due to engineering and/or construction related issues, the Zoning Administrator may agree to a later date for the completion of the improvements.

3. LANDSCAPING AND OPEN SPACE -

- a. Applicant shall strictly adhere to the limits of clearing and grading as shown on the CDP/FDP. The installation of utilities and/or trails outside of the limits of clearing and grading as shown on the CDP/FDP shall be located in the least disruptive manner necessary as determined by the Urban Forestry Division of DPWES. A replanting plan shall be developed and implemented, subject to approval by the Urban Forester, for any areas outside the limits of clearing and grading that must be disturbed.
- b. Applicant shall provide landscaping on the Application Property as generally shown on the CDP/FDP, in accordance with the recommendations of the Urban Forester. Evergreen trees shall be a minimum height of eight (8) feet and deciduous trees shall have a minimum caliper of two and one-half to three (2 ½ to 3) inches at the time of planting.

4. PARKS AND RECREATION -

- a. Applicant shall dedicate in fee simple the Resource Protection Area (RPA) as depicted on the CDP/FDP to the Fairfax County Park Authority for public park purposes prior to the issuance of a Non-residential Use Permit for the hotel, or upon demand from Fairfax County, whichever shall occur first. Dedication may be subject to a conservation easement granted to Fairfax County for BMPs.
- b. Applicant shall contribute the sum of forty-three thousand six hundred and fifty dollars (\$43,650.00) to the Fairfax County Park Authority at time of site plan approval for the construction of recreation facilities in the vicinity of the Application Property. Said contribution shall be reduced by the cost of the trail identified in Proffer 2. i.

5. STORMWATER MANAGEMENT - BEST MANAGEMENT PRACTICES -

- a. Prior to site plan approval, the Applicant shall demonstrate to the satisfaction of DPWES that adequate outfall is provided. Stormwater management and BMPs shall be provided in accordance with the PFM within one or more underground facilities. The facilities will be located where the proximity to an adequate outfall allows the most approvable design, so as not to interfere with other aspects of the CDP/FDP, but smaller facilities, integrated into storm catch basin structures such as tree box filters, Filterra, or similar facilities, may be utilized elsewhere on the site, subject to the approval of DPWES. If the proposed facilities, or viable alternatives that are in

substantial conformance with the CDP/FDP, are not approved by DPWES, the Applicant recognizes that it may be necessary to request an amendment to the approved CDP and/or FDP to alter the site design. Areas within the RPA may be used for BMP credit, if deemed suitable by DPWES, except for those areas disturbed for the installation of trails and utilities. The Applicant and its successors will assume the responsibility for the perpetual maintenance of all underground stormwater management facilities. Said maintenance responsibility shall be incorporated into an agreement to be reviewed and approved by Fairfax County Attorney's Office and recorded among the land records. Said agreement shall address the following issues:

1. Future replacement when warranted.
 2. Liability and insurance in an amount acceptable to Fairfax County.
 3. Restriction that the Applicant, or successors, or assigns shall not petition DPWES for future maintenance.
 4. County inspection to ensure that the facilities are maintained by the Applicant in good working order.
- b. Subject to the review and approval of DPWES, the Applicant shall make reasonable efforts to incorporate low impact design features into the site plan, notwithstanding that said features may not be shown on the CDP/FDP. At the Applicant's option, design features may be incorporated such as discharging stormwater or roof drainage across vegetated areas, infiltration trenches, BMP swales or other similar techniques that will result in an increased post-development time of concentration.
6. DESIGN -
- a. Buildings shall be constructed as generally consistent with the conceptual elevations shown on Sheets 5, 6, 7 and 8 of the CDP/FDP. Exposed neon tubing and wood trim shall not be provided on the building roofline and building facades.
 - b. Applicant shall provide landscape buffers and streetscape features as conceptually shown on the CDP/FDP.
 - c. Lighting on the Application Property shall be downward directed and fully shielded (cut-off) in accordance with Zoning Ordinance provisions.
 - d. Applicant shall construct all buildings, except the bank, on the Application Property with a common theme to ensure coordinated development. Common theme elements shall include, but not be limited to, consistent building materials, architectural features and colors subject to approval by DPWES during the building permit review

process. The bank shall be constructed as generally shown on the CDP/FDP, and shall include compatible materials and accent colors with the remaining buildings constructed on the Application Property.

- e. Signage shall be provided in accordance with Article 12 of the Zoning Ordinance or in accordance with a Comprehensive Sign Plan as may be approved by Fairfax County. Signage shall be architecturally compatible with the building façade, and, if provided, a monument sign shall be compatible with the examples on the CDP/FDP. There shall be no pole-mounted signs provided.
- f. Lighting for signs, if provided, shall be internal or top downward.
- g. The proposed hotel building shall not exceed a maximum height of 75 feet, and the proposed retail/office/restaurant building shall not exceed a maximum height of 45 feet.

7. NOISE ATTENUATION –

- a. In order to reduce interior noise to a level of approximately DNL 45 dBA, hotel units within a highway noise impact zone of DNL 65-70 dBA (285 feet from centerline of Centreville Road) shall employ the following acoustical treatment measures:
 - 1. Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39.
 - 2. Doors and glazing shall have a laboratory STC rating of at least 28 unless glazing constitutes more than 20 percent of any façade exposed to noise levels of DNL 65 dBA or above. If glazing constitutes more than 20 percent of an exposed façade, then the glazing shall have an STC rating of at least 39.
 - 3. All surfaces shall be sealed and caulked in accordance with methods approved by the American Society of Testing and Materials (ASTM) to minimize sound transmission.
 - 4. Applicant reserves the right to pursue other methods of mitigating highway noise impacts that can be demonstrated prior to issuance of a building permit, through an independent noise study as reviewed and approved by DPWES, that these methods will be effective in reducing interior noise levels to DNL 45 dBA, or less.

8. RESOURCE PROTECTION AREA (RPA) -

The Applicant shall develop an RPA protection and restoration plan, which is in conformance with Fairfax County's Chesapeake Bay Preservation Ordinance as approved by the Urban Forestry Division of DPWES. The restoration plan shall be submitted concurrently with the site plan submission for the hotel for review and approval by the Urban Forestry Division. The plan shall propose an appropriate selection of species based on existing and proposed site conditions to restore the area to a native forest cover type. Said plan shall include the following at a minimum:

1. Super silt fence shall be used immediately adjacent to the RPA during clearing and grading and construction activities.
2. Existing structures within the RPA shall be manually removed, or removed with rubber wheeled vehicles.
3. Plant list detailing species, sizes and stock types of trees and other vegetation to be planted.
4. Soil treatments and amendments, if necessary.

9. MISCELLANEOUS –

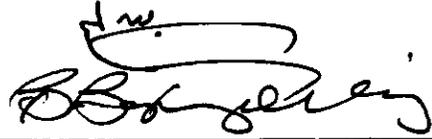
- a. Applicant shall submit a geotechnical report for the Application Property to DPWES, for review and approval, prior to site plan approval, and shall implement any recommendations. Geotechnical reports may be submitted for separate phases of the project.
- b. All of the improvements described herein shall be constructed concurrent with the appropriate phase of development of the Application Property.
- c. Cellar space may be provided within the buildings but shall be limited to uses that do not generate traffic.
- d. These proffers shall bind and inure to the benefit of the Applicant and his or her successors and assigns.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

PCA 2003-HM-004

APPLICANT/
TITLE OWNER OF 16-3 ((1)) 6A, 6B and 36

DULLES CENTER, LLC

A handwritten signature in black ink, appearing to read 'Bahman Batmanghelidj', written over a horizontal line.

By: Bahman Batmanghelidj
Its: President/Managing Member

PCA 2003-HM-004

FAIRFAX COUNTY BOARD OF SUPERVISORS,
A body corporate and politic
Title Owner of a Portion of Old Centreville Road

By: A H Griffin

Name: Anthony H. Griffin

Title: Fairfax County Executive