

COMMONWEALTH GREEN

Proffers

These Proffers are made this 25 day of October, 2011 by and among: Commonwealth Green, LLLP, a Virginia Limited Partnership) (to be indexed as Grantor); County of York, Virginia, a political subdivision of the Commonwealth of Virginia ("County") (to be indexed as Grantee).

Recitals:

R-1. Jeanette J. Keener, individually, Jeanette J. Keener, as Trustee of the Charles F. Keener Trust, is the owner of record of certain real property located in York County, Virginia, shown and depicted as approximately "51.8557 Acres" (of which 45.76 acres are in the County of York) on the attached Exhibit Plat (hereinafter referred to as "Exhibit Plat") dated October 25, 2011, attached hereto and made part hereof.

R-2. First Financial Consulting Corporation is the contract purchaser of the property mentioned above and has now assigned it's interest in the purchase contract to Commonwealth Green, LLLP as shown on the attached "Exhibit Plat".

R-3. Commonwealth Green, LLLP has filed an Application for Rezoning (hereinafter referred to as the "Application") of the property, and has consented to the "Application" as evidenced by their duly authorized signatures. The "Application" has been designated by the County as Case No. PD (to be determined).

R-4. In the "Application", Commonwealth Green, LLLP, in its capacity as the applicant and contract purchaser, has requested that the Zoning Classification of the property be changed from Zone EO, Economic Opportunity, to Zone PDMU, Planned Mixed Use Development (Minor), as described in Section 24.1-361.1 et seq. of the York County Zoning Ordinance in effect on the date hereof in order to permit the construction of a Planned Mixed Use Development, comprised of certain residential and non-residential development. Jeanette J. Keener, individually, and Jeanette J. Keener, as Trustee of the Charles F.Keener Trust, dated December 21, 1998 (hereinafter referred to as the "Seller" as the record owners (collectively, the "Owners") of the respective parcels comprising the property have consented to such change of Zoning.

R-5. A conceptual plan of development entitled "Master Concept Plan - Commonwealth Green", dated October 25, 2011 and prepared by Davis & Associates, P.C. Surveyors & Planners (hereinafter referred to as the "Master Plan"), has been submitted to the York County Planning Commission for review in connection with the "Application". The "Master Plan" is on file with the Office of the County Planning Division.

R-6. Plan renderings (hereinafter referred to as the "Plans") have been submitted to the York County Planning Division for review in connection with the "Application". The "Plans" are on file in the Office of the County Planning Division.

R-7. A Community Impact Statement prepared by Davis & Associates, P.C., dated October 2011 and the "Commonwealth Green, Fiscal Impact on York County, Virginia", dated October 20, 2011, prepared by The Wessex Group, Ltd. have been submitted to the York County Planning Division for review by the County in connection with the "Application". The Community Impact Statement is on file in the Office of the County Planning Division.

R-8. A Traffic Impact Analysis dated October 2011, and prepared by URS, Inc., has been submitted to the York County Planning Division for review in connection with the "Application". The Traffic Impact Analysis is on file in the Office of the County Planning Division.

R-9. First Financial Consulting Corporation and its collective successors and assigns to Commonwealth Green, LLLP's right to purchase the property, and any subsequent purchasers of any portion of the property are collectively referred to herein as "Contract Purchaser".

R-10. The provisions of the York County Zoning Ordinance may be deemed inadequate for protecting and enhancing orderly development of the property. Accordingly, the Owners and Contract Purchaser, in furtherance of the "Application", desire to proffer certain conditions which are limited solely to those set forth herein in addition to the regulations provided for by the York County Zoning Ordinance for the protection and enhancement of the development of the property, in accordance with the provisions of Section 15.2-2296, et seq. of the Code of Virginia (1950), as amended (hereinafter referred to as the "Virginia Code") and Section 24.1-361 of the York County Zoning Ordinance.

R-11. The County constitutes a high-growth locality as defined by Section 15.2-2298 of the "Virginia Code".

Furthermore, for and in consideration of the approval by York County of the "Application", and pursuant to Section 15.2-2296, et seq., of the "Virginia Code" and Section 24.1-361 of the York County Zoning Ordinance, the "Owners" and "Contract Purchaser" hereby agree that if the "Application" is approved and the York County Board of Supervisors allows the rezoning of the property from EO, Economic Opportunity, to PDMU, Planned Mixed Use Development (Minor), then any subsequent development of the property shall be in conformance with the following proffers:

Proffers

1. Plan of Development. The property shall be developed generally in accordance with the "Master Concept Plan" and in substantial conformance with the Plans (hereinafter referred to as the "Project"). The "Master Plan" is a conceptual plan for the proposed development of the property and provides only for the general location of buildings, proposed streets, parking, drainage facilities, areas of open space and buffer areas. Any deviations from the "Master Plan" and/or the "Project" shall be allowed only in accordance with the provisions of Section 24.1-361.1 of the York County Zoning Ordinance.
2. Property Owners Association. One or more Property Owners Associations and/or Townhome Unit Owners Associations shall be established pursuant to and in accordance with the Virginia Property Owners Association Act, Sec.55-79.508 et seq., of the "Virginia Code" or the Virginia Condominium Act, Sec. 55-79.39 et seq., of the Virginia Code, as applicable (hereinafter, each association shall be referred to as and "Owners Association"), in which all owners of lots, units and parcels within the property shall be members of at least one of such "Owners Association(s)" by virtue of their property ownership. The articles of incorporation and bylaws of each such "Owners Association" and Declaration of Covenants enforceable by each "Owners Association" (collectively the "Governing Documents") shall be submitted to and reviewed by the York County Attorney for consistency with this proffer and the requirements of Section 24.1-497 and Section 24.1-498 of the York County Zoning Ordinance prior to final Site Plan approval.

3. Exterior Building Materials. The exterior facade of buildings constructed on the property shall be constructed of any of the following: brick, stone, cement-board siding, dryvit or the equivalent of the same. The foregoing notwithstanding, trim, soffit, and accent features of such buildings and related improvements may be composed of or contain vinyl, aluminum or other materials than those materials listed above.
4. Interior Finishes. Residential units shall be constructed with a minimum of 9-foot ceilings on the main floor and 8-9-foot ceilings on the second floor and third floor.
6. Residential Units. The residential portion of the "Project" shall be comprised of a maximum of three hundred eighty four (384) multifamily units for rent (fifty or more of which will be in the City of Newport News) and a maximum of ninety four (94) townhomes for sale. In addition, there would be a total of up to sixteen (16) residential units above the mixed use buildings of which there will be three (or in the alternative, two buildings large enough to have sixteen (16) total units). In the event some or all condominium units cannot be sold, then the applicant would be able to rent the "live above" condominium units.
7. Commercial Space. The commercial portion of the project shall be comprised of a minimum of 40,610 square feet of commercial space. Additional commercial space may be constructed provided it complies with the design requirements of the PDMU (minor) Zoning.
8. Sidewalks. Sidewalks shall be provided within the boundaries of the property, in the locations shown on the "Master Plan".
9. Vehicular connections to the adjacent K-Mart Center Square shopping via Commonwealth Drive and U.S. Route 17 (George Washington Memorial Highway) shall be provided in the locations shown on the "Master Plan" upon written approval by York County.

Sequencing

- a. The tracts of land being Commonwealth Green contains approximately 45.76 acres being York County Parcel ID 036 0 A. An additional portion of the development, being in Newport News, contains approximately 6.16 acres. The multi-family element is currently under contract for purchase subject to the approved "Application". The multi-family project which contains a total of approximately 20.6 acres would contain up to 384 units. The multi-family apartments are anticipated to be the first phase of development and generally be classified as a Class A Complex. The construction sequence phasing would be to construct the mixed use Building #19 and #20 at such time as the 130 apartment unit receives a Certificate of Occupancy (C.O.), or in the event the townhouse units begin construction as a first phase of development, then the 34th townhouse unit Certificate of Occupancy would be the benchmark event requiring the construction of mixed use Building #19 and #20. It is hereby acknowledged the multi-family apartment complex will construct an on-site pool, club house and maintenance building to serve the multi-family site. Although no credit is claimed for these accessory uses, the actual commercial element square footages will be greater than the PDMU target guidelines.

- b. The applicant would commence construction of the mixed use commercial/retail and “live-above” building identified on the Master Plan as Building #18, containing 11,000 square feet of commercial/retail space for sale (or rent) and eight (8) residential “live-above” units prior to the 73rd townhouse unit issuance of the Certificate of Occupancy.
- c. The applicant would commence construction of the “Town Center” mixed use building and associated accessory uses which includes the open area, fountain, walks, and picnic table areas prior to the issuance of the 94th Certificate of Occupancy or the 384th multi-family apartment unit, whichever occurs first. It is hereby further proffered that the “Town Center” and the listed accessory used and features will be used and available by all Commonwealth Green owners and occupants. The “Town Center” would be a multi-use building and area for uses such as community picnics, social events, weddings and similar uses. Prohibited uses not allowed by these proffers would not be allowed within “Town Center”.
- d. Finally, in order to fulfill the completion of the required commercial/retail agreed upon space, the applicant would commence construction of the last commercial/retail building, currently identified as Building #17 consisting of 10,400 ± square feet within six (6) months of completion of Building #18. However, the requirement of this proffer would not take effect unless the three previous mixed use buildings have achieved at least 50% occupancy. In this unlikely event, the applicant would be deemed to have used their “best efforts” in trying to meet the minimum commercial requirement of 40,610 square feet and no other commercial space would be required to be constructed until such time as natural market forces take over and demand for additional commercial space requirements exceeds 50% of total square footage.
- e. Parallel parking would be permitted and constructed along the sides of the proposed extension of Commonwealth Drive. Commonwealth Drive, up to and including the round-about, would be constructed with the first apartment construction phase. Keener Drive to U.S. Route 17 would be constructed within two year of the first apartment building Certificate of Occupancy.
- f. The multifamily apartment structures would have an approximate 10’ or greater setback from the proposed extension of Commonwealth Drive right-of-way in conformance with the Master Plan.

Amenities: The following amenities will be constructed prior to the issuance of the Certificate of Occupancy for the 67th townhome unit:

- a. Walking Trails and Nature Preserve Conservation Area
- b. “Town Center” mixed-use building and associated accessory uses.
- c. Concrete Paver Crosswalks
- d. Bike Paths, Emergency Access Lanes on Commonwealth Drive extending to the easterly side of the property.
- e. Sidewalks – public areas
- f. Streetscape Lighting, both public and private areas
- g. Minimum of two (2) aerated pond fountains

Prohibited Uses: Commercial uses within the “Project” shall be as specified in Section 24.1-361.1 (c) (1) of the York County Zoning Ordinance in effect at the time of “Project” approval. In addition, the following commercial uses shall not be allowed in the “Project”:

- a. Flea Market
 - b. Church
 - c. Animal Hospital with outside runs
 - d. Indoor Theater
 - e. Health Club with Outdoor Facility
 - f. Video Arcade/Pool Hall/Bingo
 - g. Indoor Firing Range
 - h. Outdoor Commercial Amusement
 - i. Auction House
 - j. Funeral Home
 - k. Pawn Shop/Tattoo Parlor/Fortune Teller
 - l. Night Club
 - m. Commercial Reception Hall
 - n. Gas/Service Station
 - o. Helipad
 - p. Tourist Homes
 - q. Bus Terminal
 - r. Taxi/Limousine Service
 - s. Towing Service/Auto Storage
 - t. Bulk Warehousing
 - u. Truck Distribution Centers
 - v. Plant Nursery
 - w. Correctional Facility
 - x. Bowling Alley
 - y. Skating Rink
 - z. Golf Driving Range
 - aa. Grocery Store
 - bb. Boat Sales
 - cc. Recycling Plant
 - dd. Reclamation of Borrow Pits
10. Successors and Assigns. These Proffers shall run with the title to the property and shall be binding on the parties hereto and their respective successors and assigns; provided, however once a party ceases to own any all or any portion of the property, such party shall have no personal liability hereunder.
11. Severability. In the event that any clause, sentence, paragraph, subparagraph, section or subsection of these Proffers shall be judged by any court of competent jurisdiction to be invalid or unenforceable for any reason, including a declaration that it is contrary to the Constitution of the Commonwealth of Virginia or the United States, or if the application thereof to any owner of any portion of the property or to any government agency is held invalid, such judgment or holding shall be confined to its operation to the clause, sentence, paragraph, subparagraph, section or subsection hereof, or the specific application thereof directly involved in the controversy in which the judgment or holding shall have been rendered or made, and shall not in any way affect the validity of any other clause, sentence, paragraph, subparagraph, section, subsection or provision hereof.

12. Headings. All paragraph and subparagraph headings of the Proffers herein are for convenience only and are not a part of these Proffers.
13. Conflicts. In the event that there is any conflict between these Proffers and the York County Zoning Ordinance, the conflict shall be resolved by the York County Zoning Administrator subject to the appeal process to the Board of Zoning Appeals and the Courts as otherwise provided by law.
14. Void if Application not approved. In the event that the "Application" is not approved by York County, these Proffers, the "Master Plan" and the "Project" shall be null and void.
15. Incorporation of Recitals. The Recitals set forth above shall be included and read as part of these Proffers and are incorporated herein by reference.

Signatures Continue on Following Pages.

Jeanette J. Keener

Date

Jeanette J. Keener, Trustee
for Charles F. Keener Trust

Date

Jeanette J. Keener, Trustee
for Family Trust Created under the Charles F. Keener Trust

Date

Jeanette J. Keener,
It's Manager JLK, LLC

Date

Thomas R. Tucker
President First Financial Consulting Corporation

Date

Thomas R. Tucker
Manager Commonwealth Green, LLLP

Date