

PROFFERS
MB Herndon, L.L.C.

RZ 2006-HM-019

July 10, 2007

Pursuant to Section 15.2-2303(a), Code of Virginia, 1950 as amended, and upon the express condition that the Board of Supervisors approve this rezoning to permit the proposed office development under the C-3 zoning district, in substantial conformity with the proposed Generalized Development Plan ("GDP") in RZ 2006-HM-019, of property identified as parcel numbers 16-3 ((1)) 4N1 and 31A1 on the Fairfax County Tax Map (hereinafter referred to as the "Property"), MB Herndon, L.L.C., (hereinafter referred to as "the Applicant") in RZ 2006-HM-019 proffer for themselves, and their successors and assigns, the following conditions. In the event the foregoing rezoning is approved, then any previous proffers for the Property are hereby deemed null and void and hereafter shall have no effect on the Property.

1. Development Plan. Development of the Property shall be in substantial conformance with the GDP prepared by VIKA Inc., consisting of nineteen (19) sheets dated May 8, 2006 revised through February 2, 2007, which GDP proposes a maximum gross floor area of 640,331 (1.0 FAR).
2. Minor Modifications. Pursuant to Paragraph 5 of Section 18-204 of the Zoning Ordinance, minor modifications from the GDP may be permitted as determined by the Zoning Administrator. The Applicant shall have the flexibility to modify building footprint sizes, landscape areas, and pedestrian and vehicular circulation areas, provided that the minimum open space, level of amenities, maximum height of structures, and peripheral dimensions to lot lines are not reduced, and surface parking spaces are not increased without requiring approval of an amended GDP provided such changes are in substantial conformance with the GDP as determined by the Zoning Administrator.
3. Sunrise Valley Drive. At the time of site plan approval for Building III, or upon request by VDOT and/or Fairfax County, whichever occurs first, the Applicant shall dedicate to the Board of Supervisors in fee simple fourteen (14) feet of right-of-way along the Property's Sunrise Valley Drive frontage (for a total of fifty-nine (59) feet of right-of way from the existing centerline of Sunrise Valley Drive), as shown on the GDP. In addition, the Applicant shall provide a temporary grading/construction easement fifteen (15) feet in width along the Property's Sunrise Valley Drive frontage to facilitate any future widening.
4. Density Credit. Density credit shall be reserved as may be permitted by the provisions of Paragraph 4 of Section 2-308 of the Fairfax County Zoning Ordinance for the dedication described herein.

5. Transportation Demand Management (TDM).

- A. Transportation demand management (“TDM”) strategies, as detailed below, shall be utilized by the Applicant and/or its successors or assigns to reduce vehicular trips generated by the employees of the Property’s owners/tenants during peak hours.
- B. Mass transit (Metrorail and bus), ride-sharing, teleworking, walking, biking, and/or other strategies shall be utilized to reduce baseline vehicle trips during weekday peak hours. The goal of such strategies shall be to reduce peak hour trips in accordance with the following percentages based on the availability of mass transit proximate to the site.

Phase 1: Upon build out of the Property and prior to such time as Metro rail service is operational at the Route 28 Transit Station, peak hour trips generated by the office uses shall be reduced by thirty percent (30%).

Phase 2: Upon build out of the Property and at such time as Metro rail service is operational at the Route 28 Transit Station, peak hour trips generated by the office uses shall be reduced by thirty-five percent (35%).

For purposes of Proffer 5, build-out of the Property shall be deemed to occur upon the issuance of the last initial Non-RUP for floor area representing at least 80% of full occupancy of Building III.

For purposes of this proffer, the baseline number of trips from which such reductions are measured shall be determined using the trip generation rates data published by the Institute of Transportation Engineers and as determined by FCDOT for a total of 640,331 GSF, as constructed in three (3) buildings on the Property combined, during the highest peak hour period (AM or PM) of the adjacent street, Sunrise Valley Drive. In the event, the Applicant elects to construct less than 640,331 GSF, then the baseline number of trips shall be calculated as if 640,331 GSF was constructed on the Property. The Property’s owners/tenants and employees of those owners/tenants shall be advised of this transportation strategy.

- C. The Applicant shall submit a strategic TDM Plan to FCDOT for their review and comment prior to site plan approval.
- D. The strategic TDM Plan shall include the following strategies and, if applicable, shall coordinate implementation of these strategies with FCDOT in order to promote synergy with other TDM programs and to take advantage of FCDOT’s resources:

- (1) Within 120 days after the issuance of a building permit for Building III, an individual (such as property management staff and/or condominium association representative) shall be designated to act as the transportation coordinator ("TC") for the Property, who shall be responsible to implement the TDM strategies for the Property, with on-going coordination with FCDOT. The Applicant shall provide written notice to FCDOT within 30 days of the designation of the TC and thereafter within 30 days of any change in said designation.
- (2) Disseminate information regarding Metrobus, carpool and/or vanpool, ridesharing, and other relevant transit options in sale/leasing packages;
- (3) Provide Metro maps, schedules, and forms; information on the Fairfax County Ride Share Program; and information on other relevant transit options available to owners/tenants and employees either in a newsletter to be published on a regular basis and not fewer than four (4) times per calendar year or on a web site. In the event, the Applicant elects to establish a website for the project, then the Applicant shall provide written notice to FCDOT of the website address and the date the site became operational;
- (4) Provide SmartCards loaded with a minimum of \$25, or Metro checks in the amount of \$25, to all employees of Building III's occupants upon their initial lease, and also until such time as three (3) consecutive annual trip counts have been achieved, as described in Proffer 6G.
- (5) Provide secure bike storage for employees of the Property, sufficient to store, at a minimum, one (1) bicycle for every forty (40) required vehicle parking spaces. Provide bicycle racks for visitors either in a visitor parking area or in the vicinity of each building's main entrance. The location of secure bike storage and visitor bicycle racks shall be in a convenient and preferential location, as determined by FCDOT.
- (6) Amenities for bicyclists and walkers including that showers and lockers shall be provided in all three (3) buildings.
- (7) Participate in a larger Traffic Management Area Program, such as membership in the Dulles Area Transportation Association (DATA), a recognized commonwealth public-private transportation management association.
- (8) The Applicant, and assigns when appropriate, shall enroll as Commuter Connections members, as well in the Metropolitan Washington Council of Governments (MWCOG) Clean Air Partner Program and encourage individual employers/tenants to do so.

- (9) Preferential parking spaces for flexcar/zipcar, carpools/vanpools and hybrid vehicles shall be provided, and these preferential parking spaces shall be in convenient and desirable locations as approved by FCDOT;
- E. Following build-out of the Property as defined in Proffer 6.B., and annually each April thereafter, the effectiveness of the TDM strategies shall be evaluated and reported to FCDOT by the TC (the "Annual Report"). The Annual Report shall describe the previous year's TDM strategic efforts and the effectiveness of the TDM program in reaching trip reduction goals, including, as applicable, sample marketing materials, expenditures, the result of any surveys that may be conducted of employees, and traffic counts as outlined below. The TC shall coordinate draft survey materials and the methodology for validating survey results with FCDOT prior to each year's survey.
- F. As part of the annual reporting process, the Applicant shall measure actual trip generation of the Property in order to evaluate the success of meeting the trip reduction objectives set forth in subparagraph B above.
- (1) Peak hour counts shall be conducted during the highest peak traffic period (AM or PM, whichever is highest) ("Peak Hour Trips"), over two (2) days, within a maximum two (2) week period, at a time of year that reflects typical travel demand conditions (e.g., not during holiday weeks or when public schools are not in session.) The average number of Peak Hour Trips shall be computed by summing the number of applicable peak hour trips entering and exiting the Property (at all driveways) on each of the two (2) day's counts and dividing that sum by two (2).

Employees and employers shall not be notified of the days or times that these counts will be taken.

The Applicant shall notify FCDOT at least one (1) week in advance of the dates that the counts are to be undertaken.
 - (2) The results of the trip generation traffic counts referenced in subparagraph F.1., above, shall be compared to the baseline trip generation referenced in subparagraph B, above, to determine if the proffered reduction of peak hour trips as established in subparagraph B have been met.
 - (3) In the event the traffic counts reveal that the proffered peak hour trip reductions have been met as established in subparagraph B for each phase, then the Applicant shall continue to implement the TDM strategies in place and no adjustments to the program or penalties are required.
 - (4) If applicable, the first time traffic counts that are conducted in accord with Proffer F.1., above, reveal that the baseline trip reduction has not been

met, the TC shall request a meeting with FCDOT within thirty (30) days after the completion of the traffic counts to review the results of that report and the TDM strategies then in place for the Property. The TC shall be responsible to design and implement a strategy that is intended to bring baseline peak hour trip reductions to the proffered percentage. The Applicant shall submit any revisions to the TDM Plan to FCDOT within thirty (30) days following this meeting.

- (5) If applicable, the second time that traffic counts that are conducted in accord with Proffer F.1., above, reveal that the baseline trip reductions have not been met, then the Applicant shall pay a penalty at a rate of \$0.09 per occupied square foot during Phase 1, and \$0.14 per occupied square foot during Phase 2 into a fund established with the TC for the implementation of certain other on-site TDM incentives/enhancements. The TC shall request a meeting with FCDOT within thirty (30) days after the completion of the traffic counts to review the results of that report and the TDM strategies then in place for the Property. The TC shall be responsible to design and implement a strategy that is intended to bring baseline peak hour trip reductions to the proffered percentage. The Applicant shall submit any revisions to the TDM Plan to FCDOT within thirty (30) days following this meeting.
- (6) If the following (third) annual traffic count that is conducted in accord with proffer subparagraph F.1., above, reveals that the baseline trip reduction has not been met, then the penalty described in subparagraph F.5., above, shall again be paid. Further, the TC shall request a meeting with FCDOT within thirty (30) days after the completion of the Trip Counts to review the results of that report and the TDM strategies then in place for the Property, to discuss alternative strategies to meet the proffered reduction, to discuss the appropriateness of the proffered reduction, and/or to discuss setting an alternative peak hour trip reduction (that may be less than 30%), and which must be formalized through an interpretation of these proffers. The TC shall submit any revisions to the TDM Plan to FCDOT within thirty (30) days following this meeting. FCDOT shall approve any changes to the TDM Plan prior to its implementation.

- G. If three (3) consecutive annual trip counts conducted in accord with subparagraph F. 1, above, reveal that the trip reduction thresholds are met after build out of the Property as defined herein, then the Applicant may request a FCDOT determination that trip counts may only be conducted biannually, or less (including elimination of this requirement) if it is determined by FCDOT that fewer counts are necessary to indicate continued compliance. Further, upon such

event, only annual reports detailing the programmatic elements in place and yearly TDM expenditure assessment and/or survey results will be required.

- H. If subsequent trip counts reveal that the trip reduction thresholds are not being met, then the annual counts, reports and penalties shall again be required as described in Subparagraphs F.4, F.5, and F.6. If three (3) consecutive annual trip counts reveal that the trip reduction thresholds are met, then trip counts shall again only be conducted biannually if requested by the County, or less (including elimination of this requirement) if it is determined by FCDOT that fewer counts are necessary to indicate continued compliance. Further, upon such event, only annual reports detailing the programmatic elements in place and yearly TDM expenditure assessment and/or survey results will be required.
 - I. Prior to the issuance of a Non-RUP for Building III, the Applicant shall contribute \$10,000.00 to the appropriate authority toward the establishment of an area-wide shuttle service between Dulles Executive Center and the Route 28 Transit Station. The Applicant shall participate in this shuttle service on an equitable basis when it becomes available.
6. Landscape Plan. A landscape plan shall be submitted as part of the site plan(s) and shall be coordinated with and approved by Urban Forest Management. This plan shall be in substantial conformance with the landscape plan as to quantity and quality of plantings, and location of plantings as shown on Sheet 5 of the GDP. Trellises shall be installed on the parking garage. These trellises shall be generally centered between each of the column bays of the structure and shall span the height of the structure. Climbing vines shall be established on those trellises in order to soften the façade of the garage structure. Location of plantings may be modified based on utility location, sight distance easements, and final engineering details as approved by the Urban Forester.
7. Tree Preservation.
- A. The Applicant shall submit a tree preservation plan as part of all site plan submissions for areas showing tree preservation on GDP. The preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect, and reviewed and approved by Urban Forest Management. The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown spread and condition rating percentage of all trees ten (10) inches in diameter and greater within twenty (20) feet of either side of the limits of clearing and grading. The condition analysis ratings shall be prepared using methods outlined in the latest edition of the *Guide for Plant Appraisal* published by the International Society of Arboriculture. Specific tree preservation activities that will maximize the survivability of trees identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and other techniques as necessary, shall be included in the plan.

- B. The trees designated to be saved shall be protected by chain link fencing, a minimum of four (4) feet in height attached to 6 foot steel posts driven 18 inches into the ground and placed no further than 10 feet apart, placed at the dripline of the trees. The fencing shall be installed prior to any work being conducted on the site, including demolition of existing structures and shall remain at all times during construction. Bilingual signage affirming restricted access shall be provided on the temporary fence highly visible to construction personnel. The landscape architect contracted by the Applicant shall monitor the construction of the proposed development to ensure consistency with the landscape/tree preservation plan. Three days prior to commencement of any clearing, grading, or demolition activities, Urban Forest Management shall be notified and given the opportunity to inspect the site to assure that all tree preservation devices have been correctly installed.
- C. If as a result of final engineering, the areas designated as tree save areas on the GDP are modified or cannot be preserved, equivalent tree save areas or equivalent landscaped areas shall be substituted on the Property, as determined by Urban Forest Management.
8. Architectural Design. Building materials shall include precast concrete and glazing, with spandrel glass and decorative metal in selected locations. The architectural style shall be consistent with the existing office structures located on the Property (Buildings I and II), and of a general character to that depicted on Sheets 16-19. The Applicant reserves the right to refine the elevation as a result of final architectural design, so long as the character and quality of design remains consistent with that as shown, as approved by DPWES.
9. Focal Feature. The Applicant shall install a focal feature in the plaza between Buildings I and II, as indicated in the GDP. This focal feature shall be installed prior to Bond Release for Building III, and shall have an approximate value of \$75,000.00.
10. FAA Approval. If necessary, the Applicant shall obtain FAA approval for the height of the building prior to site plan approval. If FAA approval is not received, the Applicant shall lower the height of the building to that approved by the FAA, and reduce surface parking proportionally.
11. Lighting. All new and replacement outdoor lighting fixtures shall be in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. New fixtures used to illuminate parking areas and walkways shall not exceed twenty (20) feet in height, shall be of low intensity design and shall utilize full cut-off fixtures which shall focus directly on the Property. All new upper level parking deck lighting fixtures shall not exceed a height of fifteen (15) feet. All lighting fixtures shall be measured from finished grade or floor level, as appropriate, to the top of the fixture.

12. Park Contribution. At the time of site plan approval for Building III, the Applicant shall contribute the sum of sixty-six thousand one-hundred forty dollars (\$66,140.00) to the Fairfax County Park Authority for the development of recreational facilities in the vicinity of the Application Property, as may be determined appropriate in consultation with the Hunter Mill District Supervisor.
13. Stormwater Management/Best Management Practices.
 - A. Stormwater management shall continue to be provided for in the off-site pond that was constructed with Plan Number 3717-RGP-04 dated April 26, 2006, as may be approved by DPWES; and
 - B. Best Management Practices shall continue to be met in an existing on-site wet pond that is located between Buildings I and II, and in future regional pond #H-9, as may be approved by DPWES.
14. Low Impact Development Strategies.
 - A. The Applicant shall remove existing surface paving, and replace approximately 40,000 square feet of currently impervious area, with pervious materials, such as landscaped islands and grass pavers, as indicated on the GDP.
 - B. The Applicant shall explore the use of environmentally responsible materials and methods for the construction and operation of Building III, and shall utilize these materials and methods where determined appropriate by the Applicant.
15. Successors and Assigns. These proffers will bind and inure to the benefit of the Applicant and his/her successors and assigns.
16. Counterparts. These proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original document and all of which taken together shall constitute but one in the same instrument.
17. Severability. Any of the sections/buildings within the Property may be subject to Proffered Condition Amendments without joinder or consent of the other sections.

[SIGNATURES BEGIN ON NEXT PAGE]

PROFFERS – SIGNATURE SHEET
RZ 2006-HM-019

APPLICANT/TITLE OWNER OF TAX MAP
16-3 ((1)) 4N1 and 31A1

MB Herndon, L.L.C.

By: Minto Builders (Florida), Inc., Its Sole Member

By: 
Lori J. Foust
Its Authorized Agent

[SIGNATURES END]