

PROFFERS
RZ 2008-MV-007
JK INVESTMENTS, INC.

May 17, 2010

Pursuant to Section 15.2.2303A of the 1950 Code of Virginia, as amended, JK Investments, Inc., (hereinafter referred to as "Applicant"), for itself and its successors or assigns in Rezoning RZ 2008-MV-007 (the "Application"), hereby proffers for the property identified as Tax Map Reference No. 109-2 ((1)) 13A (hereinafter referred to as the "Property"), the following conditions provided that the Fairfax County Board of Supervisors approves the Application

1. Generalized Development Plan/Special Exception Plat. Pursuant to Fairfax County Zoning Ordinance Section 18-204, development shall be in substantial conformance with the Generalized Development Plan/Special Exception Amendment Plat (GDP/SEA Plat) entitled "J. K. Investments Inc. Property", containing fourteen (14) sheets prepared by EMSI Engineering, and dated February 2008 as revised through September 1, 2009 and these conditions, plus the attached Sheet A101 entitled "First Floor Plan-Option Two" showing lobby, conference room, theater, and banquet room".

2. Floor Area Ratio (FAR) and Building Height. The subject property shall be developed with a maximum FAR of 0.50 and maximum building height of 35 feet.

Cellar Space. The Applicant shall limit the use of cellar space in the Proposed Development to parking and:

- A. The core area used by the building tenants or owners (such as rest rooms, mechanical rooms, electrical rooms, janitor and building maintenance rooms); and
- B. The Applicant shall not include office space within the cellar.

3. Architectural Treatment. Architectural plans for all new structures on the Application Property shall be subject to review and approval by the Fairfax County Architectural Review Board (ARB) prior to the issuance of a building permit for any proposed building or building additions.

4. Noise Attenuation. In order to reduce interior noise to a level of approximately 45 dBA Ldn, construction of the hotel shall include the following acoustical treatment measures:

- i. Above 75 dBA Ldn. No Hotel Room (or portion thereof, such as outdoor balconies) may be established in areas projected to be impacted by noise levels greater than 75 dBA Ldn.
- ii. 70 dBA Ldn to 75 dBA Ldn. In order to reduce interior noise to a level of no more than 45 dBA Ldn for Hotel Rooms that are projected to be impacted by noise greater than 70 dBA Ldn (but not more than 75 dBA Ldn) the Applicant shall construct such units using the following acoustical measures:
 - a. Exterior walls shall have a laboratory STC rating of at least 45;
 - b. Doors and glazing shall have a laboratory STC rating of at least 37 unless glazing constitutes more than 20% of any façade exposed to noise levels of Ldn 70 dBA or above;
 - c. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a laboratory STC rating of at least 45; and
 - d. All surfaces shall be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (“ASTM”) to minimize sound transmission.
- vii. 65 dBA Ldn to 70 dBA Ldn. In order to reduce interior noise to a level of no more than 45 dBA Ldn for Residential Units that are projected to be impacted by noise projected greater than 65 dBA Ldn (but not more than 70 dBA Ldn), the Applicant shall construct such units using the following acoustical measures:
 - a. Exterior walls shall have a laboratory sound transmission class (“STC”) rating of at least 39;

- b. Doors and glazing shall have a laboratory STC rating of at least 28 unless glazing constitutes more than 20% of any façade exposed to noise levels of Ldn 70 dBA or above;
- c. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a laboratory STC rating of at least 39; and
- d. All surfaces shall be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (“ASTM”) to minimize sound transmission.

As an alternative to the above, the Applicant may, prior to site plan approval, elect to have an acoustical analysis performed subject to approval by DPWES, in coordination with Environmental and Design Review Branch, DPWES and the Department of Planning and Zoning, to verify or amend the noise levels and impact areas as set forth above, and/or to administratively determine which areas of the hotel may have sufficient shielding to permit a reduction in the mitigation measures prescribed above or which may include alternative measures to mitigate noise impacts exposed façade, then the glazing shall have an STC rating of at least 39.

5. Landscaping. Landscaping shall be in substantial conformance with that shown on the GDP_General Notes sheet 1 of 14, Sheet 10 of 14, Landscape Plan, and the Ultimate Improvement of Richmond Highway Section, sheet 12 of 14.

6. Streetscape. The streetscape design and materials shown on the GDP (sidewalk, lighting, landscaping and street furnishings) shall be in substantial conformance with that shown on the GDP/SEA plat.

7. Transportation.

A. Road Dedication. At the time of site plan approval, or upon demand by Fairfax County, whichever occurs first, right-of-way along Richmond Highway necessary for public street purposes as determined by FCDOT and/or VDOT and as shown on the GDP on Sheet # 5A (designated as Ultimate Proposed Conditions) shall be dedicated and conveyed to the Board of Supervisors in fee simple.

B. Construction. A southbound right turn deceleration lane along Richmond Highway shall be constructed as shown on GDP sheets 5 & 6 of GDP along with extended median (sheet # 5) before the issuance of 1st Non-RUP. Upon demonstration by the Applicant that, despite diligent efforts or as a result of factors beyond the Applicant's control, the milestones set forth in this Proffer for the Richmond Highway improvements will not be achieved or are delayed, such as the inability to secure right-of-way, to obtain necessary permission for utility relocations or secure VDOT approval for the improvements, the Director of ZED may agree to extend the dates for completing the required obligation(s).

If site improvements precede the Federal Richmond Highway – Telegraph Road Connector (RH-TRC) project, the applicant may provide the subject southbound right turn lane as shown on the GDP, per the approval of VDOT, and in accordance with the RH-TRC project plans.

If site improvements precede the Federal RH-TRC project, the *applicant* shall extend the median on Rte 1 before and after the Federal RH-TRC project per the approval of VDOT.

C. Interparcel Access. At the time of site plan approval, a public access easement shall be provided in a form approved by the County Attorney, to be recorded over the portion of western boundary of the application property abutting Tax Map 109-2 ((1)) 15 for the purpose of providing an interparcel access to that property similar to that shown on the GDP/SEA plat.

D. Bus Shelter. A bus shelter with concrete pad shall be provided by the applicant at the general location as shown on the GDP or an alternate location per Fairfax County DOT for the general purpose of the REX bus line. The applicant shall be responsible for the general maintenance of the subject bus shelter and construct a concrete walkway from the shelter or trail to the nearest curb line of Richmond Highway.

8. LEED. The applicant shall include, as part of the site plan submission and building plan submission for any building to be constructed, a list of specific credits within the most current version of the U.S. Green Building Council's (USGBC's) Leadership in Energy and Environmental Design—New Construction rating system (LEED[®]-NC) that the applicant anticipates attaining. A LEED-accredited professional who is also a professional engineer or architect licensed to practice in the Commonwealth of Virginia will provide certification statements at both the time of site plan/subdivision plan review and the time of building plan review confirming that the items on the list will meet at least the minimum number of credits necessary to attain LEED Silver certification of the project.

In addition, prior to site plan/subdivision plan approval, the applicant shall designate the Chief of the Environment and Development Review Branch of the Department of Planning and Zoning as a team member in the USGBC's LEED Online system. This team member shall have privileges to review the project status and monitor the progress of all documents submitted by the project team, but will not be assigned responsibility for any LEED credits and will not be provided with the authority to modify any documentation or paperwork.

Prior to building plan approval for any building to be constructed, the applicant will submit, to the Environment and Development Review Branch of DPZ, documentation from the U.S. Green Building Council demonstrating that LEED Silver precertification under the Core and Shell program has been attained for that building. Prior to release of the bond for the project, the applicant shall provide documentation to the Environment and Development Review Branch of DPZ demonstrating the status of attainment of LEED Certification from the U.S. Green Building Council for each building on the property.

As an alternative to the actions outlined in the above paragraphs, or if the applicant fails to attain LEED Silver precertification prior to building plan approval, the applicant will execute a separate agreement and post, for each building, a "green building escrow," in the form of cash bond or a letter of credit from a financial institute acceptable to DPWES as defined in the Public Facilities Manual, in the amount of \$161,798 for Building B and \$92,656 for

Building C. This escrow will be in addition to and separate from other bond requirements and will be released upon demonstration of attainment of certification, by the U.S. Green Building has attained LEED certification will be sufficient to satisfy this commitment. If the applicant fails to provide documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of LEED certification within one year of issuance of the RUP/non-RUP for the building, the escrow will be released to Fairfax County and will be posted to a fund within the county budget supporting implementation of county environmental initiatives.

9. General/Vegetation.

If potentially hazardous or toxic substances are discovered during excavation, grading, or construction, then all activity within the affected area shall cease immediately until a determination of the toxic nature and extent of the material has been made as agreed by the County, and a program for control and cleanup has been fully implemented and all such hazardous conditions removed from the site.

- In the EQC area, except as otherwise provided herein, there shall be no clearing of any vegetation, except for dead or dying trees or shrubs; and there shall be no structures, except for utilities and stormwater management facilities and any required barriers, as generally depicted on the GDP/SEA Plat or in such other manner as may be determined necessary by DPWES which minimizes the disturbance to the EQC to the maximum extent feasible. Any additional disturbance areas which are determined by DPWES to be necessary shall be re-vegetated with indigenous species, subject to the approval of the Urban Forest Management Division.
- Tree conservation and associated tree preservation target calculations shall be provided are required by Article 13 of the Zoning Ordinance and the PFM, unless waived or modified by DPWES at the time of site plan review.
- A landscape plan shall be submitted concurrent with site plan review and shall be subject to the review and approval of the Urban Forest Management Department (UFMD), DPWES. The trees and landscaping shall be provided and maintained as shown on the GDP/SEA Plat, subject to the review and approval of UFMD, DPWES. Any dead or dying plantings shall be replaced as approved by UFMD, DPWES. Shrubbery, groundcover and native flowers shall be provided in landscape beds adjacent to the proposed buildings.

10. All signs shall be in conformance with the provisions of Article 12 of the Zoning Ordinance. Furthermore, there shall be no pole-mounted signage, and all signs shall be lighted only during the hours of operation. All signs shall be submitted to the Architectural Review Board for review and approval prior to installation. The applicant shall provide documentation of such review and approval to the Department of Planning and Zoning concurrent with any application for a sign permit.

11. Stormwater Management and Best Management Practices Facilities in accordance with the Public Facilities Manual (PFM) shall be provided as determined by DPWES, unless waived by DPWES. The invert of the underground storage facilities shall be above the 10-yr floodplain water surface elevation as determined by DPWES.

Concurrently with the first and all subsequent site plan submissions, the applicant shall submit a reforestation plan in conformance with the Chesapeake Bay regulations, for the RPA located in the eastern portion of the property for review and approval by DPWES, and shall be implemented as approved. 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.

- A detailed landscape plan shall be submitted as part of the first site plan submission, and shall be reviewed and approved by the Urban Forest Management Division. The landscape plan shall also reference and include all required landscaping, reforestation and tree preservation requirements as part of the County's latest Tree Conservation Ordinance.
 - This plan shall include details of the location of shrubbery and ground cover beds at the areas directly adjacent the buildings.
 - The applicant will commit to use native trees and plants to the greatest extent possible.

Tree Protection Fencing and Signage. All individual trees to be preserved/conserved and all areas designated to be left undisturbed shall be protected by tree protection fencing and signage as set forth below. Tree protection fencing (select fencing to be used from the options listed below) shall be erected at the drip line of individual trees to be preserved and at the limits of clearing and grading, and shall be shown on the demolition and

phase II erosion and sediment control sheets. (If not for all areas, specify the areas in which the fencing will be installed).

- four foot high, 14 gauge welded wire attached to 6 foot steel posts driven 18 inches into the ground and placed no further than 10 feet apart (see attached detail); or,
- super silt fence as may be approved by UFM to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees.

All tree protection fencing shall be installed prior to Phase II clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist or landscape architect and accomplished in a manner that does not harm existing vegetation that is required to be preserved/conserved. At least three days prior to the commencement of any clearing, grading, or demolition activities and prior to the installation of tree protection fencing, UFM and the District Supervisor shall be notified in writing and given the opportunity to inspect the site to assure that all individual trees to be preserved and all areas to be left undisturbed have been correctly delineated. UFM shall provide written notice to the applicant as to whether or not the areas have been delineated correctly. If it is determined by UFM that the areas are not delineated correctly, no grading or construction activities shall occur on the subject property until the delineation is corrected and field verified by UFM.

The applicant shall provide signs that identify and help protect all areas to be left undisturbed. These signs will be highly visible, posted in appropriate locations along the limits of clearing and grading, and attached to the tree protection fencing. Under no circumstances will the signs be nailed or in any manner attached to the trees or vegetation within the areas to left undisturbed.

12. 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 taken together shall constitute but one and the same instrument.

SIGNATURE PAGE FOLLOWS

JK INVESTMENTS, INC.

By: 

Khalid M. Akhtar, President