

PROFFERS

RZ 2000-MV-046

March 23, 2001

Pursuant to Section 15.2-2303(a), *Code of Virginia*, 1950 as amended, and subject to the Board of Supervisors approving a rezoning to the PRM District, for property identified as Tax Map 83-1 ((1)) 17, 83-1 ((7)) 2B and 83-3 ((1)) 88 (hereinafter referred to as the "Application Property"), the Applicant and Owner in RZ 2000-MV-046 proffer for themselves, their successors and assigns the following conditions.

1. Development Plan

A. Development of the Application Property shall be in substantial conformance with the Conceptual Development Plan/Final Development Plan (CDP/FDP) prepared by SKG Architects and Planners, LLC, consisting of twelve (12) sheets dated August 22, 2000 through March 12, 2001. Said CDP/FDP proposes a maximum of 1,335,000 gross square feet of building area. The primary uses shall be Washington Metropolitan Area Transit Authority ("WMATA") facilities, offices and multi-family and single-family attached residential units, however, the following principal and secondary uses may also be included within the structures shown on the CDP/FDP:

- 1) Accessory uses and accessory service uses.
- 2) Business service and supply service establishments.
- 3) Eating establishments.
- 4) Establishment 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.
- 5) Fast food restaurants (non-drive-through).
- 6) Financial institutions.
- 7) Health clubs.
- 8) Community uses.
- 9) Institutional uses.
- 10) Personal service establishments.
- 11) Private clubs and public benefit associations.
- 12) Public uses.
- 13) Quick service food stores.
- 14) Repair service establishments.
- 15) Retail sales establishments.

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- 16) Exposition halls and facilities to house cultural or civic events.
- 17) Bank teller machines.
- 18) Child care centers and nursery schools.

Additional Principal and Secondary uses not listed above may be permitted with the approval of a Final Development Plan Amendment (FDPA). A Proffered Condition Amendment (PCA) application shall not be required so long as the layout is in substantial conformance with the CDP.

- B. Notwithstanding that the CDP/FDP is presented on twelve sheets and said CDP/FDP is the subject of Proffer 1 above, it shall be understood that the CDP shall be the entire plan shown on Sheets 1, 5 and 12 relative to the points of access, the maximum square footage, the amount and general location of open space and general location and arrangement of the buildings, uses, and parking garages, park dedication/easement whereas the FDP includes Sheets 1 and 4-12. The Applicant has the option to request a FDPA for elements other than the CDP elements from the Planning Commission for all or a portion of the CDP/FDP in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance, if in conformance with the approved CDP and proffers.
- C. Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, minor modifications from the Final Development Plan (FDP) may be permitted as determined by the Zoning Administrator. The Applicant shall have the flexibility to modify the layouts shown on the FDP without requiring approval of an amended FDP provided such changes are in substantial conformance with the FDP as determined by the Department of Planning and Zoning ("DPZ") and do not increase the total amount of square footage, decrease the amount of open space; decrease the setback from the peripheries; or substantially change the location of open space areas.
- D. The CDP/FDP provides two alternatives on Sheets 5 and 12. The variation involves the site design of the four- to six-story multi-family residential building(s) immediately west of the proposed public park area. The determination of which design will be implemented shall be made at the sole discretion of the Applicant at the time of final site plan approval for this area. In the event the Applicant proceeds with the alternative shown on Sheet 12, the Applicant shall provide landscaping and amenities generally equivalent with that provided with the design shown on Sheet 5.

2. Transportation

- A. North Kings Highway Access. The Applicant shall provide access to the Application Property along its North Kings Highway frontage as generally shown on the

CDP/FDP. The final design of the two main (southern) entrances shall be determined at the time of final site plan review, generally based on implementing one of the following two options as determined by DPWES and VDOT. However, the Applicant reserves the flexibility to modify the final design as may be determined by WMATA, VDOT and DPWES, without necessitating approval of a PCA, CDPA or FDPA if in general conformance with the CDP/FDP.

Option 1 - The southern most entrance, just north of the residential component, shall be constructed with dual left turn lanes exiting the Application Property onto southbound North Kings Highway, with modifications made to the existing signal as necessary. The entrance located south of the proposed two-story retail structure shall be unsignalized and restricted to right turns in and right turns out.

Option 2 - Both entrances discussed in Option 1 above shall provide for full turning movements with single left turn lanes onto southbound North Kings Highway. Under this option, the Applicant shall be responsible to provide a signal analysis and design, and shall install a traffic signal at the intersection of North Kings Highway and the Application Property's entrance road located immediately south of the proposed retail structure and existing Metro parking garage, if warranted by the Virginia Department of Transportation (VDOT) prior to the issuance of the 650th RUP and Non-RUPs for the 275,000 square feet of non-residential uses on the Application Property. The signal shall be installed and the requisite ancillary easement for the signal provided upon demand by the Fairfax County Department of Transportation, in writing, stating that a traffic signal has been determined to be warranted by VDOT.

In conjunction with the signal design plans, a SYNCHRO/SIM traffic analysis shall be provided to VDOT, if requested, in order to assess the operational impacts associated with the introduction of a new signal within the North Kings Highway corridor.

- B. Turn Lane. The Applicant shall extend the existing right turn lane on northbound North Kings Highway at the Application Property's southernmost site entrance, if required by VDOT prior to bond release.
- C. Transportation Management Strategies. The use of mass transit, ride-sharing and other transportation strategies to reduce single occupant vehicular traffic generated by site development during peak periods shall be encouraged. Lessees and homeowners shall be advised of this transportation strategy development condition. Upon the occupancy of 300 dwelling units or the occupancy of 100,000 square feet of non-residential uses, whichever occurs first, the following transportation

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management strategies shall be implemented by the developer and/or the occupants of the building(s):

-the Applicant shall designate an individual to act as the transportation coordinator for the Application Property and whose responsibility it will be to implement the transportation management strategies.

-mass transit (both rail and bus) usage shall be encouraged and promoted by the transportation coordinator.

- voluntary car pool/van pool programs shall be established for residents and employees occupying office space on the property, under the direction of a transportation coordinator;

-a program for matching car pool and van pool service shall be coordinated with various governmental agencies and other private employers in the area; and

-convenient parking in preferred locations shall be designated for car pool/van pool use.

D. Garage Access. The specific design of the intersection of the access drive from the existing METRO parking garage and the access drive for the proposed METRO parking garage, which is located between the retail structure and the office building, shall be determined at the time of final site plan by DPWES. It is understood that the final design may vary from that shown on the CDP/FDP, but shall not necessitate a CDPA or FDPA.

3. Parking. Parking shall be provided in accordance with Article 11 of the Zoning Ordinance, however the Applicant reserves the right to request a parking reduction pursuant to Section 11-102 (5). The number of parking spaces represented on the CDP/FDP is based on preliminary estimates; the final number of parking spaces provided shall be determined at the time of site plan submission. During the phasing of construction, the Applicant shall be permitted to provide temporary surface parking and access roads in lieu of garage parking in any areas designated on the CDP for development, or within the limits of clearing and grading, specifically the existing open fields, ball fields and parking, shown on the area of future park (parking in the park area shall be for one period not to exceed 30 months in duration) without obtaining a PCA or FDPA. However, there shall be no reduction in the amount of parking for WMATA facilities during construction activities.

4. Landscape Plan. A landscape plan(s) shall be submitted as part of the site plan(s) in general conformance with the landscape design shown on Sheets 6, 10 and 11 of the FDP. The

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landscaped plan(s) shall include detailed streetscape, courtyard and open space landscaping, and provide details for landscaping, paving and amenities in the central open space located along North Kings Highway south of the proposed retail structure. Said plan(s) shall be coordinated with and approved by the Urban Forester. Street trees along North King's Highway, Fort Drive and within the central open space area west of the office building shall be a minimum of three (3) inch caliper at the time of planting. Notwithstanding what is shown on Sheet 6, the Applicant shall provide supplemental plantings between the proposed stormwater management pond and the adjacent townhouse building in order to provide an effective screen.

5. Limits of Clearing and Grading. Clearing, grading and construction shall conform to the limits of clearing and grading as shown on the CDP/FDP, subject to installation of necessary utility lines, trails and other required site improvements, all of which shall be installed in the least disruptive manner possible, considering cost and engineering, as determined in accordance with the approved plans. The Applicant shall have the limits of clearing and grading marked with a continuous line of flagging prior to the pre-construction meeting and shall clearly delineate the limits of clearing and grading with such flagging throughout the construction period. Before or during the pre-construction meeting, the Applicant shall walk the limits of clearing and grading with an Urban Forestry Branch representative to determine where adjustments to the clearing limits can be made to increase the survivability of trees at the edge of the limits of clearing and grading. The area defined by the limits of clearing and grading on the western boundary of the Application Property adjacent to the Huntington Club community shall remain in a natural, undisturbed state. The Applicant reserves the right to subject portions of the areas outside the limits of clearing and grading to conservation easements running to the benefit of Fairfax County for water quality purposes.

To ensure preservation of the Civil War fortifications and trees in the public park area, the limits of clearing and grading shown in this area on the FDP shall be strictly adhered to and shall be protected by tree preservation fencing. Tree protection, consisting of four foot high wire fencing, shall be placed at the limits of clearing and grading around the Civil War fortifications and in other areas in the park subject to construction activities. The tree protection fencing and a sign affirming restricted access shall be made clearly visible to all construction personnel. The tree protection fencing shall be installed prior to the performance of any clearing and grading activities in the vicinity and maintained throughout the construction period. Trees within the tree preservation fencing that are damaged or destroyed by construction activities shall be replaced as determined by the Urban Forester.

6. Park Dedication. The Applicant shall either dedicate and convey in fee simple or dedicate and convey a perpetual easement to the Fairfax County Park Authority on approximately 12 acres ("Park Property") of the Application Property for park purposes as shown on the CDP/FDP. The dedication and conveyance shall be in fee simple unless the Federal Transit

Administration determines that such fee simple conveyance would be illegal. In such case, the dedication and conveyance shall be a perpetual easement permitting the Fairfax County Park Authority and its assigns and invitees to use the Park Property for any park purposes. The dedication and conveyance of the perpetual easement shall include full public access to the Park Property. Such dedication and conveyance, whether in fee simple or a perpetual easement, shall be subject to preexisting easements, licenses and covenants of record for the benefit of the Montebello Condominium Unit Owners Association, Fairfax County Water Authority and other utilities and public bodies. Dedication and conveyance of the fee to the Park Property or dedication and conveyance of the perpetual easement for park use shall occur prior to the issuance of the 250th Residential Use Permit (RUP) for multi-family dwellings on the Application Property. The Applicant reserves the right to subject northern portion(s) of the Park Property to conservation easement(s) running to the benefit of Fairfax County, for water quality purposes prior to dedication or recordation of the fee on the perpetual easement for Park Property. The deed in fee simple or the deed of perpetual easement, if applicable, and any conservation easements, if applicable, shall be in a form acceptable to the County Attorney.

It is understood that the existing Mt. Eagle Park, which currently is leased by the Park Authority and is generally located in the area designated on the CDP/FDP for park purposes, may need to be closed on a temporary basis for one period not to exceed 30 months in duration and used for construction activities and/or temporary parking while construction on the Application Property proceeds. The Applicant shall restore any areas used for construction or parking purposes within the park area to a condition comparable to that prior to the temporary closure, or to an improved condition, if mutually agreed by the Fairfax County Park Authority (FCPA) and the Applicant. However, under no circumstance shall the Applicant disturb in any way the existing earthen mounds identified as part of historic Civil War fortifications. The Applicant shall exercise extreme caution in working within this historic site. If the existing parking area for the park is disturbed by the Applicant, equivalent parking shall be provided by the Applicant in a location to be determined in consultation with the FCPA. This relocated parking shall not necessitate an amendment to the CDP/FDP.

Furthermore, prior to the issuance of the first RUP or Non-RUP on the Application Property, the developer shall pay to WMATA for the account of the FCPA any rents due to WMATA by FCPA under the Agreement for Use and Occupancy dated July 20, 1977.

7. Pedestrian Facilities. The following pedestrian facilities shall be provided on the Application Property:
 - A. Applicant acknowledges the perpetual exclusive license for ingress and egress to the WMATA facilities held by Montebello Condominium. Pursuant to the terms of the

license, the existing combined pedestrian walkway and shuttle bus driveway from the Montebello Condominiums to the WMATA facilities (the "Montebello Access Drive") shall remain, with modifications as depicted on the sketch included as Attachment One or as outlined in the following paragraphs. The Applicant shall keep the Montebello Access Drive or an interim alternate route, open during construction of the project, and shall pave any permanent modification or replacement driveway. As provided in the license, Applicant shall consult with and provide advance notice to Montebello of any changes in the location of the Montebello Access Drive.

Notwithstanding what is shown on the CDP/FDP, the cul-de-sac at the end of the Montebello Access Drive shall be located generally in the area between the proposed new WMATA parking garage and the proposed new private parking garage. Attachment One shows an alternative location to that depicted on the CDP/FDP, however, the cul-de-sac's final location is subject to change based on final engineering and community input, without the need for an FDPA. The location of the cul-de-sac shall be coordinated with the requirements of the Fairfax County Water Authority Easement Agreement, provided that all other requirements of this proffer 7.A. are met.

Access from the cul-de-sac to the station by one of a number of alternatives as follows:

- A paved/concrete walkway leading to either a covered pedestrian bridge or well-lighted underpass over or under, respectively, the driveway to the new parking garage, each with seating along one side to accommodate waiting commuters;
- By providing a paved/concrete walkway to the new parking garage with safe, convenient access through the garage to its connections to the station in which the walkway enters the new garage at a different level than the one on which any public driveway enters the garage. This alternative might prove acceptable if the access provided for pedestrians and handicapped persons from the garage to the Metro platform was convenient; or
- By another option that may be identified in the site plan process which option is acceptable to Montebello as a substitute for its current exclusive access.

In any event, the length of the principal walkway shall not cross any public roadway, be no steeper in grade, nor be any longer than the existing walkway from the existing cul-de-sac. To facilitate handicapped access, at least one such walkway shall not have stairs between the end of the Montebello Access Drive and the point where it enters a WMATA garage. Walkways shall be a minimum of four (4) feet in width.

- B. If feasible as determined by DPWES, a pedestrian stairway and connection shall be constructed from the terminus of Biscayne Drive crossing the area to be dedicated for park purposes as generally shown on Sheet 9 of the CDP/FDP. Care shall be exercised in siting and constructing this connection to minimize the disturbance to existing quality trees, recognizing however, that due to steep slopes in this area, some disturbance is required. The Applicant shall coordinate its plans with the Urban Forester in an effort to minimize disruption to quality trees. Due to severe topographical constraints, it shall be understood that the connection will not be handicapped accessible. Said connection shall be constructed prior to the park dedication/ easement described in Proffer #6 above.
- C. A pedestrian connection shall be constructed from the terminus of Blaine Drive crossing the area to be dedicated for park purposes as generally shown on Sheet 9 of the CDP/FDP. Care shall be exercised in siting and constructing this connection to minimize the disturbance to existing quality trees, recognizing however, that due to steep slopes in this area, some disturbance is required. The Applicant shall coordinate its plans with the Urban Forester in an effort to minimize disruption to quality trees. In addition, it shall be understood that this connection will not be handicapped accessible. Said connection shall be constructed prior to the park dedication/easement described in Proffer #6 above.
- D. The Applicant shall reconstruct the pedestrian pathway currently crossing the park land from Tax Map 83-3 ((1)) 90B in a northwesterly direction. This pathway shall be a minimum of six (6) feet in width and connect to the proposed sidewalk in the developed portion of the Application Property. The final location of the pathway shall be determined in cooperation with the Fairfax County Park Authority. This reconstruction shall be complete prior to the park dedication/easement described in Proffer #6.
- E. The Applicant shall provide a comprehensive sidewalk system within the developed portions of the Application Property as generally shown on Sheet 9 of the FDP, including completion of sidewalks along the Application Property frontages with North Kings Highway and Fort Drive, and internal connections between all commercial and residential components and the WMATA facilities. Construction of sidewalks shall be concurrent with development activity on the Application Property.
- F. The Applicant shall provide zebra painted pedestrian crosswalks at entrances along its North Kings highway frontage, as generally shown on Sheet 9 of the FDP, as may

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be determined appropriate by DPWES. Provision of painted crosswalks shall be concurrent with development activity on the Application Property.

G. The Applicant shall involve community representatives from nearby communities in the site plan process with regard to the evaluation of access alternatives to provide pedestrians and shuttle bus users access to the station or parking garage as provided above.

8. Use of Garages. A covenant shall be recorded which provides that townhouse garages shall only be used for a purpose that will not interfere with the intended purpose of garages (e.g., parking of vehicles). This covenant shall be recorded among the land records of Fairfax County in a form approved by the County Attorney prior to the sale of any lots.

9. Private Streets. The private streets on the Application Property shall be constructed in conformance with Public Facilities Manual standards TS-5A with a minimum 30-foot easement and a minimum 24-foot pavement width. Said private streets shall be constructed of materials and depth of pavement consistent with Section 7-502 of the Public Facilities Manual ("PFM"). The rear loaded alleys located off the private streets which provide access to the garage of the townhouse mews units shall be constructed of materials and in a width and depth of pavement consistent with Section 7-502 of the Zoning Ordinance, but shall not be required to meet easement width or curb and gutter standards as on the other private streets on the Application Property. The private streets shall be subject to a recorded public access easement, in a form acceptable to the County Attorney, ensuring continual public access to the proposed park area. Purchasers of dwelling units shall be informed in writing and in the homeowner association documents that the private streets are subject to easements providing public access for the park and that the cost of maintenance of the private streets shall be the responsibility of the homeowners association and other property owners within the Application Property.

10. Recreational Facilities. Pursuant to Paragraph 2 of Section 6-409 of the Zoning Ordinance regarding developed recreational facilities, the Applicant shall provide the recreational facilities to serve the Application Property. These facilities include swimming pools, passive seating areas and an indoor recreational facility, which may include, but not be limited to, fitness equipment.

The Applicant proffers that the minimum expenditure for the above-referenced recreational facilities shall be \$955.00 per residential unit excluding ADUs. Credit toward the minimum expenditure shall be given for the Applicant's construction of trails on the area to be dedicated for park purposes as well as other expenditures for improvements to the park area.

11. Noise. In order to achieve a maximum interior noise level of approximately 45 dBA Ldn

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within that area impact by noise from North Kings Highway between 65 and 70 dBA Ldn noise contours, the Applicant shall construct the proposed dwelling units with the following acoustical measures to mitigate the impact of highway noise:

-Construction materials and techniques known to have physical properties or characteristics suitable to achieve an STC of at least 39 for exterior walls;

-Doors and windows shall have a laboratory STC rating of at least 28. If glazing constitutes more than 20 percent (20%) of any façade, they shall have the same laboratory STC as walls.

-Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

12. Affordable Dwelling Units. The Applicant shall comply with the Affordable Dwelling Unit (ADU) program as set forth in Part 8 of Article 2 of the Zoning Ordinance in effect at the time of the approval of this rezoning application. It is understood that ADUs for the townhouse component shall be dispersed and may be provided within the multi-family buildings.
13. Stormwater Management. Unless waived or modified by DPWES, the Applicant shall provide on-site stormwater management designed with Best Management Practices in the pond facility shown on the CDP/FDP, and within an underground structure located in the garage serving the office, retail and high-rise residential uses. The maintenance of the underground facilities shall be the responsibility of the Applicant and its successors. The private ownership and maintenance responsibilities shall be disclosed to future purchasers.
14. Energy Conservation. Dwelling units constructed on the Application Property shall meet thermal guidelines of the Virginia Power Energy Saver Program for energy-efficient homes or its equivalent, as determined by DPWES.
15. Architectural Design. The architectural design of the buildings shall be in general character with the elevations shown on Sheets 7 and 8 of the FDP. Modifications may be made with the final architectural designs. Building materials for the prominent wing ends of the mid-rise residential building facing North Kings Highway will be predominately brick (more than 50 percent), as will the townhouse facades facing public streets.
16. Geotechnical Report. If required by DPWES, geotechnical studies shall be submitted at the time of site plan submissions and the recommendations of said studies implemented, as determined by DPWES.
17. Lighting. Outdoor lighting shall use full cut-off fixtures and shall be directed downward and

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inward to minimize glare onto adjacent residential properties. Street lighting shall not exceed a height of fourteen (14) feet. Efforts shall be made to minimize the visibility of parking garage lighting on adjacent residential properties, such as installing lighting between the ceiling beams or other comparable techniques.

18. Park Signage.

A. The Applicant shall install a sign with design and text to be determined in cooperation with FCPA at one of its entrances on North Kings Highway frontage identifying the Mt. Eagle Park and providing a directional arrow, as may be permitted by the Zoning Ordinance.

B. The Applicant shall install a permanent marker with design and text to be determined in cooperation with Fairfax County Park Authority (FCPA) to commemorate the remains of the Civil War fortifications in Mt. Eagle Park. Such marker shall be installed prior to park dedication/easement.

19. Successors and Assigns. These proffers will bind and inure to the benefit of the Applicant and his/her successors and assigns.

20. Density Credit. Advanced density credit shall be reserved as may be permitted by the provisions of Paragraph 5 of Section 2-308 of the Fairfax County Zoning Ordinance for all eligible dedications described herein, including the dedication of land for park purposes, or as may be required by Fairfax County or VDOT at time of site plan approval.

21. 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.

22. Severability. Any of the sections/buildings within the Application Property may be subject to Proffered Condition Amendments and Final Development Plan Amendments without joinder or consent of the property owners of the other sections/buildings.

[SIGNATURES BEGIN ON NEXT PAGE]

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APPLICANT/CONTRACT LESSEE

HUNTINGTON METRO LLC

By: The Stout & Teague Company, Co-Manager


G. Neel Teague, Vice President

[SIGNATURES CONTINUE ON NEXT PAGE]

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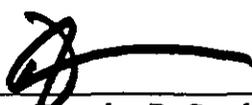
APPLICANT/CONTRACT LESSEE

HUNTINGTON METRO LLC

By: Clark Realty Capital, L.L.C.,
A Delaware limited liability company
Its: Co-Manager



By: Lawrence C. Nussdorf
Its: Manager



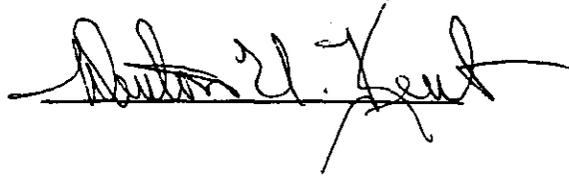
By: Douglas R. Sandor
Its: Manager

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TITLE OWNER

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

A handwritten signature in black ink, appearing to read "Arthur J. Kent", is written over a horizontal line. The signature is stylized and cursive.