

## PROFFERS

RZ 2010-MV-011

Memorial Venture, LLC

July 25, 2011

Pursuant to Section 15.2-2303(a) Code of Virginia, 1950, as amended, Memorial Venture, LLC, (hereinafter referred to as the "Applicant"), for itself, successors and assigns in RZ 2010-MV-011 filed for property identified as Tax Map 93-1 ((18)) (D) 117, 126, 130, and 138 (hereinafter referred to as the "Application Property") hereby proffers that the development of the Application Property shall be in accordance with the following proffers, provided that the Board of Supervisors approves RZ 2010-MV-011. These proffers shall supersede and replace all previously approved proffers applicable to the Application Property.

### 1. GENERAL

- a. Generalized Development Plan. Subject to the provisions of 18-204 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 generalized development plan ("GDP") consisting of eight (8) sheets, prepared by Dominion Surveyors, Inc. dated August 12, 2010 and revised through July 8, 2011.
- b. Minor Modifications. Minor modifications to the GDP may be permitted as determined by the Zoning Administrator. The Applicant reserves the right to modify the layout shown on the GDP at time of site plan based on final engineering and design provided that there is no decrease in the amount or location of open space or landscaping, or distances to peripheral lot lines as shown on the GDP.
- c. Uses. As shown on the GDP, the Application Property shall be developed as a shopping center. Development on the Application Property shall include a maximum of 6,000 square feet of gross floor area ("GFA"). The Applicant shall not exceed a single fast food restaurant use on the Application Property. No more than six (6) tenant spaces shall be permitted on the Application Property.

Permitted uses shall include the following:

- Business service and supply service establishments;
- Eating establishments;
- Fast food restaurant that complies with the provisions of Section 4-805 of the Zoning Ordinance;
- Financial institutions;
- Garment cleaning establishments;

- Health clubs;
  - Offices;
  - Personal service establishments;
  - Public uses;
  - Private schools of special education;
  - Quick service food stores that comply with the provisions of Section 4-805 of the Zoning Ordinance;
  - Repair service establishments;
  - Retail sales establishments.
- d. Special Exceptions. The Applicant shall request special exception approval for any fast food restaurant or quick service food store that does not meet the limitations of Section 4-805 of the Zoning Ordinance. As determined by the Zoning Administrator, a special exception application shall not require a proffered condition amendment provided that there is no decrease in the amount or location of open space, landscaping, distance to peripheral lot lines, or increase in the total square footage as shown on the GDP.
- e. Density Credit. Density credit is reserved consistent with Section 2-308 of the Zoning Ordinance for all eligible dedications described herein or as may be required by Fairfax County or the Virginia Department of Transportation (VDOT) pursuant to the Public Facilities Manual (PFM), at or prior to time of site plan approval.

## 2. TRANSPORTATION

- a. Richmond Highway. The Applicant shall dedicate right-of-way for public street purposes up to 88 feet from the centerline of Richmond Highway along the entire site frontage in fee simple without encumbrances to the Board of Supervisors, as shown on the GDP, prior to site plan approval or upon demand, whichever shall occur first.
- b. East Lee Avenue. Prior to the issuance of a Non-Residential Use Permit (non-RUP), the Applicant shall construct a five (5) foot sidewalk on East Lee Avenue as shown on the GDP.
- c. Access Management Exception. Prior to site plan approval, the Applicant shall obtain approval of an access management exception.
- d. Right Turn Lane. If, prior to site plan approval, VDOT does not approve a waiver of the requirement to construct a separate right turn lane along the Application Property's frontage from northbound Richmond Highway onto East Lee Avenue, or VDOT does not approve a modified design for a right turn lane, the Applicant shall construct a right turn lane in accordance with VDOT standards and in substantial conformance with Sheet 3C of the GDP. Prior to issuance of a non-

RUP, the turn lane shall be open to use by the public for travel but not necessarily accepted by the state for maintenance.

- e. Upon demonstration by the Applicant that, despite diligent efforts or due to factors beyond the Applicant's control, the required transportation improvements have been delayed (due to, but not limited to, an inability to secure necessary permission for utility relocations and/or necessary easements, site plan approval, etc.) beyond the timeframes specified, the Zoning Administrator may agree to a later date for completion of these improvement(s).

### 3. DESIGN

- a. The Applicant shall be permitted to develop the Application Property with one (1) building consisting of a maximum of 6,000 square feet or two (2) buildings that total a maximum of 6,000 square feet. The Applicant reserves the right to shift square footage between the buildings provided there is no decrease in open space and/or building setbacks.
- b. The Applicant shall ensure that the final architectural design of the building(s) shall be in substantial conformance with the general type, quality, and proportion of materials depicted in the illustrative elevation attached to these proffers. The building(s) shall be constructed of masonry and pre-cast concrete on all four (4) sides of the building(s). The building(s) shall include awnings and transparent glass for all windows, including those incorporated into entry doors.
- c. The Applicant shall screen all mechanical equipment from view on all sides.

### 4. GREEN BUILDING PRACTICES

- a. The Applicant shall include, as part of the site plan submission and building plan submission for the Application Property, a list of specific credits within the project's registered version of the U.S. Green Building Council's Leadership in Energy and Environmental Design—New Construction (LEED®-NC) rating system, or other LEED rating system determined to be applicable by the U.S. Green Building Council (USGBC), or its equivalent (as determined jointly by the Applicant and Fairfax County), that the Applicant anticipates attaining.
- b. A LEED accredited or equivalent-accredited professional shall be included as part of the design team. A LEED or equivalent-accredited professional shall provide certification statements at the time of site plan review and building plan submission confirming that the items on the list will meet at least the minimum number of credits necessary to attain LEED-NC certification of the project.

Prior to site plan approval, the Applicant shall submit documentation, to the Environment and Development Review Branch of DPZ, regarding the USGBC's preliminary review of design-oriented credits in the LEED program. This documentation will demonstrate that the project is anticipated to attain a sufficient

number of design-related credits that, along with the anticipated construction-related credits, will be sufficient to attain LEED-NC certification

- c. Prior to approval of the site plan for each building, the Applicant will execute a separate agreement and post, for that building, a “green building escrow,” in the form of cash or a letter of credit from a financial institute acceptable to DPWES as defined in the Public Facilities Manual, in the amount of \$12,000. 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 Council, under the most current version of the U.S. Green Building Council’s (USGBC) Leadership in Energy and Environmental Design—New Construction (LEED®-NC) rating system or other LEED rating system determined, by the U.S. Green Building Council, to be applicable to the building. The provision to the Environment and Development Review Branch of DPZ of documentation from the U.S. Green Building Council that each 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 three (3) years of issuance of the 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.
- d. Prior to site plan approval, the Applicant will 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 will 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.
- e. If the Applicant provides to the Environment and Development Review Branch of DPZ, within three (3) years of issuance of the non-RUP for the building, documentation demonstrating that LEED certification for the building has not been attained but that the building has been determined by the U.S. Green Building Council to fall within three (3) points of attainment of LEED certification, 50% of the escrow will be released to the Applicant; the other 50% will be released to Fairfax County and will be posted to a fund within the county budget supporting implementation of county environmental initiatives.
- f. If the Applicant fails to provide, within three (3) years of issuance of the non-RUP for the building, documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of LEED certification or demonstrating that the building has fallen short of certification by three (3) points or less, the entirety of the escrow for that building will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

- g. If the Applicant provides documentation from the USGBC demonstrating, to the satisfaction of the Environment and Development Review Branch of DPZ, that USGBC completion of the review of the LEED certification application has been delayed through no fault of the Applicant, the Applicant's contractors or subcontractors, the proffered time frame may be extended as determined appropriate by the Zoning Administrator, and no release of escrowed funds shall be made to the Applicant or to the County during the extension.

5. STORMWATER MANAGEMENT/BEST MANAGEMENT PRACTICES

The Applicant shall provide Stormwater Management (SWM) and Best Management Practices (BMP) in the locations as generally shown on the GDP. Said facilities shall be designed in accordance with the PFM and the Chesapeake Bay Preservation Ordinance, unless modified by DPWES. All or a portion of the SWM/BMPs may be provided underground, on-site in a location and manner acceptable to DPWES. The Applicant shall achieve at least 50% phosphorus removal to improve stormwater quality.

6. STREETScape

- a. The Applicant shall install a streetscape generally consisting of landscaping, a trail, and a browsing strip along the Application Property's Richmond Highway frontage as shown on the GDP. Subject to approval by Urban Forest Management (UFM), in addition to what is shown on the GDP, the Applicant shall install ground cover, shrubs, and flowers along the Richmond Highway frontage. The Applicant shall coordinate the installation of the proposed streetscape with VDOT. The Applicant reserves the right to make minor modifications to landscaping to reasonably accommodate utility lines, provided such relocated landscaping shall retain a generally equivalent number of plantings as shown on the GDP.
- b. The Applicant shall install a streetscape generally consisting of landscaping and a sidewalk along the Application Property's East Lee Avenue frontage as shown on the GDP. The Applicant shall coordinate the installation of the proposed streetscape with VDOT. The Applicant reserves the right to make minor modifications to landscaping to reasonably accommodate utility lines, provided such relocated landscaping shall retain a generally equivalent number of plantings as shown on the GDP.

7. LANDSCAPING AND SCREENING

- a. Peripheral parking lot landscaping shall be provided as generally shown on the GDP.
- b. Transitional screening and barriers shall be provided as generally shown on the GDP.

- c. The Applicant shall provide a seven (7) foot wall, as generally shown on the GDP, provided that the distance from the wall to the eastern and southern property lines is not reduced from that shown on the GDP. The Applicant shall determine the final location of the wall at time of site plan to accommodate screening to the greatest extent possible. The wall shall be constructed of architectural block or masonry materials.

8. HERITAGE RESOURCES

Prior to any land disturbing activities on the Application Property, Applicant shall conduct a Phase I archaeological study of the undisturbed areas of the Application Property, and provide the results of such study to the Park Authority Cultural Resources Management and Protection Section (CRMPS). The study shall be conducted by a qualified archaeological professional approved by CRMPS, and shall be reviewed and approved by CRMPS within a reasonable time period so as to not delay construction. The Phase I study shall be performed in accordance with a scope provided by CRMPS.

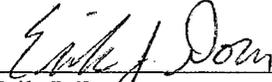
There shall be no land disturbing activities on the Application Property until the Phase I study has been reviewed and approved by CRMPS. If any archeological resources are found by the Phase I study and determined to be potentially significant, then the Applicant shall conduct a Phase II archeological study. The Phase II study data recovery shall be performed in accordance with a scope provided by CRMPS. Archeological reports produced as a result of the Phase I and/or Phase II studies shall be submitted for approval to CRMPS. Said approval process shall be completed within a reasonable time period so as to not delay construction.

9. SUCCESSORS AND ASSIGNS

These proffers shall bind and inure to the benefit of the Applicant and its successors or assigns.

Applicant/Title Owner of Tax Map 93-1 ((18)) (D) 117,  
126, 130, 138

MEMORIAL VENTURE, LLC

A handwritten signature in cursive script, appearing to read "Erik J. Don", is written over a horizontal line.

By: Erik J. Don  
Its: Managing Member

[SIGNATURE ENDS]

