

PROFFERS

FF REALTY IV LLC

ZONING MAP AMENDMENT

July 2, 2018

Pursuant to Section 15.2-2303(a) of the *Code of Virginia*, 1950, as amended, and Section 110-7 (b) of the Zoning Ordinance of the City of Fairfax, Virginia, FF Realty IV LLC, for the owner, and successors and/or assigns (hereinafter referred to as the "Applicant") in Z-18-00121 filed on property identified on the City of Fairfax tax map 57-1-27, 31, 31A, and 31B (hereinafter referred to as the "Application Property") hereby proffers the following, provided that the Fairfax City Council approves a rezoning amendment of the Application Property in conjunction with a general development plan for residential and commercial development. These proffers shall replace and supersede all previous proffers approved on the Application Property. In the event the rezoning is denied by the Council, these proffers shall immediately be null and void.

1. GENERAL DEVELOPMENT PLAN

Development of the Application Property shall be in substantial conformance with the General Development Plan (GDP) prepared by Vika Virginia LLC and Preston Drake Architects consisting of 55 sheets, dated July 2, 2018. The Applicant shall have the flexibility to make minor modifications to site design and improvements shown on the GDP based on final engineering and design subject to the approval of the Director of Community Development and Planning.

2. USES

The following uses shall be permitted on the Application Property:

- A. Approximately 21,249 square feet of gross floor area (GFA) which may be occupied by any of the permitted uses or special use permit uses as shown on the GDP. Additional uses that require approval of a special use permit may be permitted with approval of a separate special use permit without necessitating an amendment to these proffers so long as the layout is in substantial conformance with the GDP.
- B. Multifamily residential up to a maximum of 403 dwelling units
- C. The Applicant proposes approximately 10,750 square feet of ground level GFA that will be accessory uses to the multifamily dwelling units as shown on the GDP. The Applicant reserves the right to convert up to 5,000 square feet of said accessory use space to commercial uses as permitted in the CR District without necessitating a rezoning amendment or development plan amendment should future market conditions allow, subject to demonstration of adequate parking, as demonstrated in a parking study completed by a transportation engineer or

planner, to the satisfaction of the Department of Community Development and Planning.

- D. The existing uses on the Application Property shall remain legally nonconforming until the commencement of construction.

3. TRANSPORTATION

- A. Fairfax Boulevard and Lee Highway. Prior to the issuance of the first Residential Use Permit (RUP) or Non-Residential Use Permit (Non-RUP) for the Application Property, the Applicant shall construct road improvements to enable vehicular access from both Fairfax Boulevard (Route 50) and Lee Highway (Route 29) as shown on the GDP.
- B. Fairfax Boulevard Right Turn Lane. Prior to the issuance of the first RUP or Non-RUP for the Application Property, the Applicant shall construct a right turn lane from Fairfax Boulevard into the Application Property as shown on the GDP.
- C. Fairfax Boulevard Circular Entry Feature. Subject to final design at time of site plan approval, the Applicant shall construct a circular entry feature in substantial conformance with the GDP. Final signing and striping to be approved in coordination with the Director of Public Works.
- D. Lee Highway Sign. Prior to the issuance of the first RUP or Non-RUP for the Application Property, the Applicant shall install improvements as shown on the GDP and a sign prohibiting left turns into the Application Property from Lee Highway. The sign shall be placed in the median of Lee Highway, subject to the approval of the Director of Public Works and the Virginia Department of Transportation (VDOT).
- E. Signal Modifications. Prior to the issuance of the first RUP or Non-RUP for the Application Property, the Applicant shall fund signal modifications for the signal at Bevan Drive and Fairfax Boulevard should such modifications be required by VDOT.
- F. New Streets. Prior to the issuance of any RUP or Non-RUP for the first building located within the Application Property, the Applicant shall construct at its sole expense the streets, accessways, and sidewalks on the Application Property as shown on the GDP that are required to provide access to the building for which the RUP or Non-RUP is requested. Such streets shall be maintained by the Applicant as private streets. Special paving materials, raised crosswalks, and on-street parking within these shall be provided, subject to the approval of the Department of Public Works. The Applicant shall install signs and/or pavement markings for bicycles, subject to the approval of the Department of Public Works. The Applicant shall provide a public ingress/egress easement for all private streets, accessways, and adjacent sidewalks. Such easements shall extend to the peripheral boundaries of the Application Property to permit extension of the private streets and accessways in the future. Upon demand by the City, that will

take place no sooner than completion of all improvements on the Application Property, the Applicant shall dedicate right-of-way to convert the streets to public streets, and, once dedicated, the entirety of the project as designed and constructed will remain a legally conforming use in accordance with zoning approval, Board of Architectural Review (BAR) approval, site plan approval and building permits. The Applicant shall not be obligated to obtain off-site easements or right-of-way to facilitate extensions. Prior to the issuance of the final RUP or Non-RUP for the Application Property, all streets, accessways, and sidewalks shall have final paving and shall be complete in substantial conformance with the GDP.

- G. Sidewalks. The Applicant shall provide ADA compliant sidewalks on both sides of all internal streets as shown on the GDP.
- H. Internal Intersection Alignment. At time of site plan approval, the Applicant shall minimize the southern internal intersection skew to better align the intersection in coordination with the Director of Public Works.
- I. Maintenance. The Applicant shall maintain the streets and sidewalks as private until such time as the City may demand dedication.
- J. Fairfax Boulevard Reservation. Prior to site plan approval, the Applicant shall reserve land area of approximately 5,510 square feet along the Application Property's Fairfax Boulevard frontage, which shall be dedicated to the City upon request to accommodate a slow lane as depicted in the City's Comprehensive Plan. Said reservation shall be made without cost to the City of Fairfax.
- K. Lee Highway Dedication and Reservation. The Applicant shall dedicate up to 50 feet from centerline of the Application Property's Lee Highway frontage to comply with the minimum right-of-way required by the Subdivision Ordinance. In addition, prior to site plan approval, the Applicant shall reserve land area of approximately 7,640 square feet along the Application Property's Lee Highway frontage, which shall be dedicated to the City upon request. Said reservation shall be made without cost to the City of Fairfax.
- L. Construction Timing. The Applicant shall coordinate phasing of transportation improvements with the Department of Public Works at time of site plan.
- M. Kamp Washington Study. Prior to the issuance of the final RUP or Non-RUP for the Application Property, the Applicant shall contribute \$25,000.00 to the City to help fund a study regarding road design, pedestrian improvements, and/or bicycle improvements in the Kamp Washington area.

4. STORMWATER MANAGEMENT

Design and construction of stormwater management facilities shall comply with 4VAC50-60 Virginia Stormwater Management Program (VSMP) Permit Regulations, as may be amended, or other relevant standard in place at the time of building permit

submission. At time of site plan, the Applicant shall consider low impact development techniques to the extent feasible which may include, but not be limited to, permeable pavers, infiltration, and/or bio-retention.

5. STREETSCAPE

- A. Prior to the issuance of the first RUP or Non-RUP for the Application Property, the Applicant shall install a streetscape generally consisting of landscaping, a minimum ten (10) foot wide sidewalk or shared use path, and acorn lights along the Application Property's Fairfax Boulevard and Lee Highway frontages as shown on the GDP and in accordance with the City's Public Facilities Manual standards. The Applicant shall grant access easements for maintenance, if required. The final streetscape design shall be approved at time of site plan.
- B. Prior to the issuance of a RUP or Non-RUP for the Application Property, the Applicant shall underground utilities located along the Application Property's Fairfax Boulevard and Lee Highway frontages and on the Application Property, with the exception of temporary power poles necessary for construction of buildings and improvements not yet complete.

6. LANDSCAPING AND OPEN SPACE

- A. General. Landscaping on the Application Property shall be in general conformance with the landscape design shown on the GDP. Final selection of the type and location of vegetation and the design of landscaped areas and streetscape improvements/plantings shall be made as a component of the site plan approval process.
- B. Contemplative Open Space. Prior to the issuance of the final Non-RUP for Building 300 as identified on the GDP, the Applicant shall provide a publicly accessible landscaped open space in the northeastern portion of the Application Property adjacent to the Jermantown Cemetery which may include walkways, specialty plantings, and furniture, as approved at time of site plan. The Applicant shall consult with Historic Fairfax, Inc. regarding the design of the contemplative open space.
- C. Construction Timing. The Applicant shall coordinate phasing of landscaping and open space improvements with the Department of Public Works at time of site plan.

7. RECREATIONAL AMENITIES

- A. The Applicant shall provide up to 21,500 square feet, of on-site recreational facilities to serve the residences of the Application Property that may include, but not be limited to, a fitness center, pool amenity area, meeting rooms, and a dog park. The Applicant shall have the right to convert up to 5,000 square feet of ground level amenities to commercial uses without necessitating an amendment to

these proffers or development plan should future market conditions allow, as provided for in Proffer 2.C.

- B. Following the commencement of construction but prior to the issuance of the first RUP, the Applicant shall contribute an amount equivalent to \$250.00 per residential unit to the City of Fairfax for use in the planning, design and/or construction of recreational amenities at Kutner and/or parks in the Westmore neighborhood area.
- C. The Applicant shall provide a minimum of one (1) location for public art within open space on the Application Property.

8. JERMANTOWN CEMETERY

Commencing upon delivery of the first RUP on the Application Property, and provided that the cemetery owner grants access to the Applicant or its Designee, the Applicant shall maintain the landscaping within Jermantown Cemetery as a component of the landscape maintenance for the proposed project for a period not to exceed thirty (30) years. Landscape maintenance shall include mowing, seeding, edging, tree pruning, and trash removal.

9. ARCHITECTURAL DESIGN

- A. The architectural design and style of the buildings shall be generally consistent with the conceptual elevations as shown on the GDP, and shall be generally consistent in style on all sides of the buildings. The elevations may be refined as a result of final design and engineering so long as the character and quality of the buildings remain in substantial conformance with those shown on the GDP. Building materials shall be predominately brick, cementitious board, and may also include stone, cultured stone, simulated stone, and/or metal paneling
- B. All residential units shall comply with all applicable municipal, state and federal accessibility and anti-discrimination requirements in place at the time of building permit submission.
- C. The proposed development shall consist of studio, one-bedroom, two-bedroom, and three-bedroom units as shown on the GDP. Notwithstanding the unit mix provided on the GDP, the Applicant shall have the ability to modify the final unit mix at time of site plan, provided that such modification shall not apply to more than five percent (5%) of the total number of units, and provided that the minimum parking ratios provided on Sheet C-0 of the GDP are met for each unit type.
- D. Pursuant to the Virginia Statewide Fire Prevention Code, the Applicant shall provide approved alternative means of fire protection to the satisfaction of the Fire Marshal to mitigate the limited accessible perimeter of the proposed buildings. Such alternative means shall include, but not be limited to, NFPA 13 fire suppression systems where sprinkler systems are required throughout the

development, and the use of non-combustible exterior finish materials as described in Proffer 9.A.

- E. At time of site plan, the Applicant shall identify accessible units in each proposed building as required by the then, in place, applicable municipal, state, and federal accessibility requirements.
- F. The Applicant shall incorporate design and construction techniques to direct restaurant exhaust away from the planned residential units, such as installing rooftop ventilation systems, as may be required by the applicable building code at time of building permit submission.
- G. Prior to the issuance of a building permit for residential units, the Applicant shall submit documentation to the City that exterior materials and construction techniques are effective in ensuring interior average noise levels of approximately 55 dBA between 7:00 a.m. and 9:00 p.m. and approximately 45 dBA between 9:00 p.m. and 7:00 a.m.

10. SUSTAINABLE DESIGN

- A. In order to promote energy conservation and green building techniques, the Applicant shall incorporate energy saving devices which may include, but not be limited to, use of ENERGY STAR[®] appliances, energy efficient mechanical systems, recycling for occupant refuse, energy efficient lighting and insulation that meets or exceeds applicable energy code requirements.
- B. At time of site plan submission, the Applicant shall submit a LEED checklist to demonstrate the incorporation of energy saving components as described above and as generally available in the marketplace.

11. PARKING MANAGEMENT

- A. The Applicant shall provide parking in conformance with the GDP. Notwithstanding the number of parking spaces indicated on the GDP, the Applicant may increase the final number of parking spaces provided at time of final site plan provided that any additional parking spaces are located within the parking garage, that the minimum parking rates as depicted on the GDP are provided, and that open space is not decreased and the distance to peripheral lot lines is not decreased.
- B. The Applicant shall assign parking management as one of the duties of its property manager. Parking management shall entail the efficient use of available constructed parking spaces, including the assignment of parking spaces to residents within the parking garage, and designation of guest parking as identified by signage. No fewer than two (2) conveniently located parking spaces will be reserved for vanpools and/or car sharing services.

- C. The Applicant shall assign one (1) parking space per unit that will be included in the monthly rent for each unit. The Applicant reserves the right to charge a fee or premium for preferred and/or additional parking spaces. Guest and commercial parking shall be clearly designated on the Application Property and distributed throughout the site. Code required parking for commercial uses shall be located either on the first or second level of the parking structures.
- D. The Applicant shall utilize measures as it deems appropriate, which may include but not be limited to signs and/or meters, to ensure that all on-street parking spaces are unreserved and time limited so that parking is available for commercial patrons.

12. TRANSPORTATION DEMAND MANAGEMENT STRATEGIES

In an effort to reduce the numbers of vehicle trips generated by the Application Property, the Applicant shall implement Transportation Demand Management (“TDM”) strategies. These strategies will include, but not be limited to, the following:

- A. Designation of a Transportation Management Coordinator (“TMC”) which may be one of the duties assigned to its property manager. The TMC will provide on-site assistance to residents and employees in forming and maintaining carpools and vanpools. The TMC will display in the Application Property’s leasing office information on local transit services, carpool programs, and ridesharing programs. The TMC will ensure that the displayed information is current.
- B. At the time of the initial occupancy only for each dwelling unit on the Application Property, the Applicant shall provide one (1) resident of the unit with a one-time prepaid transit card with a value of twenty-five (\$25.00).
- C. Designation of a space on the Application Property that may be used by residents for telework activities. The space will include access to a computer, printer, and copy machine.
- D. Installation of at least one interior or exterior electric vehicle charging station on the Application Property.
- E. Prior to the issuance of a RUP or Non-RUP for the Application Property, the Applicant shall install one (1) standard City bus shelter on the Application Property’s Fairfax Boulevard frontage and one (1) on the Application Property’s Lee Highway frontage to serve bus routes that serve Lee Highway and Fairfax Boulevard.
- F. The Applicant shall provide City staff with information obtained by resident surveys regarding the use of public transportation, carpooling, bikes, teleworking, and any other transportation options on an annual basis.

13. AFFORDABLE HOUSING

- A. The Applicant shall provide 24 units as affordable dwelling units to be affordable to persons having a median household income up to and including 60% of AMI as determined by HUD, adjusted for unit size, and as set forth below.
- B. The following conditions shall be applicable to the affordable units:
 - (i) Income eligibility limits shall be adjusted based on unit size as follows: 60% for a studio, 80% for a one bedroom unit, 90% for a two bedroom unit, 100% for a three bedroom unit.
 - (ii) Maximum monthly rental rates for the affordable dwelling units shall be adjusted annually based on changes in the AMI by:
 - a. Multiplying the applicable AMI by the maximum income percentage in Paragraph 13.A. above;
 - b. Multiplying the product of subparagraph (i) by the adjustment factor for unit size in Paragraph 13.B(i);
 - c. Dividing the product of subparagraph (ii) by twelve (12) to reflect the number of months in a year; and
 - d. Multiplying the quotient of subparagraph (iii) by 30% to determine the rent that may be charged to renters in each income bracket.
 - (iii) The units shall be integrated into and dispersed throughout the development to the extent feasible.
 - (iv) The units shall be constructed of comparable materials and fixtures and maintained at comparable levels with market rate units
 - (v) To the extent feasible, the number of bedrooms per affordable unit shall be proportional to the number of bedrooms per market unit on the Application Property.
 - (vi) If an affordable unit is vacant and cannot be rented for more than 90 consecutive days, despite diligent marketing efforts as demonstrated to the City, the owner can rent the vacant affordable unit at market rates, provided that the next similar unit that is on the market is designated as an affordable unit to ensure consistency with the required percentage of affordable units.
 - (vii) The tenants who lease the affordable units shall meet the income eligibility criteria identified herein, as well as typical background checks and other applications as may be required for the rental of the market rate units as required by the Applicant. Said requirements shall be made

available to the Department of Community Development and Planning on an annual basis upon request.

- (viii) Existing tenants who are income qualified upon initial occupancy shall remain eligible for affordable housing provided their income remains at or below 80% of AMI as adjusted herein for household size. Existing tenants whose income exceeds 80% of AMI will no longer qualify under the income eligibility criteria identified herein, and the Applicant, within its sole discretion, shall either allow the tenant to continue occupancy at market rates and designate another unit within the development as affordable, when available, or relocate the tenant to a market rate unit and continue to lease the previously designated affordable unit in accordance with the income eligibility criteria.
- (ix) Marketing of the affordable units shall include coordination with non-profit organizations.
- (x) The affordability restriction described herein shall remain in place for thirty (30) years after the issuance of the first RUP for an affordable unit on the Application Property at which time the provisions of this Proffer 13 shall be null and void and of no further force and effect.
- (xi) The Applicant shall furnish City Staff with information on the affordable units' occupancy/vacancy status and tenant eligibility information annually.
- (xii) Should the proposed development be converted to condominium ownership, the Applicant shall ensure that the affordable units are maintained as affordable rental units for the balance of the thirty (30) year affordability term.

14. NON-PROFIT OFFICE SPACE

The Applicant shall construct, furnish, and make available up to 4,000 square feet of commercial space for a local non-profit organization at \$0 rent for fifteen (15) years from receipt of the Non-RUP for the non-profit commercial space; however, the non-profit will be responsible for operating expenses associated with their pro rata share commercial space.

15. SCHOOL CONTRIBUTION

Prior to the issuance of the first RUP, the Applicant shall contribute \$200,000.00 to the City of Fairfax to mitigate impacts to City schools.

16. MISCELLANEOUS

- A. Occupancy Restrictions. To the extent permitted by State and Federal Fair Housing regulations, the occupancy of each dwelling unit in the development

shall be limited to no more than two (2) persons per bedroom plus one (1) additional person per unit.

- B. 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 when taken together shall constitute but one in the same document.
- C. Successors and Assigns. These proffers will bind and inure to the benefit of the Applicant and its successors and assigns.

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[SIGNATURES BEGIN ON NEXT PAGE]

OWNER

MGB Properties III, L.L.C.,
A Virginia Limited Liability Company

By: MGB Properties, L.L.C.
A Virginia Limited Liability Company

By: _____
Its: _____

[SIGNATURES CONTINUE]

APPLICANT/CONTRACT PURCHASER

FF Realty IV LLC

By: Jon A. MacDonald
Its: EVP, General Counsel & Corporate Secretary

[SIGNATURES CONTINUE]

CONTRACT PURCHASER
NOVUS RESIDENCES LLC

By: Conrad B. Cafritz
Its: CEO

[SIGNATURES END]