FAIRFAX COUNTY

DEPARTMENT OF PLANNING AND ZONING
Zoning Evaluation Division
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035-5509

(703) 324-1290 TTY 711 (Virginia Relay Center) Fax (703) 324-3924

V I R G I N I A

March 31, 2005

Jane W. Gwinn, Land Use Coordinator
Walsh, Colucci, Lubeley, & Terpach, P.C.
2200 Clarendon Blvd., Thirteenth Floor
Arlington, VA 22201-3359

Re: Interpretation for RZ/FDP 2002-DR-019, Waterford McLean, L.LC. Commercial floor area.

Dear Ms. Gwinn:

This is in response to your letters of June 29, 2004, August 19, 2004, and March 1, 2005, requesting an interpretation of the proffers and the Conceptual Development Plan (CDP) accepted by the Board of Supervisors in conjunction with approval of RZ 2002-DR-019, and the Final Development Plan (FDP) approved by the Planning Commission pursuant to FDP 2002-DR-019. As I understand it, the question is whether a reduction in the commercial floor area from 17,102 square feet to 16,352 square feet would be in substantial conformance with RZ/FDP 2002-DR-019. This determination is based on your March 1, 2005 letter which includes an exhibit entitled "Owner Directed Storefront Change", prepared by the Lessard Architectural Group, dated February 9, 2005, and a second undated sheet which is a portion of the building plan, that has been colored to show access between the elevator lobby/hallway area and the underground parking and Civic Place Green. Copies of your letters and the proffers are attached.

On October 7, 2002, the Board of Supervisors approved RZ 2002-PR-019 and the Conceptual Development Plan (CDP), subject to proffers dated September 18, 2002. The Final Development Plan (FDP) had been approved by the Planning Commission on September 19, 2002, subject to the Board's approval of RZ 2002-PR-019 and the proffers. Rezoning application RZ 2002-PR-019 rezoned 2.24 acres to the PRM District to permit the development of a planned residential mixed use development. The proffers allow a maximum FAR of 1.66, which consists of "approximately 11,102 square feet of retail space" (Proffer 6) and "approximately 6,000 square feet of office and/or other uses" (Proffer 7). Tabulations contained on the combined CDP/FDP show 11,102 square feet of surface level retail, including an eating establishment and 6,029 square feet of surface level office/retail for a total of 17,131 maximum square feet of commercial uses.

According to your March 1, 2005, letter, revisions have occurred during the building design phase of this project which have reduced the commercial floor area from the proffered total of 17,131

square feet to 16,352 square feet. Your letter states that the "approximately 6,000 square feet of office and/or other uses" was reduced to 5,678 square feet because a transformer vault located on the ground floor required the walls to be shifted inward. A second reduction in commercial area resulted from re-design of two common areas which serve the retail area, the Civic Place Green area, and the overall development. The exhibit attached to your March 1, 2005 letter shows a revision to the design which now shows access between the elevator, stairwell and hallway/entrance area serving the retail space and the underground parking area. In addition, you have now provided access between the elevator and entrance/hallway located in the back corner of the retail space and the parking garage. The above elevator/hallway areas are included in the commercial square footage. Your letter states that the reduction in commercial square footage in the areas described above is 750 square feet (4%), which is likely due to the fact that the tabulations of gross floor area presented on the CDP/FDP were not based on final engineering and did not consider wall sections and indentations in the building facade.

It is my determination that the reduction in commercial gross floor area from 17,102 square feet to 16,352 square feet, as set forth in your letter, would be in substantial conformance with RZ/FDP 2002-DR-019.

This determination has been made in my capacity as the duly authorized agent of the Zoning Administrator. If you have any questions regarding this interpretation, please feel free to contact Mary Ann Godfrey at (703) 324-1290.

Sincerely,

Barbara Byron

Barbara A. Byron, Director
Zoning Evaluation Division, DPZ

BAB/MAG/O:\mgodfr\Proffer Interpretations PI\WaterfordMcLean (RZ 2002-DR-019)\Commercial Floor Area interp.doc

Attachments: A/S

cc: Joan M. Dubois, Supervisor, Dranesville District
Nancy Hopkins, Planning Commissioner, Dranesville District
Leslie Johnson, Deputy Zoning Administrator, DPZ
Michelle Brickner, Assistant Director, Office of Land Development Services, DPWES
Kevin J. Guinaw, Chief, Special Projects/Applications Management Branch, DPZ
Angela Rodeheaver, Section Chief for Site Analysis, DOT
Audrey Clark, Director, Building Plan Review Division, DPWES
Craig Carinci, Director, Environmental and Facilities Inspection Division, DPWES
File: RZ/FDP 2002-PR-019, PI 0406 070, Imaging, Reading File

Jane W. Gwinn
Land Use Coordinator
(703) 528-4700 Ext. 32
jgwinn@arl.thelandlawyers.com

WALSH COLUCCI
LUBELEY EMRICH
& TERPAK PC

RECEIVED
Department of Planning & Zoning

MAR 0 2 2005

Zoning Evaluation Division

March 1, 2005

Via Scheduled Express

Barbara A. Byron
Director, Zoning Evaluation Division
Fairfax County Department of Planning & Zoning
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035

Re: Proffer Interpretation Request
RZ 2002-DR-019

Dear Ms. Byron:

This is a follow up to my letters of June 29, 2004 and August 19, 2004 and our meeting on February 4, 2005 regarding the commercial floor area for the above-referenced rezoning application.

As we have discussed, the proffer interpretation request concerns the amount of commercial floor area proposed in conjunction with the PRM District development approved by Rezoning RZ 2002-DR-019. The approved proffers provide that approximately 11,102 square feet of retail space is to be provided on the first floor level of the building fronting on Laughlin Avenue and Civic Place Green, and approximately 6,000 square feet of office and/or other uses in the surface level of the northeastern portion of the building. This results in a total of 17,102 square feet of commercial floor area.

During the building design there have been revisions which result in a slight reduction in the square footage devoted to commercial uses. With regard to the approximately 6,000 square foot area, it has been determined that a transformer vault located on the ground floor requires the walls to be shifted inward, causing a minor reduction from approximately 6,000 square feet to 5,678 square feet. This change was reflected on the two sheets of architectural plans provided with my August 19, 2004 letter.

The other commercial area is proposed to be reduced from approximately 11,102 to 10,674 square feet. This total square footage includes two common areas which serve the retail area, the Civic Place Green area and the overall development. One of these areas is the elevator, stairwell and hallway/entrance area in the center of the retail space. In line with our discussion at our meeting on February 4, 2005, the building plan has been revised to show access into and through this area between the parking under the plaza area and Civic Place Green. The elevator serving this lobby area will also be available for use by people parking in the garage and coming to the retail space as customers or to enjoy the benefits of Civic Place Green. In addition, there

are optional entrances from this lobby/hallway area into the retail spaces on either side. The use of these entrances would be subject to the review and approval of the specific tenants who would go into these retail spaces, but it is an option for another connection. A copy of this revised layout is enclosed. The second area is the elevator and entrance/hallway area at the inside, back corner of the retail space. The elevator will serve as the means by which retail users will be able to get to the parking and trash rooms in the garage. Likewise, customers (or people coming to the site to use Civic Place Green) will be able to use this elevator as a way of getting from the parking in the garage to this surface level for either the retail uses or the events that will take place in Civic Place Green. It is believed that these areas are appropriately included in the retail floor area calculations, based upon the design and purpose of these areas.

Therefore, the requested reduction for this area is 750 square feet. This reduction probably occurs as a result of not taking into account the wall sections and various indentations in the building façade at the time the square footage was measured on the CDP/FDP versus the completed architectural drawings, as the overall footprint is the same as shown on the proffered development plan.

The effect of these revisions is to reduce the total floor area for commercial uses from 17,102 square feet to 16,352 square feet, or a 4% reduction. Based upon the proffered conditions that provide that the area for the commercial use is approximate and the basis for the proposed changes to the square footage, as discussed above, it is believed that this reduction in commercial floor area is a minor modification that is in substantial conformance with the approved rezoning.

Should you have any questions regarding this request or require additional information, please do not hesitate to give me a call.

Sincerely,

WALSH, COLUCCI, LUBELEY, EMRICH & TERPAK, P.C.

Jane W. Gwinn
Land Use Coordinator

Enclosure
cc: Russell S. Rosenberger Jr., President, Madison Homes
Martin D. Walsh
Elizabeth D. Baker
J:\MADISON HOMES\577.20\3-1-05 proffer interp request2 FINAL.doc

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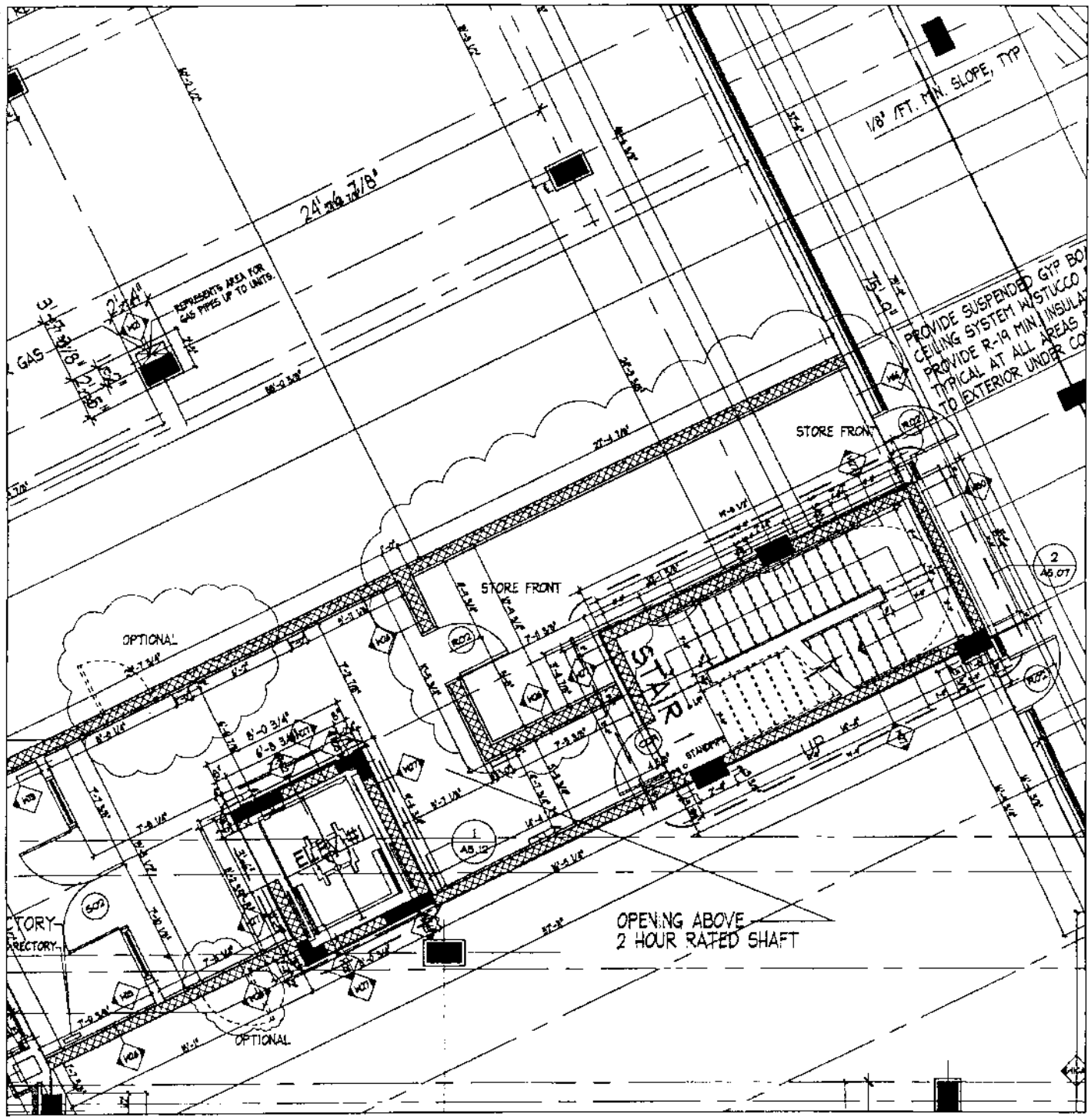

SHEET TITLE :	OWNER DIRECTED STOREFRONT CHANGE	SHEET NO :	
PROJECT NAME :	THE PALLADIUM	PROJECT NO :	MHI34B
CLIENT NAME :	MADISON HOMES	DATE:	02/09/05

Jane W. Gwinn
Land Use Coordinator
(703) 528-4700 Ext. 32
jgwinn@arl.thelandlawyers.com

August 19, 2004

Via Courier

MaryAnn Godfrey
Senior Staff Coordinator
Fairfax County
Department of Planning & Zoning
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035

Re: Proffer interpretation Request
RZ 2002-DR-019

Dear Ms. Godfrey:

As a follow up to our telephone conversation on August 4, 2004 and in accordance with the request of Barbara Byron, please find enclosed two sheets of the architectural plans for The Palladium at McLean. As you will note, there is a small lobby area in the southwestern corner of the building, which serves the retail uses, however, it is the lobby for the residential units in the southeastern corner for the building that is expansive and impacts the square footage devoted to commercial uses in this building. As you will note, this lobby area includes open areas, elevators, and space for a concierge and mailroom.

As stated in my letter of June 29, 2004, It is believed that the resulting reduction in commercial square footage from the approximate 17,100 square feet set forth in the Proffers to 15,362 square feet is in substantial conformance with the approved zoning and should be approved as a minor modification.

Should you have any questions or need additional information, please do not hesitate to give me a call.

Sincerely,

WALSH, COLUCCI, LUBELEY, EMRICH & TERPAK, P.C.

Jane W. Gwinn
Land Use Coordinator

Enclosure

cc: Russell S. Rosenberger, Jr.; Greg Poulson; Martin D. Walsh; Elizabeth D. Baker

Jane W. Gwinn
Land Use Coordinator
(703) 528-4700 Ext. 32
jgwinn@arl.thelandlawyers.com

June 29, 2004

Barbara A. Byron
Director, Zoning Evaluation Division
Fairfax County Department of Planning & Zoning
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035

Re: Proffer Interpretation Request
RZ 2002-DR-019

Dear Ms. Byron:

The referenced rezoning application was approved by the Board of Supervisors on October 7, 2002. The Board of Supervisors rezoned approximately 2.24 acres from the PDC District to the PRM District subject to proffers dated September 18, 2002. A copy of the approved proffers is enclosed for your convenient reference.

Under Proffers 1 and 2, the property is subject to an approved Conceptual Development Plan ("CDP") and Final Development Plan ("FDP"), prepared by Walter L. Phillips Incorporated, consisting of nine sheets dated May 28, 2002 as revised through July 29, 2002. Proffer 3 allows for minor modifications to the FDP as may be determined by the Zoning Administrator pursuant to Par. 4 of Sec. 16-403, and under Par. 5 of Sec. 18-204 of the Zoning Ordinance minor modifications to proffered conditions may be permitted as determined by the Zoning Administrator. The purpose of this letter is to request a determination that a slight reduction in the commercial floor area is in substantial conformance with the approved proffers and CDP/FDP.

The approval of this rezoning and proffers allows a maximum Floor Area Ratio (FAR) of 1.66, with a primary use of multiple family dwelling units and specified principal and secondary uses as listed in the PRM District. The approved CDP/FDP indicates a maximum density of 70 dwelling units and the amount of permitted commercial use is addressed in Proffers 6 and 7. Pursuant to Proffer 6, "approximately 11,102 square feet of retail space" is to be provided on the first floor level of the building fronting on Laughlin Avenue and Civic Place Green, and Proffer 7 allows "approximately 6,000 square feet of office and/or other uses ... in the surface level of the northeastern portion of the building." This results in a total of 17,102 square feet of commercial floor area.

During the final building design, there has been a slight reduction in the total square footage proposed for these commercial areas. With regard to the "approximately 11,102 square feet of retail space," it was determined that the area for the building lobby which is to be shared

by the retail and residential uses should more appropriately be included within the residential floor area calculations as this area would predominantly be used by the residents of the dwelling units. This reallocation of floor area has caused a reduction in the commercial floor space from approximately 11,102 square feet to approximately 9,684 square feet. Secondly, in designing the office space as allowed under Proffer 7, it was determined that a transformer vault located on the ground floor would require the walls to be shifted inward, causing a reduction from approximately 6,000 square feet to 5,678 square feet. The effect of these two changes is to reduce the total floor area for commercial uses from 17,102 square feet to 15,362 square feet, which is a 10 percent reduction. These changes do not result in an increase in the number of dwelling units as the number of proposed dwelling units is 69, which is less than the proffered maximum of 70 units, and the overall gross floor area for the entire development complies with the proffered FAR of 1.66.

The other provisions of Proffers 6 and 7 will continue to be met. It is still intended that there will be two or three tenants and an eating establishment in the area addressed by Proffer 6. Pursuant to Proffer 7b, the applicant has been in continuing discussions with the McLean Planning Committee and the McLean Project for the Arts regarding the provision of space. It is my understanding that neither of these organizations believes that they can afford to purchase space within the building but there are continuing discussions regarding a possible leasing of space. Once this issue is resolved, the applicant will proceed with making available an area to the McLean Chamber of Commerce and McLean Revitalization Corporation as provided for in Proffer 7c.

Based upon the proffered conditions that provide that the area for the commercial uses is approximate and the basis for the proposed changes to the square footage, it is believed that this reduction in commercial floor area is clearly a minor modification that is in substantial conformance with the approved zoning.

Should you have any questions regarding this request or require additional information, please do not hesitate to give me a call.

Sincerely,

WALSH, COLUCCI, LUBELEY, EMRICH & TERPAK, P.C.

Jane W. Gwinn
Land Use Coordinator

Enclosures
cc: Russell S. Rosenberger, Jr.
Greg Poulson
Martin D. Walsh
Elizabeth D. Baker

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PROFFERS

WATERFORD MCLEAN, LLC

RZ 2002-DR-019

September 18, 2002

Pursuant to Section 15.2-2303(a), *Code of Virginia*, 1950 as amended, Waterford McLean, LLC, the owner and the Applicant in RZ 2002-DR-019, filed for property identified as Tax Map 30-2 ((9)) 56-66 (hereinafter referred to as the "Application Property") proffer for themselves, their successors and assigns the following, provided that the Board of Supervisors (hereinafter referred to as the "Board") approves the requested rezoning from PDC-Planned Development Commercial Use District to PRM-Planned Residential Mixed Use District. If RZ 2002-DR-019 is approved, these proffers shall supercede all other proffers for the Application Property.

1. Development Plan. Development of the Application Property shall be in substantial conformance with the Conceptual Development Plan/Final Development Plan ("CDP/FDP"), prepared by Walter L. Phillips Incorporated, consisting of nine (9) sheets dated May 28, 2002 as revised through July 29, 2002.

2. Final Development Plan Amendment. Notwithstanding that the CDP/FDP is presented on 9 sheets and said CDP/FDP is the subject of Proffer No. 1 above, it shall be understood that the CDP shall be the entire plan shown on Sheets 1 and 3 relative to the points of access, uses, the total square footage, the general location of the buildings, the location of the retail and office components within the building and the location of the Civic Place Green open space area. The Applicant has the option to request a Final Development Plan Amendment ("FDPA") for elements other than CDP elements from the Planning Commission for all of 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.

3. Minor Modifications. Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, minor modifications from the FDP may be permitted as determined by the Zoning Administrator. The Applicant shall have the flexibility to modify the layout shown on Sheets 2 and 3 of 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 approved FAR, decrease the amount of open space or generally alter the location of open space areas.

4. Uses. The maximum Floor Area Ratio ("FAR") for the Application Property shall not exceed 1.66. The primary use of the building shall be multiple family dwellings. The following principal and secondary uses as identified in the PRM District, shall be permitted within the building:

(a) Accessory uses and home occupation uses.
(b) Bank teller machines.
(c) Business service and supply service establishments.
(d) Cultural Centers, museums and similar facilities.
(e) Eating establishments
(f) Fast food restaurants.
(g) Financial institutions.
(h) Health clubs.
(i) Home child care facilities.
(j) Offices.
(k) Personal service establishments.
(l) Private clubs and public benefit associations.
(m) Public uses.
(n) Quick service food stores.
(o) Repair service establishments.
(p) Retail sales establishments.

Additional principal and secondary uses not listed above may be permitted with the approval of a Final Development Plan Amendment (FDPA). Additionally, a post office use shall require approval of an FDPA. A Proffered Condition Amendment (PCA) application shall not be required so long as the modification is in substantial conformance with the CDP/FDP. No drive-thru or drive-up facilities shall be permitted as a part of any of these uses.

5. Civic Place Green. The Applicant shall construct an open space/plaza area, in the southwest corner of the Application Property as shown on the CDP/FDP. Option A for the Civic Place Green design shall include the on-site area and a provision for the temporary closure of the adjoining portion of Lowell Avenue for special events, including the incorporation of special paving treatment for that portion of Lowell Avenue, subject to the approval of the Board of Supervisors and the Virginia Department of Transportation (VDOT). The special paving treatment shall be brick pavers over a concrete bed constructed to VDOT standards, provided VDOT is willing to accept maintenance of this type of material. If VDOT is unwilling to accept the maintenance of brick pavers over a concrete bed, the Applicant may utilize stamped asphalt or stamped concrete as the special paving treatment. Option A is shown on Sheet 7 of the FDP.

In the event the Board of Supervisors vacates/abandons the portion of Lowell Avenue adjacent to Civic Place Green by no later than six (6) months following the issuance of the first building permit for a structure on the Application Property other than the parking garage, the Applicant shall incorporate this adjacent abandoned right-of-way into Civic Place Green's design, and shall construct the improvements in this area, all in accordance with the Option B plan shown on Sheet 8 of the FDP.

Recognizing that changes in the design of Civic Place Green (Option A or Option B) may be desirable due to final engineering considerations and/or community input, the

Applicant reserves the flexibility to alter the design without the requirement to seek a PCA or FDPA, provided that any significant revisions to Civic Place Green's design be reviewed and approved by the Dranesville District Supervisor.

While Civic Place Green shall be open for public use and enjoyment, it shall remain under the ownership and control of the to-be-established Unit Owners Association for the Application Property subject to the following stipulations which shall be included in the Unit Owners Association documents:

(a) A public access easement in a form acceptable to the County Attorney, shall be provided and recorded over the area of Civic Place Green.

(b) The Unit Owners Association shall be responsible for maintenance of the Civic Place Green (including the repair of stamped asphalt or stamped concrete that may be utilized in Lowell Avenue and, in the event of a vacation of a portion of Lowell Avenue, the portion of Civic Place Green included within this vacated area) and the scheduling of events/activities to include an average of two events/activities per month designed to attract the public to Civic Place Green. A sign shall be incorporated into the plan for Civic Place Green for the purpose of posting notices of these events/activities.

(c) To ensure that the McLean community as well as unit owners are involved with the activities at Civic Place Green, a Civic Place Green Management Committee shall be established, which Committee shall be comprised of seven (7) members; four (4) representatives from the Unit Owners Association including at least one representative of the retail owners of the retail space fronting directly onto Civic Place Green; one (1) representative from the Bryn Mawr Civic Association; one (1) representative from McLean Mews or The Hamptons community associations; and one (1) representative The McLean Revitalization Corporation or its successor. The McLean Community Center shall be included as an advisory (non-voting) member. Additional voting members and advisory (non-voting) members can be added at the discretion of the Civic Place Green Management Committee. The Management Committee shall establish by-laws governing its membership and operations, and procedures for amending its membership and operations.

6. Retail Space. For purposes of these proffers, the term "retail space" shall include retail uses, service uses, and eating establishments as defined in the Fairfax County Zoning Ordinance. The Applicant shall include approximately 11,102 square feet of retail space, on the first floor level of the building fronting on Laughlin Avenue and Civic Place Green. The Applicant shall make good faith efforts to provide a mix of two or three tenants compatible with the Comprehensive Plan and the existing tenants in the McLean CBC, including at least one eating establishment with facilities and services to accommodate an outdoor dining terrace as part of Civic Place Green, all as more particularly shown on the Option A and Option B plans for the design of Civic Place

Green. No more than 5,400 square feet of retail space shall be devoted to eating establishments serving alcoholic beverages.

Service hours (i.e., the prescribed time for trash pick-ups and service deliveries, etc.) for retail uses (including eating establishments) will be restricted to the normal business hours of the day (8:00 A.M. to 6:00 P.M.) so as to minimize the impact of any noise or other disruption from servicing these retail uses on the residential units in the Civic Place Green development and on surrounding residential neighborhoods. Hours of operation for the retail uses will conform with the general hours of operation for other similar retail uses within the McLean Community Business Center.

HVAC condenser units, garage ventilation units and restaurant/café ventilation and exhaust units will be located, screened and shielded so as to minimize the impact of any noise from these units on the residential units in the Civic Place Green development and on surrounding residential neighborhoods.

7. Northeastern Commercial Space.

a. The Applicant shall include approximately 6,000 square feet of office and/or other uses referred to in Paragraph 4 above in the surface level of the northeastern portion of the building. Retail and public benefit uses may be included within this 6,000 square foot area.

b. In order to encourage inclusion of a "Visual Arts Center" on the first floor of this portion of the building, the Applicant shall provide a first option to a community based art-related group to purchase 2,500 square feet of first floor space at a price 10 percent (10%) below market rates. This option shall be available for a period of six (6) months after notice of the issuance of the building permit for the development of the Property has been provided to the McLean Planning Committee and the Dranesville District Supervisor.

c. The Applicant agrees to make available to the McLean Chamber of Commerce and the McLean Revitalization Corporation an area of 800 square feet within the building, to be leased at the rate of $10.00 per square foot, triple net, for a term of ten (10) years. The Applicant shall provide the McLean Chamber of Commerce and the McLean Revitalization Corporation with a written offer of the lease arrangement, which offer shall be provided no sooner than six (6) months after notice of the issuance of the building permit for the development of the Application Property has been provided to the McLean Planning Committee and the Dranesville District Supervisor. A copy of that offer shall be provided to DPZ by the Applicant at the time it is sent. If after 60 days the McLean Chamber of Commerce and the McLean Revitalization Corporation do not respond in writing, or if they choose not lease this space, the Applicant's obligation under this proffer shall be null and void. In the event a written response is received, that response shall also be provided to DPZ by the Applicant.

8. Architecture. The architectural elevations and design details shown on Sheets 4-6 of the CDP/FDP are provided to illustrate the general scale, character, quality and design intent of the proposed development. This general scale, character, quality and design intent will be included on all elevations of the building. The Applicant reserves the right to modify the elevations based on final architectural design. Building materials may include one or more of the following: masonry, stone, pre-cast concrete, stucco (excluding dryvit or other similar synthetic stucco material) and glass. Exposed facades of parking structures shall be constructed of stone, masonry or pre-cast concrete and shall be designed to be compatible with the façade treatments of the building.

9. Design Features. Design elements within the Application Property shall include the following:

   a. A public open space/plaza area known as Civic Place Green shall be provided as described in Proffer #5. Landscaping of Civic Place Green shall be in general conformance with that shown on Sheet 7 (Option A) or Sheet 8(Option B) of the CDP/FDP with the plaza trees being a minimum of 6 to 8 inch caliper at the time of planting.

   b. A second level plaza for use of the residents of the Application Property shall be provided and landscaped in substantial conformance with that shown on the CDP/FDP.

   c. Streetscape improvements shall be provided along the Application Property's frontages with Emerson, Lowell and Laughlin Avenues, including sidewalks, street trees and landscaping shown on Sheet 2 of the CDP/FDP, all in accordance with the current Open Space Design Standards for the McLean Community Business Center including the revised standards for public sidewalks, as shown on Exhibit I. A public access easement in a form acceptable to the County Attorney shall be recorded on portions of these sidewalks located outside of the rights-of-way.

   d. A continuous pedestrian walkway connecting Laughlin Avenue and Emerson Avenue across the Application Property shall be provided by the Applicant as shown on the CDP/FDP. A public access easement shall be provided by the Applicant for the pedestrian walkway.

   e. Benches and street furniture shall be provided in general conformance with the character shown on Sheets 7 and 8 of the CDP/FDP, all in accordance with the current Open Space Design Standards for the McLean Community business Center.

   f. Site lighting shall be a maximum of 12 feet in height and shall utilize full cut-off fixtures designed to direct light downward and minimize spillage on adjacent

properties in accordance with the revised Dark Skies-compliant lighting provisions, as shown on Exhibit II.

10. Emerson Avenue, Lowell Avenue and Laughlin Avenue Improvements.

    a. At time of site plan approval, the Applicant shall dedicate and convey in fee simple to the Board of Supervisors right-of-way along the Application Property's Emerson Avenue, Lowell Avenue and Laughlin Avenue frontages measuring 30 feet from the existing centerline.

    b. The Applicant shall construct improvements to the Application Property's frontage along Emerson Avenue and Lowell Avenue measuring 21 feet from centerline to face of curb, and shall construct improvements measuring approximately 16 feet from centerline to face of curb along the Application Property's frontage with Laughlin Avenue.

11. Realignment of the Intersection of Chain Bridge Road and Laughlin Avenue. The Applicant shall design and process for approval a separate public improvement plan, coincident with the submission and processing of the site plan for the development of the Application Property, for the realignment of the intersection of Chain Bridge Road and Laughlin Avenue on the south side of Chain Bridge Road. This public improvement plan shall be in basic conformance with the exhibit of the "Realignment of Laughlin Avenue" shown on Sheet 9 of the CDP/FDP, subject to VDOT approval. The Applicant shall construct these improvements, which shall include the realignment of the intersection and the relocation of the traffic signal.

12. Transportation Strategies. The following transportation management strategies shall be implemented by the developer and/or the occupants of the building:

    a. Transportation Coordinator shall be appointed to coordinate the transportation management strategies for the Application Property and to coordinate with the Fairfax County Department of Transportation.

    b. The Transportation Coordinator shall disseminate information on an annual basis to the commercial tenants and residents of the Application Property concerning mass transit (bus) availability, car pool matching and the "guaranteed ride home" program sponsored by the Washington Council of Governments.

13. Main Street Contribution. The Applicant shall make a contribution in the amount of One Million Dollars ($1,000,000) (the "Contribution") in support of the McLean Main Street development concept as set forth in the Fairfax County Comprehensive Plan, 2000 Edition. The Contribution shall be made and held in escrow by the McLean Revitalization Corporation subject to the terms and conditions of an Escrow Agreement to be executed by and between the Applicant, Board of Supervisors and McLean Revitalization Corporation.

14. Utilities. Prior to issuance of the first RUP or Non-RUP, the Applicant shall remove or place underground all existing overhead utility lines on the Application Property and install all new utilities underground except for transformers, street lights and other customary and standard utility boxes typically located above the ground.

15. Stormwater Management. Stormwater and Best Management Practices (BMPs) shall be provided for the Application Property on-site in proposed underground facilities as shown on the CDP/FDP. Said underground facilities shall be constructed by the Applicant's in accordance with the requirements of the Department of Public Works and Environmental Services ("DPWES").

The design of the facilities shall incorporate the following:

a. The storage vault, which shall provide BMPs, shall be constructed of concrete.

b. The pipes, which shall provide stormwater management, may be constructed of corrugated metal or galvanized steel in accordance with requirements of the Public Facilities Manual and as approved by DPWES.

c. Safety measures shall be provided for the location of said facilities in a residential area, as may be reasonably requested by DPWES, at time of site plan approval. Safety measures may include, but not limited to, Bilco doors or equivalent, to cover the facility entrance with a double locked keyed entry and/or bolted manhole lids.

The proposed facilities shall be maintained by the Applicant, its successors and assigns, in accordance with the regulations of DPWES. Said maintenance responsibility shall be incorporated in an agreement to be reviewed and approved by the Fairfax County Attorney's office and recorded among the Fairfax County land records. Said agreement shall address the following issues:

a. Future replacements of facilities when warranted.

b. County inspection and all other issues as may be necessary to ensure that the facilities are maintained by the Applicants in good working order acceptable to the County so as to detain the flow of stormwater which results from development of the Application Property.

c. Liability and insurance in an amount acceptable to the Applicant and Fairfax County.

d. A restriction that the Applicant, their successors and assigns, shall not petition DPWES for future maintenance.

e. Establishment of an initial reserve fund by the Applicant for future maintenance replacement in the amount of $5,000 with the Unit Owners Association to be

formed with respect to the Application Property, prior to the conveyance of either the first residential or commercial unit on the Application Property.

If the proposed underground facility is not approved by DPWES, the Applicant shall install an alternative facility subject to the approval of DPWES. Said alternative may be approved administratively if in substantial conformance to the CDP/FDP as determined by DPZ or may necessitate an FDP/PCA to the Application Property.

16. Recreational Facilities. The Applicant shall comply with Paragraph 2 of Section 6-110 of the Zoning Ordinance regarding developed recreational facilities for the residential uses. The Applicant proffers that the minimum expenditure for the recreational facilities shall be $955.00 per residential unit. The Applicant shall receive credit for the on-site recreational facilities which shall include, but not be limited to, an interior community area with exercise facilities, the public Civic Place Green, plazas and outdoor seating areas. Any funds remaining after this construction shall be contributed to the Fairfax County Park Authority for development of park facilities in the vicinity of the McLean Revitalization District.

17. Maintenance Responsibilities. The Applicant and subsequent Unit Owners Association shall have specific maintenance responsibilities which shall include but not be limited to the following:

(a) Maintenance of Civic Place Green including standard cleaning and lawn/landscaping maintenance, repair of surfaces and site furnishings, and replacement of dead, dying or diseased trees and landscaping with the same size and similar species as originally approved on the landscape plan.

(b) Maintenance and replacement of the street trees, landscaping and sidewalks located within the public right-of-way, as well as the maintenance and replacement of trees, landscaping and sidewalks throughout the Application Property. Any replacement of trees and other plant materials shall be made with the same size and similar species as originally approved on the landscape plan.

(c) Maintenance of the underground stormwater management facilities as outlined in Proffer 15 above.

Purchasers shall be advised prior to entering into a contract of sale and in the Unit Owners Association documents that the Unit Owners' Association shall be responsible for the maintenance of the underground stormwater management facilities, Civic Place Green, landscaping and sidewalks as stipulated above.

18. Parking.

a. The Applicant agrees not to seek the 20 percent reduction in required parking permissible under the Commercial Revitalization District Regulations.

b. Of the parking spaces proposed on the CDP/FDP, it is estimated that approximately 138 spaces will be allocated to the residents of the dwelling units on the Application Property. Access to these residential parking spaces may be gated. The remainder of the parking spaces ("non-residential parking spaces") shall be available for use by restaurant, retail and office patrons and other visitors to the Application Property. No more than 80 of the non-residential parking spaces shall be reserved for residential guest parking and non-residential users located on the Application Property. Such reserved spaces shall be available for the use of other visitors to the Application Property after the hours of operation of the use for which the spaces are reserved.

19. Bicycle Parking. The Applicant shall provide bicycle parking accessible to the public in a convenient location subject to the approval of DPWES with submission of the final site plan.

20. Loading Spaces. Notwithstanding what is shown on the CDP/FDP, the Applicant shall provide a total of three (3) loading spaces for the uses on the Application Property.

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

22. Counterparts. These proffers may be executed in one or more counterparts, each of one 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.

23. Severability. Any of the sections may be subject to a Proffered Condition Amendment ("PCA") without joinder and/or consent of the other sections, if such PCA does not affect any other sections. Previously approved proffered conditions applicable to the section(s) that is not the subject of such a PCA shall otherwise remain in full force and effect.

[SIGNATURE ON NEXT PAGE]

APPLICANT/OWNER

WATERFORD MCLEAN, LLC

By: Batavia, LLC, Managing Member

By: Jan A. Zachariasse, Managing Member

[SIGNATURE ENDS]

APPLICANT/OWNER

WATERFORD MCLEAN, LLC

By: Batavia, LLC, Managing Member

By: Jan A. Zachariasse, Managing Member

[SIGNATURE ENDS]