



# FAIRFAX COUNTY

720  
OFFICE OF THE CLERK  
BOARD OF SUPERVISORS  
12000 Government Center Parkway, Suite 533  
Fairfax, Virginia 22035-0072

V I R G I N I A

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October 23, 2002

Elizabeth D. Baker, Land Use Coordinator  
Walsh, Colucci, Stackhouse, Emrich and Lubeley, PC  
2200 Clarendon Boulevard, 13<sup>th</sup> Floor  
Arlington, Virginia 22201-3359

RE: Rezoning Application  
Number RZ 2002-DR-019

Dear Ms. Baker:

Enclosed you will find a copy of an Ordinance adopted by the Board of Supervisors at a regular meeting held on October 7, 2002, granting Rezoning Application Number RZ 2002-DR-019 in the name of Waterford McLean, LLC to rezone certain property in the Dranesville District from the PDC, HC, SC, and CRD Districts to the PRM, HC, SC, and CRD Districts, located on the north side of Lowell Avenue, east of Laughlin Avenue and west of Emerson Avenue (Tax Map 30-2 ((9)) 56 - 61, 61A, 62-65, 65A, 66), subject to the proffers dated September 18, 2002, consisting of approximately 2.24 acres.

The Board also approved the Conceptual Development Plan subject to the development conditions dated September 5, 2002. The Planning Commission having previously approved Final Development Plan FDP 2002-DR-019 on September 19, 2002, subject to the Board's approval of RZ 2002-DR-019 and the Conceptual Development Plan.

The Board also:

- Modified the peripheral parking lot landscaping on the northern boundary in accordance with that depicted on the Conceptual Development Plan/Final Development Plan and reduction of the loading space requirement for the project to three spaces.

WALTER L. PHILLIPS, INCORPORATED

Founded 1945

Bryn Mawr, Lots 56 through 66, as recorded in Deed Book Z-6 at Page 486 and Deed Book 12092 at Page 290, more particularly described by metes and bounds as follows:

"Beginning at a point at the intersection of the north line of Lowell Avenue – Route 1837 with the west line of Emerson Avenue – Route 1811; thence with the north line of Lowell Avenue – Route 1837, S 67° 26' 33" W, 450.92 feet to a point in the east line of Laughlin Avenue – Route 1801; thence with the east line of Laughlin Avenue – Route 1801, N 22° 25' 27" W, 165.81 feet to a point; thence N 41° 46' 33" E, 10.00 feet to a point; thence N 22° 25' 27" W, 11.11 feet to a point in the south line of Bryn Mawr, Lot 67; thence with Bryn Mawr, Lots 67 through 72, N 41° 46' 33" E, 169.43 feet to a point; thence S 48° 13' 27" E, 5.00 feet to a point; thence N 41° 46' 33" E, 140.00 feet to a point in the west line of Emerson Avenue – Route 1811; thence with the west line of Emerson Avenue – Route 1811, S 48° 13' 27" E, 5.00 feet to a point; thence N 41° 46' 33" E, 10.00 to a point; thence S 48° 13' 27" E, 344.59 feet to the point of beginning and containing an area of 97,392 square feet or 2.2358 acres, more or less."

*Brian G. Baillargeon*

Brian G. Baillargeon, L.S.

May 28, 2002

RECEIVED  
Department of Planning & Zoning

MAY 29 2002

Zoning Evaluation Division



## ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Agreement") is made and entered into this 7<sup>th</sup> day of October, 2002, by and among **WATERFORD McLEAN, LLC**, a Virginia limited liability company ("Waterford"); **McLEAN REVITALIZATION CORPORATION**, a Virginia non-stock corporation ("McLean Revitalization"); and **THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a body politic (the "Board of Supervisors").

- R-1 Waterford is the owner and developer of property known as Fairfax County Tax Map Parcels 30-2 ((9)) 56-66 (collectively, the "Property"), which is the subject of a pending Fairfax County rezoning application, referred to as RZ 2002 DR-019 ("Rezoning"). The primary purpose of the Rezoning is the substitution of residential uses for approved office uses.
- R-2 As approved, the Property is subject to certain proffers accepted by the Board of Supervisors ("Proffers").
- R-3 In conjunction with the Rezoning, Waterford has proposed a Proffer ("Escrow Proffer"), whereby subject to the approval of the Rezoning by the Board of Supervisors, Waterford will make a contribution in the amount of One Million and No/100 Dollars (\$1,000,000.00) ("Contribution") in support of the McLean Main Street Development Concept to McLean Revitalization, such Contribution to be held in escrow by McLean Revitalization.
- R-4 It is the desire of the parties hereto to establish the terms and conditions upon which the Contribution shall be held in escrow.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows:

1. Waterford agrees, subject to the approval of the Rezoning, upon the earlier to occur of (i) the issuance of the first residential or non-residential use permit for the Property or (ii) eighteen months from the date of the approval of the Rezoning, to deposit with McLean Revitalization the Contribution, which shall be held in escrow by McLean Revitalization, subject to the terms and conditions of this Agreement (the "Escrowed Funds"); provided, however, that Waterford may extend the period in clause (ii) by an additional six months by depositing with McLean Revitalization an additional \$15,000 (the "Extension Payment") on or before the expiration of such eighteen month period.

2. McLean Revitalization shall invest the Escrowed Funds reasonably and prudently so as to preserve the Contribution and earned investment sums. Investments

Funds, then McLean Revitalization shall supplement its written report specifically to identify potential McLean Main Street development projects that could be completed within no more than three years.

D. After receipt and review of the report specified in subparagraph C above, if the County Executive reasonably determines that, based on the report, Escrowed Funds will likely not be expended within the subsequent three years, the County Executive may determine that the Escrowed Funds shall be remitted to Fairfax County. In that event, he shall provide written notice to the parties to this Escrow Agreement and to MPC, and McLean Revitalization shall remit all remaining Escrowed Funds in accordance with such notice. The County Executive shall authorize the use of such remitted funds only in furtherance of the McLean Main Street development projects as expeditiously as possible in consultation with MPC, or, in its absence, the McLean community, including residents, business owners and landowners.

E. If McLean Revitalization fails to provide in a reasonably timely manner the reports specified in this Agreement, or if McLean Revitalization ceases to exist for any reason without a successor organization during the time in which it is performing its role under the terms of this Escrow Agreement, then the County Executive may either designate, in consultation with MPC, a successor organization representing the McLean community to administer the Escrowed Funds in accordance with this Escrow Agreement or require remittance of the Escrowed Funds and utilize those funds in the manner specified in subparagraph D above.

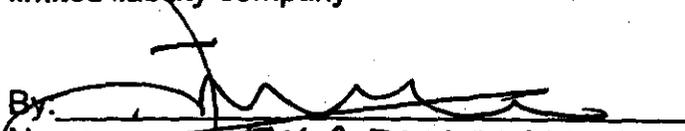
5. McLean Revitalization shall have the right at any time to remit the Escrowed Funds to Fairfax County after giving written notice to the County Executive and the MPC. In that event, the County Executive shall authorize the use of the Escrowed Funds in the manner specified in subparagraph 4.D above.

6. Any earnings (which shall include interest, dividends, or similar income items and the Extension Payment, if applicable) on the Escrowed Funds shall be used as follows: a minimum of one-third shall be retained to be added to the Contribution amount of the Escrowed Funds to be expended solely as provided in paragraph 3 above; one-third may be expended for soft costs related to potential McLean Main Street development projects, such as planning studies, engineering documents and project related services; and one-third may be used by McLean Revitalization for its administrative and overhead expenses, including expenses associated with investment and reporting obligations of McLean Revitalization under this Agreement.

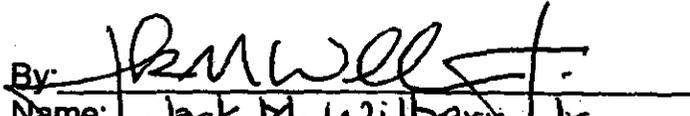
7. McLean Revitalization's liability will be limited solely to gross negligence or willful misconduct on its part, except (1) for claims by a party to this Agreement for damages resulting from McLean Revitalization's breach of this Agreement; and (2) that with regard to the investment of the Contribution, McLean Revitalization shall be held to the standards of reasonable and prudent conduct as provided in Paragraph 2. Waterford (but not Fairfax County or the Board of Supervisors) agrees to indemnify and hold McLean Revitalization and its officers, directors, employees and agents harmless

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement on the date written below.

**WATERFORD McLEAN, LLC**, a Virginia limited liability company

By:   
Name: JAN A. ZACHARIANE  
Title: manager of Potomac, LLC

**MCLEAN REVITALIZATION CORPORATION**, a Virginia non-stock corporation

By:   
Name: Jack M. Wilbern Jr.  
Title: President

**Schedule 1**

**Subareas 5, 6, 7, 10, 11, 12, and 13 of the McLean Community Business Center in the McLean Planning District.**