

October 1, 2001: 4:00 p.m. Board Item

PROFFERS

COURTYARD MANAGEMENT CORPORATION

RZ 1999-PR-034

September 27, 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 49-2((1)) Pt. 15, Pt. 16, 17 and 17A (hereinafter referred to as the "Application Property"), the Applicant and Owner in RZ 1999-PR-034 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 VIKA, dated March 12, 1998, as revised through September 20, 2001. Said CDP/FDP proposes a maximum of 378,276 gross square feet of building area. The principal use shall be multi-family residential units, with a maximum GFA of 259,276 square feet and 257 units. The major secondary use shall be a hotel, with a maximum GFA of 119,000 square feet. The following secondary uses may also be included within the structures shown on the CDP/FDP:

- 1) Accessory uses and accessory service uses.
- 2) Eating establishments.
- 3) Personal service establishments.
- 4) Retail sales establishments.
- 5) Bank teller machines.
- 6) Hotel Restaurant and Meeting Space.

(a) A restaurant shall be provided within the first floor of the hotel and shall be open to the public for breakfast and dinner. A public entrance to the restaurant shall be provided along the hotel's Prosperity Avenue frontage as shown on the CDP/FDP.

(b) A minimum of 1,900 square feet of contiguous meeting space within the hotel shall be provided. This space shall be available for community use

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 the subject of Proffer 1 above, it shall be understood that the CDP shall be the entire plan shown, 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, 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 and apply for shared parking approval 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 illustrative elevations of the hotel and residential buildings as shown on Sheets 5, 6, 6A, 7, 8, and 9 of the CDP/FDP are provided to illustrate the design intent of the two buildings. The building elevations shall be substantially consistent in terms of character and quality with the illustration. The specific features, such as the exact location of windows, doors and roofline and other architectural details are subject to modification with final engineering and architectural design.
- E. The facade of the residential building shall consist of a minimum of 75% brick and glass.
- F. The hotel facade shall consist of a combination of brick, glass and E.I.F.S. materials in substantial conformance with the building elevations shown on Exhibits A, B and C attached hereto.

2. Transportation

- A. Prosperity Avenue. At time of first site plan approval, or upon demand (whichever occurs first), the Applicant shall dedicate and convey in fee simple right-of-way to the Board and provide access to the Application Property along its Prosperity Avenue frontage as generally shown on the CDP/FDP. The entrance shall be designed as specified by VDOT and the County Department of Transportation and provide for the following:
- Construction of two outbound and one inbound lane.
 - Increased radii to facilitate right-turn movements into the site.
 - Construction of a left turn lane on westbound Prosperity Avenue into the site entrance, as shown on the CDP/FDP. In the event VDOT determines that left turn movements outbound onto Prosperity Avenue during morning and/or afternoon rush hours are creating an unacceptable level of service, the Applicant will prohibit outbound left turns from the entrance during the hours of 7:00 a.m. to 9:00 a.m. and/or 5:00 p.m. to 7:00 p.m., Monday through Friday, excluding holidays.
 - The Applicant shall provide additional dedication from the site entrance south to the adjacent Long property in order to facilitate future lane shift transitions for east bound through traffic if required by VDOT. Applicant shall make such dedication provided such does not impact building setbacks from peripheries, or substantially change the amount of open space required in accordance with the Zoning Ordinance.
- B. Gallows Road. At the time of first site plan approval, or upon demand (whichever occurs first), the Applicant shall dedicate and convey in fee simple right-of-way to the Board and provide access to the Application Property along its Gallows Road frontage as generally shown on the CDP/FDP. An additional 3 feet of right-of-way to accommodate a landscaped median along the portion of the Application Property's Gallows Road frontage south of the entrance will be dedicated and conveyed in fee simple to the Board if requested by DPWES at time of site plan approval. The entrance shall be designed as specified by VDOT and the County Department of Transportation and provide for the following:
- Construction of one inbound and one outbound lane

- Provision of an exclusive right-turn deceleration lane and taper to serve the entrance utilizing the third lane referenced below.

Prior to occupancy of either building, the Applicant shall also construct a third southbound thru lane along Gallows Road from the intersection with Prosperity Avenue to the site entrance. The cost to construct the portion of this third lane from the site entrance south to the property line, and the ultimate full width right turn lane serving the site entrance, as determined by DPWES, will be escrowed with Fairfax County at the time of site plan approval. Applicant shall provide a 15-foot wide temporary grading and construction easement along the Application Property's frontage of the escrowed portions of Gallows Road.

- C. Prosperity Avenue/Gallows Road Intersection. The Applicant shall modify the existing signal timing/phasing at the subject intersection if deemed warranted and approved by VDOT at the time of site plan approval.
- D. Transportation Management Strategies. The use of mass transit, ridesharing and other transportation management strategies shall be implemented in order to reduce single occupant vehicle (SOV) traffic generated by the site development during peak hours. The goal of these strategies shall be to achieve at least a 25% reduction in peak SOV trips. The program shall have three (3) general components as follows:
- The designation of transportation coordination duties to be carried out by a designated property manager(s) or transportation management coordinator(s) (the TSMC), who will have the authority to implement the TSM program. The TSMC will be assigned by the Applicant prior to the issuance of occupancy permits for more than 200 dwelling units or the issuance of a non-residential use permit for the hotel, whichever occurs first. The TSMC functions may be performed as part of the other duties of designated individuals.
 - Ongoing coordination by the TSMC with a designated Fairfax County Dept. of Transportation agent or staff (the "County Coordinator") on an annual basis, to provide opportunities for adjustments of the TSM Program in accordance with "state of the art" strategies and recommendations.

- Specific incentive programs to be implemented by the TSMC. The incentive programs may include the following:
 1. Participation in the Fairfax County Ride Share Program;
 2. Dissemination of Ridesharing information in residential lease packages.
 3. Ridesharing display maps and forms available in each building;
 4. On demand shuttle service for hotel employees, visitors and guests to and from the Dunn Loring Metro station;
 5. Amenities for bicycle storage;
 6. Sidewalk system designed to encourage/facilitate pedestrian circulation.
 7. Subsidization of Smart Trip Cards for hotel employees.
 8. Contribution to a Merrifield Area shuttle service, if established.

An annual sum of \$0.10 per square foot of occupied gross floor area will be contributed by the Applicant to a TSM fund to be used by TSMC for the implementation of the TSM Program at the beginning of each calendar year.

Upon occupancy of the 200th dwelling unit or within 6 months of the hotel opening, the Applicant shall conduct a survey of residents, visitors, employees and guests to determine the transportation characteristics of building tenants and employees. This survey will form the basis of the TSM program for the development.

Annually thereafter, and at the beginning of each calendar year, the hotel owners and multifamily building owners shall conduct traffic studies to be undertaken to confirm, to the satisfaction of the Fairfax County Department of Transportation, that the total peak hour vehicle trip generated projections for the Property, as set forth on Exhibit A herein, are not being exceeded. If the total peak hour traffic generation of the Property falls below the levels projected by Wells & Associates, then no additional action shall be taken. If however, the annual traffic study indicates that actual traffic generated by the Property exceeds that which has been

forecast in the Wells & Associates study, an additional \$0.05 per square foot of occupied gross floor area per year will be contributed to the TSM fund until such time as the projections are not exceeded. In any event, the terms of this proffer shall expire 15 years after the occupancy of the last residential unit or hotel occupancy, whichever occurs last.

Assuming a fifteen (15) year life of the program, and assuming traffic generation does not exceed the trip generation forecast, the value of the Applicant's contribution to the TSM fund is calculated at \$567,405.00.

3. Bus Shelter.

Applicant shall construct a bus shelter on Gallows Road, at a location to be determined by the Fairfax County Department of Transportation, in coordination with the Applicant's and/or assigns, at the time of site plan approval. If a bus stop location is not designated by WMATA and the County at such time, then the Applicant's and/or assigns shall contribute \$10,000 towards the provision of such a shelter.

4. Parking.

Parking and loading spaces 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. The number of parking spaces represented on the CDP/FDP is based on preliminary estimates; the final number of parking spaces provided at the time of site plan submission shall be consistent with any approved parking reduction.

5. Landscape Plan.

A landscape plan(s) corresponding to the hotel and residential portions of the Property shall be submitted as part of each site plan(s) in substantial conformance with the landscape design shown on Sheets 9 through 11 of the FDP. The 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 Prosperity Avenue. Said plan(s) shall be coordinated with and approved by the Urban Forester. Street trees along Prosperity Avenue, Gallows Road and within the central open space area (and replacement trees in this area, should landscaping die) shall be a minimum of three (3) inch caliper at the time of planting.

6. Pedestrian Facilities.

The following pedestrian facilities shall be provided on the Application Property, subject to public access easements:

- The Applicant shall provide a comprehensive sidewalk system within the developed portions of the Application Property as generally shown on Sheet 10 of the CDP/FDP, including completion of sidewalks along the Application Property frontages with Prosperity Avenue and Gallows Road, and a crosswalk connection between all commercial and residential components and the WMATA facilities. Construction of sidewalks shall be concurrent with the corresponding phase of a site plan development activity on the Application Property.
- The Applicant shall provide a pedestrian plaza at the intersection of Prosperity Avenue and Gallows Road as shown on the CDP/FDP. The plaza shall consist of special paver materials and a monument style clock. Landscaping and seating areas shall be provided adjacent to the hotel building to accent the plaza.
- Pocket parks along Prosperity Avenue and Gallows Road as shown on the CDP/FDP.

7. Recreational Facilities.

- A. 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 a swimming pool, passive seating areas in the multifamily use 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.
- B. The multi-family building's swimming pool shall be furnished with fencing, furniture and grills and in substantial conformance with the details shown on Sheet 9 of the CDP/FDP.
- C. Bicycle racks in secured and covered areas shall be provided in both the residential and hotel areas.

- D. Applicant shall make the following contributions to Fairfax County for acquiring land for park purposes or for park facilities in the Merrifield area;
- \$10,500 prior to the issuance of the non-RUP for the hotel.
 - \$64,800 prior to the issuance of the RUP for the multifamily building.

8. Noise.

In order to achieve a maximum interior noise level of approximately 45 dBA Ldn within that area impacted by noise 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 glazing 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.

9. Stormwater Management.

Unless waived or modified by DPWES, the Applicant shall provide on-site stormwater management designed with Best Management Practices in the facility shown on the CDP/FDP within an underground structure serving the hotel and multi-family residential uses. The maintenance of the underground facilities shall be the responsibility of the Applicant and its successors. The Applicant shall enter into a private maintenance agreement for the perpetual maintenance of the SWM facility. The private ownership and maintenance responsibilities shall be disclosed in writing to future purchasers.

10. 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.

11. Architectural Design.

The architectural design of the buildings shall be in general character with the elevations shown on Sheets 5 through 8 of the FDP. Minor modifications may be made with the final architectural designs. Building materials for the first level of the residential building and hotel, excluding doors and windows, will be masonry. Both buildings shall utilize similar materials and colors on all sides, and as each other.

12. 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.

13. Lighting.

All lighting, including wall mounted, security, pedestrian, and pole lighting, shall use full cut-off fixtures and shall be directed downward and inward to minimize glare onto adjacent residential properties. Onsite parking lot lighting shall not exceed a height of twenty (20) feet. Light fixtures for both the hotel and residential uses shall be in conformance with the details shown on Sheet 12 of the CDP/FDP.

14. Telecommunication Equipment.

Antenna, satellite dishes and other telecommunication facilities may be placed on the proposed building rooftops; however, any such facilities must: (a) comply with the Zoning Ordinance; and (b) be screened and/or setback sufficiently from the perimeter of the roof and penthouse such that they shall not be visible from the surrounding streets at street level. Other screening measures may be used, such as including the facilities as part of the architecture of the building, utilizing compatible colors, or employing telecommunication screening material, and flush-mounted antennas.

15. Affordable Housing.

Fourteen units within the residential building, as selected by the Applicant, shall be offered for rental through Fairfax County's Housing and Redevelopment Authority (RHDA) for a term of 20 years from the date of the issuance of the building's occupancy permit. Rental rates shall be established by the Applicant and approved by RHDA in such a manner as to offer affordable housing to those households whose income is 70% or less of the median income of the WSMSA. The provision of these ADUs shall be subject to the adoption of state legislation and subsequent Board of Supervisors' action, which provides the necessary tax abatements of multi-family units, which make the rental rate reduction revenue neutral. In the event a tax abatement is not approved prior to the

issuance of the building RUP, then the residential developer shall contribute the sum of \$280,000 to the Fairfax County Housing Trust Fund in lieu of the provision of 14 rental units.

16. E.I.F.S.

Applicant shall utilize the highest grade of E.I.F.S. and licensed E.I.F.S. contractors to install the system's facade. The facade shall be routinely maintained to preserve the appearance. Applicant shall conduct an inspection of the facade every 5 years and submit a written inspection report to Fairfax County. Applicant shall implement any remedial measures recommended by the inspection report within 90 days.

17. Successors and Assigns.

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

18. 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, or as may be required by Fairfax County or VDOT at time of site plan approval.

19. 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.

20. Severability.

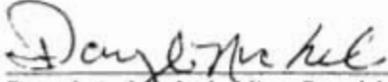
Any of the sections/buildings within the Application Property may be subject to Proffered Condition Amendments and Final Development Plan Amendments without joinder or consent of the property owners of the other sections/buildings.

[SIGNATURES BEGIN ON NEXT PAGE]

Proffers
RZ 1999-PR-034

APPLICANT/TITLE OWNER TAX MAP 49-2 ((1)), 17, 17A
CONTRACT PURCHASER TAX MAP 49-2 ((1)) PT. 15, PT. 16

COURTYARD MANAGEMENT CORPORATION



Daryl A. Mickel, Vice President

[SIGNATURES CONTINUE ON NEXT PAGE]

CONTRACT PURCHASER

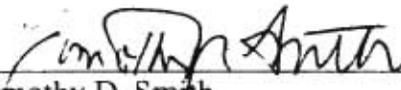
LCOR/JV ACQUISITION L. L. C.,

By: LCOR Operating Company, L.L.C.,
Its: Managing Members

By: LCOR Public/Private LLC
Its: Managing Members

By: LCOR Holdings, LLC
Its: Managing Members

By: LCOR Incorporated
Its: Member

By: 

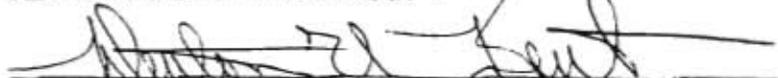
Timothy D. Smith
Senior Vice President, Assistant Secretary

[SIGNATURES CONTINUE ON NEXT PAGE]

PROFFERS
RZ. 1999-PR-034

TITLE OWNER TAX MAP 49-2 ((1)) PT. 15, PT. 16

WASHINGTON METROPOLITAN
AREA TRANSIT AUTHORITY

A handwritten signature in black ink, appearing to read "Denton U. Kent", is written over a horizontal line.

By: Denton U. Kent

Its: Director, Office of Property Development and Management

[SIGNATURES END]