

June 29, 2011

VIA HAND DELIVERY

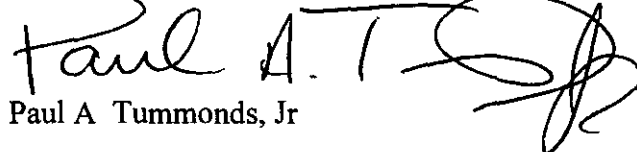
Ms Sharon Schellin
Secretary to the D C Zoning Commission
441 4th Street NW, Suite 210S
Washington, DC 20001

Re Z C Case No 06-08/06-08A/06-08B – Fort Lincoln/Gateway Village, LLC
Certified Copy of Recorded PUD Covenant

Dear Ms Schellin

Enclosed please find a certified copy of the PUD Covenant for the above-mentioned PUD application which was recorded in the DC Land Records on June 27, 2011. Please do not hesitate to contact me if you have any questions regarding the attached covenant.

Sincerely,


Paul A. Tummonds, Jr.

Enclosure

cc Matthew Le Grant, Zoning Administrator (by Standard Mail, w/encl)
William Collins (by Standard Mail, w/encl)

ZONING COMMISSION
District of Columbia
CASE NO. 06-08B
EXHIBIT NO. 204

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PUD COVENANT

THIS COVENANT, made as of this 29th day of July 2010, by and between FORT LINCOLN/GATEWAY VILLAGE, LLC, a District of Columbia limited liability corporation (hereinafter referred to as "Owner"), and the DISTRICT OF COLUMBIA, a municipal corporation (hereinafter referred to as the "District")

WITNESSETH

WHEREAS, Owner is the owner of that certain parcel of land located in the District of Columbia now known as a portion of Parcel 173/45 in Square 4325, as described in Exhibit A attached hereto and made a part hereof (such property hereinafter referred to as the "Subject Site"), and

WHEREAS, Owner intends to develop the Subject Site for use as a Planned Unit Development (hereinafter referred to as the "Project") under Chapter 24 of the Zoning Regulations of the District of Columbia in accordance with Zoning Commission Order Nos 06-08, 06-08A and 06-08B (collectively, the "Zoning Commission Orders"), and

WHEREAS, said Chapter 24 and Zoning Commission Order No 06-08 further require that Owner enter into this Covenant with the District of Columbia assuring Owner's (and its respective successors in title) development and operation of the Project as approved by the Zoning Commission of the District of Columbia (hereinafter referred to as the "Zoning Commission") in the Zoning Commission Orders and all modifications, alterations or amendments thereto

NOW, THEREFORE, in consideration of the foregoing recitals, which are a material part hereof, it is agreed among the parties hereto as follows

- 1 Recitals The above recitals are incorporated herein

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2 Approved Plans The terms and conditions of the Zoning Commission's approval of the Planned Unit Development under the Zoning Commission Orders (most recently in Order No 06-08B effective April 30, 2010, and as the same may be amended and/or modified from time to time), are incorporated herein by reference and made a part hereof as Exhibit B attached hereto and shall be considered a part of this Covenant. The Subject Site will be developed and used in accordance with the plans approved by said Zoning Commission Orders and in accordance with conditions and restrictions contained in said Zoning Commission Order No 06-08, as those conditions were revised in Zoning Commission Orders No 06-08A and 06-08B, subject to such changes thereto as the Zoning Commission and/or the Zoning Administrator of the District of Columbia may authorize pursuant to 11 DCMR §§ 2409.6 and 2409.9, respectively. Owner covenants that it will use the Subject Site only in accordance with the terms of the Zoning Commission Orders, as the same may be further amended and/or modified from time to time, subject to the terms and conditions contained herein and the provisions of Chapter 24 of the Zoning Regulations.

3 Additional Time to Construct Planned Unit Development If Owner should fail to file for a building permit and to commence construction of the first or second phases of the approved Planned Unit Development, within the time periods specified in condition no 13 of Zoning Commission Order 06-08 as revised in Zoning Commission Order No 06-08B, the Zoning Commission may duly consider an application for an extension of time for good cause shown.

4 Default In the event that Owner fails to file for the building permits and to commence construction of the approved Planned Unit Development within the time periods specified in condition no 13 of Zoning Commission Order 06-08 as revised in Zoning

Commission Order No 06-08B, or within any extension of time granted by the Zoning Commission for good cause shown, the benefits granted by the Zoning Commission Orders shall terminate pursuant to Section 2408 14 of the Zoning Regulations

5 Future Conveyance Owner covenants that if any conveyance of all or any part of the Subject Site takes place, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns to develop and use the Subject Site in accordance with the terms and conditions of this Covenant

6 Successors and Assigns The covenants and restrictions contained herein shall be deemed real covenants running with the land, and shall bind the parties hereto, their successors and assigns and shall inure to the benefit of the parties hereto, their successors and assigns Such covenants are not binding upon any party who no longer has a property interest in the Subject Site The District shall have the right to enforce all covenants, conditions and restrictions contained herein

7 Recordation Owner shall record this Covenant, as fully executed by the parties hereto, among the Land Records of the District of Columbia, and shall file a certified copy of this Covenant with the Zoning Administrator and the Zoning Commission

8 Counterparts This Covenant may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument

9 Rescission/Alteration of Chapter 24 Covenant If the Zoning Commission Orders are further modified or amended by the Zoning Commission, no formal amendment of this Covenant shall be required, provided that the Owner, or its successors or assigns, records a notice of modification in the Land Records of the District of Columbia together with a copy of the written

order authorizing the modification or amendment. No other amendment of the obligations created by this Covenant is permitted without the written consent of the District and, if determined by the Office of the Attorney General to be necessary, without the prior approval of the Zoning Commission.

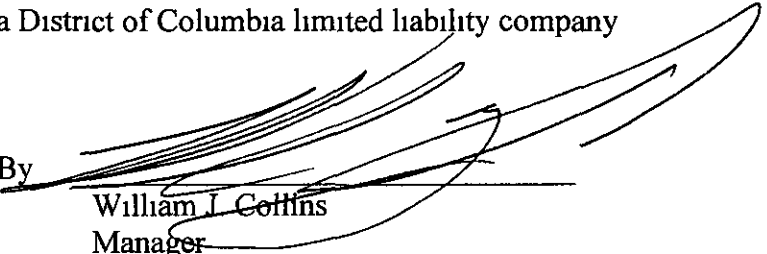
[SIGNATURES ON FOLLOWING PAGES]

SIGNATURE OF OWNER

IN WITNESS WHEREOF, FORT LINCOLN/GATEWAY VILLAGE, LLC, a District of Columbia limited liability company, has, as of the day and year first above written, caused this Covenant to be signed with its corporate name by William J Collins, manager of Fort Lincoln/Gateway Village, LLC, and does hereby appoint the said William J Collins to be its attorney-in-fact, and in its name to acknowledge and deliver this Covenant according to law

FORT LINCOLN/GATEWAY VILLAGE, LLC
a District of Columbia limited liability company

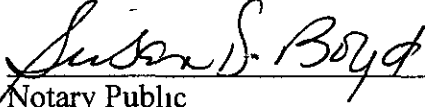
By


William J Collins
Manager

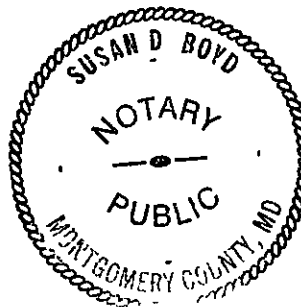
State of Maryland
Montgomery, ss

I, Susan D Boyd, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that William J Collins, manager of Fort Lincoln/Gateway Village, LLC, a District of Columbia limited liability company, the said William J Collins being named as attorney-in-fact for said organization in the foregoing and annexed Covenant, personally appeared before me and, being personally well known to me as such attorney-in-fact, acknowledged said Covenant to be the act and deed of said organization and that he delivered the same as such,

GIVEN under my hand and seal this ^{29th} day of ~~29~~ July, 2010


Notary Public

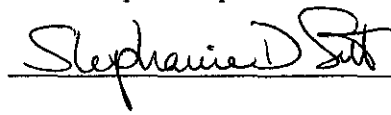
My commission expires 12-30-2010



SIGNATURE OF THE DISTRICT OF COLUMBIA

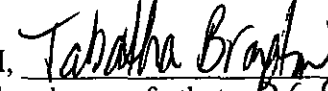
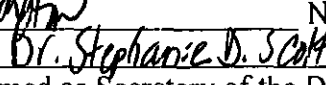
IN WITNESS WHEREOF, the Mayor of the DISTRICT OF COLUMBIA, having first considered and approved the foregoing Covenant, has directed the execution thereof in the name of said DISTRICT OF COLUMBIA, by the Secretary, D C , who has hereunto set her hand and affixed the seal of the District of Columbia hereto under authority of the Act of Congress entitled "An Act to Relieve the Commissioners of the District of Columbia of Certain Ministerial Duties," approved February 11, 1932

DISTRICT OF COLUMBIA,
a Municipal Corporation



Secretary, D C (Corporate Seal)

DISTRICT OF COLUMBIA, ss

I,  Notary Public in and for the District of Columbia, do hereby certify that  who is personally well known to me as the person named as Secretary of the DISTRICT OF COLUMBIA in the foregoing PUD Covenant hereunto annexed, personally appeared before me in said District and as Secretary of the DISTRICT OF COLUMBIA aforesaid, and by virtue of the authority in her vested, acknowledged the same to be the act and deed of the Mayor of the DISTRICT OF COLUMBIA

GIVEN under my hand and seal this day of August 27 2010



Notary Public

My commission expires _____
TABATHA BRAXTON
Notary Public District of Columbia
My Commission Expires May 14, 2012

APPROVED AS TO LEGAL SUFFICIENCY

Alan Bryson

Chief, Land Use Section
D C Office of the Attorney General

APPROVED AS TO FORM AND CONTENT

Matthew Z Le Goff 8/17/10

Zoning Administrator of the District of Columbia

APPROVED AS TO LEGAL SUFFICIENCY

Chief, Land Use Section
D C Office of the Attorney General

APPROVED AS TO FORM AND CONTENT

Matthew Z Le Goff 8/17/10

Zoning Administrator of the District of Columbia

EXHIBIT A



PROPOSED PHASE I

**JANUARY 6, 2011
DESCRIPTION OF A PORTION OF
PARCEL 173/145
ASSESSMENT AND TAXATION PLAT 3821-J
WASHINGTON, D.C.**

Being a portion of Parcel 173/145 filed in Assessment and Taxation Plat 3821-J, said Parcel 173/145 also being shown on a Plat of Streets Dedication recorded in Subdivision Book 190 at Page 38 (Map 10225), all among the records of The Office of the Surveyor for the District of Columbia and being more particularly described as follows:

Beginning for the same at a point marking the southeasterly corner of the aforesaid Parcel 173/145, said point also marking the intersection of the northerly line of Fort Lincoln Drive, N.E (100 feet wide) and the westerly line of Fort Lincoln Drive North, N.E (100 feet wide), thence running with a portion of said northerly line of Fort Lincoln Drive, N.E the following three (3) courses and distances

- 1) North 68°50'42" West, 11 30 feet to a point, thence
- 2) 250 23 feet along the arc of a tangent curve to left having radius of 1411 43 feet and chord bearing and distance of North 73°55'26" West, 249 90 feet to a point, thence
- 3) North 79°00'10" West, 289 27 feet to a point, thence leaving the aforesaid northerly line of Fort Lincoln Drive, N.E and running so as to cross and include a portion of the aforesaid Parcel 173/145
- 4) North 10°59'50" East, 407 14 feet to a point lying on the northeasterly line of the aforesaid Parcel 173/145, said point also being on the southerly line of Commodore Joshua Barney Drive, N.E (90 feet wide), thence running with a portion of said southerly line of Commodore Joshua Barney Drive, N.E the following two (2) courses and distances
- 5) 55 25 feet along the arc of a non-tangent curve to right having radius of 835 00 feet and chord bearing and distance of South 74°21'00" West, 55 24 feet to a point; thence
- 6.) South 72°27'16" East, 575 26 to a point marking a northeasterly corner of the aforesaid Parcel 173/145, said point also marking the intersection of the aforesaid southerly line of Commodore Joshua Barney Drive, N.E and the aforesaid westerly line of Fort Lincoln Drive North, N.E, thence running with a portion of said westerly line of Fort Lincoln Drive North, N.E the following two (2) courses and distances

Vika, Incorporated

20251 Century Boulevard, Suite 400 • Germantown, Maryland 20874 • 301 916 4100 Fax 301 916 2262
8180 Greensboro Drive Suite 200 • McLean, Virginia 22102 • 703 442 7800 Fax 703 761 2787

www.vika.com

- 7) 126.89 feet along the arc of a non-tangent curve to left having radius of 650.00 feet and chord bearing and distance of South 26°44'51" West, 126.69 feet to a point, thence
- 8) South 21°09'18" West, 243.05 feet to the point of beginning containing 221,925 square feet or 5.09470 acres of land



EXHIBIT B

ZONING COMMISSION ORDER NOS 06-08, 06-08A, and 06-08B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



July 20, 2010

Re: Z.C. Case No. 06-08 – Fort Lincoln/Gateway Village, LLC

To Whom It May Concern

I hereby certify that attached hereto, and bearing my initials in red ink in the lower right corner of each page, is a true copy of Order No 06-08 – consisting of 25 pages – of the official record of the Zoning Commission for the District of Columbia in Z C Case No 06-08


SHARON S SCHELLIN
SECRETARY TO THE ZONING COMMISSION

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT COLUMBIA

Z C. ORDER NO. 06-08

Z.C. Case No. 06-08

Consolidated Planned Unit Development for Fort Lincoln/Gateway Village, LLC

April 9, 2007

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on December 18, 2006 to consider an application from Fort Lincoln/Gateway Village, LLC, for the consolidated review and approval of a planned unit development ("PUD") for the property known as Parcel 173/145 in Square 4325, pursuant to Chapter 24 of the District of Columbia Municipal Regulations (DCMR) Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

At its public meeting on February 12, 2007, the Commission took proposed action by a vote of 4-0-1 to approve the application and plans that were submitted into the record.

The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. The NCPC Executive Director, through a Delegated Action dated March 1, 2007, found that the proposed PUD would not affect the federal interests in the National Capitol, or be inconsistent with the Comprehensive Plan for the National Capitol.

The Commission took final action to approve the application on April 9, 2007, by a vote of 4-0-1.

FINDINGS OF FACT

PROCEDURAL HISTORY

- 1 The property that is the subject of this application is Parcel 173/145 in Square 4325 and is bounded by Fort Lincoln Drive, NE to the west and south, Fort Lincoln Drive North, NE to the east, and Commodore Joshua Barney Drive, NE to the north (the "Subject Property" or "Property"). The Subject Property is located in the Fort Lincoln neighborhood in Ward 5. The Property consists of approximately 23 acres or 1,003,544 square feet of land and is located in an R-5-D Zone District (Exhibit 22, p. 1).
- 2 Fort Lincoln/Gateway Village, LLC (the "Applicant") is a joint venture owned by Fort Lincoln New Town Corporation and the Concordia Group (Exhibit 22, p. 1).

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- 3 The Applicant seeks to construct a 357-unit townhouse and townhouse condominium development consisting of three sizes of single-family townhouses (16-foot, 20-foot, and 24-foot wide models) and "2 over 2" townhouse condominiums (Exhibit 22, p 2)
- 4 The Commission voted 3-1-1 to set the case down for a public hearing at its June 12, 2006 public meeting. At that meeting, the Commission members requested the following plans and information: detailing grading and enhanced landscape plans (including more information and details on the proposed Community Green), a revised site plan, and more information regarding the relationship of this project to the proposed retail project across Fort Lincoln Drive (Tr June 12, 2006, pp 16-22)
- 5 In its pre-hearing statement, dated August 11, 2006, the Applicant addressed and submitted information on the above-mentioned questions from the Commission. In addition, the Applicant included information on the previously approved PUD for the site (Z C Order No 903) and an analysis of how the proposed PUD conforms to the Fort Lincoln Urban Renewal Plan ("FLURA") (Exhibit 22)
- 6 The Applicant filed a supplemental submission on November 28, 2006, which included resumes of proposed expert witnesses, a description of the project and community amenities, updated zoning information, and a site context plan to show proposed traffic improvements for the area (Exhibit 27)
- 7 The Commission held a public hearing on the above-mentioned application on December 18, 2006, which was conducted in accordance with the provisions of 11 DCMR § 3022
- 8 At the December 18, 2006 public hearing, Paul Tummonds of Pillsbury Winthrop Shaw Pittman, LLP presented the case on behalf of the Applicant. The Commission accepted John Amatetti of Vika Incorporated as an expert in civil engineering, Trini Rodriguez of ParkerRodriguez as an expert in land planning and landscape architecture, and Jami Milanovich of Wells & Associates, LLC as an expert in traffic engineering (Tr December 18, 2006, p 8)

PUD SITE AND SURROUNDING AREA

- 9 The Property includes approximately 23 acres or 1,003,544 square feet of vacant land and is located between Fort Lincoln Drive, NE and Commodore Joshua Barney Drive, NE (Exhibit 22, p 1) It is located in Ward 5 and in the Fort Lincoln Urban Renewal Plan Area (Exhibit 22, p 6)

- 10 The PUD site is part of the 360-acre residential neighborhood that was initially planned in 1972 as a federally-funded urban renewal community. Known as the Fort Lincoln Urban Renewal Area, development of the surrounding community, including the 22.97-acre site, is guided by the Fort Lincoln Urban Renewal Plan. The plan was most recently amended in 1994. (Exhibit 22, p. 6, Exhibit B.)
- 11 The Property has significant grade changes throughout the site and is currently overgrown with invasive, non-native tree and plant species. The site is bordered by thickly wooded and natural areas to the north and the west. (Exhibit 22, p. 1, Exhibit C-2B, Exhibit 35.)
- 12 Further to the west of the site are the Theodore Hagans Cultural Center and the Fort Lincoln Recreational Center, which provide a number of recreational amenities to the neighborhood. (Exhibit 22, pp. 1, 2.)
- 13 Fort Lincoln New Town Corporation is also developing a major retail project known as "Washington Gateway Shopping Center," located to the south of the Property. This project will consist of approximately 400,000 square feet of retail space on 42 acres of land. Washington Gateway Shopping Center will be anchored by a Costco, Target, and Shoppers Food Warehouse. (Exhibit 3, pp. 2, 3.) This retail project is on land that was rezoned to C-2-B as a result of Z.C. Order No. 02-33. (Exhibit 3, p. 3.)

DESCRIPTION OF THE PUD PROJECT

- 14 The proposed 357-unit townhouse and townhouse condominium development will provide a variety of housing options for individuals and families seeking homeownership opportunities in Ward 5. The various unit types have been interspersed throughout the Property. The proposed density of the PUD project (0.753 FAR) is significantly lower than the matter-of-right density limitation (3.5 FAR) and the proposed building heights (40-43 feet and 54 feet) are also significantly lower than the maximum matter-of-right building height (90 feet) in the R-5-D District. (Exhibit 22, pp. ix, 2, 3.)
- 15 The 24-foot wide townhouses will include approximately 3,024 square feet of living area, which is comparable in size to typical single-family detached houses located in an R-5-D Zone District. Each single-family townhouse will be three stories and the "2 over 2" townhouse condominiums will be four stories tall. All of the single-family townhouse units will have family rooms or studies and garages on the first floor, kitchens and living areas on the main floor, and two or three bedrooms on the third floor. All of the townhouses will have decks in the rear. The "2 over 2" townhouse condominiums will include approximately 1,600

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- square feet in the lower level units and approximately 2,300 square feet in the upper level units (Exhibit 22, p 2 , Exhibit A)
- 16 The Project will provide a significant amount of open and green space. Open space accounts for 180,486 square feet (4.14 acres) or 17.98% of the site area. The overall average lot occupancy (which includes the decks) is 58.64% (Exhibit 27, Exhibit C, pp C-1 and C-6)
 - 17 The central open space provided in the project will be a large Community Green. The Community Green, which includes a total of 1.18 acres, is intended for non-organized, passive and active recreational use. The lawn will have a slope of 2% - 3%. At the eastern and western corners of the Community Green, more formal entrances to the Green will be marked with stone and brick paving, and, at the western corner, will include a pavilion. There will be a children's play area/tot lot just north of the Community Green. In addition, a rectangular Mews Green will be located at the western edge of the site and will serve as the terminus of the long east/west street that runs from the Community Green to the western edge of the site. A pocket park on the northern edge of the Property along Commodore Joshua Barney Drive provides additional green space and includes pedestrian connection from the project to the public street (Exhibit 22, pp 3, 4 and Exhibit A, p L-1)
 - 18 All of the buildings will have entrances facing the Community Green, existing and proposed streets, or the proposed pocket park and Mews Green. The facades and sides of all the buildings will be predominantly brick. Side entrances to the townhomes will be provided for those that face the public street or the Community Green (Exhibit 22, pp 2, 3)
 - 19 All units will have one or two garage parking spaces (the 16-foot wide units will have a single parking space in the garage and a tandem parking space in the driveway) accessed from the rear of the units via alleys as well as driveway space for additional parking. The "2 over 2" condominiums will have one garage parking space and one tandem parking space for each unit. In addition, 182 additional guest parking spaces will be made available throughout the site on the interior private street system (Exhibit 22, pp 3, 19)
 - 20 The PUD project complies with the underlying zoning district requirements, however, pursuant to 11 DCMR Chapter 24, it requires relief from the front, rear, and side yard requirements (§§ 2516 5(b), 404, and 405) and to allow more than one principal structure on a single lot (§ 2516 1). This minor flexibility requested from the R-5-D District requirements will have no impact on the surrounding R-5-D-zoned properties (Exhibit 22, p 13, Exhibit A, pp C-7 and C-7A)

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SATISFACTION OF PUD EVALUATION STANDARDS

- 21 Through written submissions and testimony to the Commission, the Applicant and its representatives noted that the proposed project will provide high quality residential development on the Subject Property with significant public benefits to the neighborhood and the District as a whole
- 22 The Applicant's representative, Michele Hagans, testified that the goal of this project is to create high-quality homeownership opportunities and an attractive community that would be an integral part of the larger Fort Lincoln neighborhood. She confirmed that this will not be a "gated community" but instead will allow for residents, guests, and the Fort Lincoln community as a whole, to enjoy the large Community Green, the tot lots, and Mews Green by offering safe and convenient connections to the surrounding neighborhood. In addition, Ms. Hagans noted that the amenities package had been thoroughly negotiated with the Single Member District Commissioner and the Applicant will continue to work with the Advisory Neighborhood Commission ("ANC") and community to achieve and satisfy their financial commitment. (Tr. December 18, 2006, pp. 15-18.)
- 23 The Applicant's landscape architect, Trini Rodriguez, accepted as an expert in urban planning and landscape design, testified that the project was designed to create a strong sense of place and community orientation, taking into account streets, public spaces, and alleys. Ms. Rodriguez noted the importance of the open space to the project, the monumental entrances, the treatment of fences, and the landscaped median along Ft. Lincoln Drive. Ms. Rodriguez also discussed the pedestrian-friendly entrance from the residential project to the neighboring retail development. (Tr. December 18, 2006, pp. 19-28.)
- 24 Urban Design and Architecture The proposed townhouses and condominium townhouses are designed to complement and elevate the level of architectural quality and design in this area of the District. The proposed design connects the homes to the public streets, incorporates the development into the existing neighborhood, and enhances the walkability of the interior streets. The proposed detached garages for the 24-foot wide townhouses allow for additional green space on those lots that are most likely to have families with children. The appearance of the retaining walls has been reduced through the terracing of the retaining walls and the landscaping. The proposed landscape plan and treatment of the Community Green, the pocket park, Mews Green, and the children's play area/tot lot provide both active and passive recreation activities for residents of the project and their guests. The landscape plans include a variety of street trees and alley trees that will be used to create a uniform setting along the interior

streets and to help soften the visual impact of the proposed alleys (Exhibit 22, p 17, Exhibit A, Exhibit 42)

- 25 Site Planning The site plan for the proposed project makes use of a vacant site that sits in the center of a developing neighborhood. The design of the residential complex intersperses street-oriented, rear-loaded townhouses in an efficient and economical manner appropriate for the R-5-D Zone District. The provided green spaces seamlessly tie into the existing and future fabric of the Fort Lincoln neighborhood (Exhibit 3, p 13, Exhibit 22, p 18)
- 26 Effective and Safe Vehicular and Pedestrian Access The Project provides four means of vehicular access to Fort Lincoln Drive and Commodore Joshua Barney Drive. The connections to the surrounding streets allow pedestrians and vehicular traffic to enter and exit the development safely and efficiently. The new internal road system allows for two-way traffic. Safe and inviting sidewalks will be created along the surrounding public streets and throughout the site to encourage pedestrian activity and also mitigate pedestrian/vehicle conflicts. The PUD will provide residents with 714 parking spaces and 182 spaces designated for guests (Exhibit 22, pp 18, 19)
- 27 The Applicant's traffic and parking expert provided written documentation and testimony that analyzed not just the Property at the Village of Washington Gateway but examined the proposed build-out of the Fort Lincoln area, a holistic approach that was recommended by the District Department of Transportation ("DDOT"). These additional areas include Dakota Crossing, which is currently under construction and consists of 209 townhouse units, the proposed Washington Gateway Shopping Center, which consists of 425,000 square feet of retail development, and the Wesley House development (currently under construction) which consists of 127 active adult apartment units (Exhibit 27, Exhibit D, Tr December 18, 2006, pp 29-33)
- 28 The private roadway improvements recommended by the traffic and parking expert and proposed by the Applicant include
- Close the existing median break located along 33rd Place and construct median improvements to provide additional storage for the left-turn lane onto South Dakota Avenue from 33rd Place,
 - Extend the median on Fort Lincoln Drive North to better define travel paths for vehicles coming out of Premium Driveway and Commodore Joshua Barney Drive,

- Install traffic calming devices such as speed humps, speed tables, and/or raised crosswalks along Fort Lincoln Drive, particularly in the vicinity of the proposed crosswalk between the Village at Washington Gateway and the Washington Gateway Shopping Center,
 - Construct Commodore Joshua Barney Drive/Fort Lincoln Drive North/Premium Driveway as an all-way stop due to the unnatural configuration of the T-intersection (i.e., the major movement is not a through movement, it is a left-turn movement),
 - Construct the Village at Washington Gateway westernmost (full access) site driveway on Fort Lincoln Drive as an all-way stop including a stamped-concrete, raised speed table in order to prevent pedestrian/vehicle conflicts that would occur as the result of the proposed pedestrian crossing between the Village at Washington Gateway and the Washington Gateway Shopping Center, and
 - Landscape the medians along Fort Lincoln Drive between 33rd Place and Fort Lincoln Drive North, along Commodore Joshua Barney Drive, and along Fort Lincoln, pending DDOT approval (Exhibit 35, Exhibit F)
- 29 Housing In addition to providing a significant number of market rate housing units, the project will also set-aside 30 workforce affordable units. The National Capital Revitalization Corporation ("NCRC") and the District of Columbia Public Schools ("DCPS") offer a home ownership program targeting DCPS employees. The Applicant intends to utilize this NCRC/DCPS program in the proposed PUD by offering 30 residential units to qualified DCPS employees. The sale of the affordable units will be targeted to DCPS employees with annual household incomes (four-person family size) between \$54,180 and \$72,240 (60% to 80% of the Washington D C Metropolitan Area Median Income). The 30 workforce housing units offered will be the first and second floor units within the stacked ("2 over 2") townhouse condominium buildings. The gross floor area for this unit type is approximately 1,600 square feet and these homes contain three bedrooms and two and one-half bathrooms. Each unit has a one-car garage and a tandem driveway space. The Affordable Housing Program will commence on the date that the building including the affordable units has received a certificate of occupancy and will run for ten years. Upon expiration of the ten-year term, these units may be sold at market rates. (Exhibit 22, p 19, Exhibit 42, Exhibit A)
- 30 Revenue for the District The addition of 357 new households will result in the generation of additional tax revenues in the form of property, income, sales, and employment taxes for the District. (Exhibit 3, p 15, Exhibit 22, p 20)

- 31 First Source Employment Program The Applicant will enter into an agreement to participate in the Department of Employment Services ("DOES") First Source Employment Program to promote and encourage the hiring of District of Columbia residents during the development and construction process (Exhibit 3, p 15, Exhibit 22, Exhibit K)
- 32 Local, Small, and Disadvantaged Businesses The Applicant will enter into a Memorandum of Understanding ("MOU") with the Department of Small and Local Business Development ("DSLBD") to use the resources of the DSLBD to utilize local business enterprises in the development of this project (Exhibit 3, p 15, Exhibit 20, p 20)
- 33 Environmental Benefits The Applicant stated that it is committed to a low impact development ("LID") strategy for the Property John Amatetti, accepted as an expert in civil engineering, testified on behalf of the Applicant and stated that the most important element of LID is to try and minimize impervious surfaces from the outset of the project He testified that infiltration also provides ground water recharge and is a benefit not only to the water quality but to the environment as a whole Mr Amatetti also testified that the survey done on the Property found no jurisdictional wetlands (Tr December 18, 2006, pp 34-42)
- 34 Due to the highly variable nature of the soil, the large amount of uncontrolled fill, and the highly plastic clays found on the Property, the Applicant's water quality control for this project is primarily provided by two large underground storm filter facilities located at the downstream end of the project These filter systems have integral sediment traps and provide water filtration through multiple media filled cartridges Treated water is then discharged into the storm water system In addition to the storm filter facilities, the project will include multiple bioretention facilities Bioretention facilities are planted areas in local depressions that are subject to temporary ponding of water during storm events The bioretention facilities create a reduction in peak flow rate as the storm water filters through the various natural material layers (Exhibit 42, Exhibit D)
- Water quantity control will be provided off-site in a proposed regional stormwater management pond The regional stormwater management pond will provide peak reduction requirements to meet the District's environmental regulations for this site as well as adjoining properties (Exhibit 42, Exhibits C and D)
- 35 Uses of Special Value to the Neighborhood The Applicant will provide the following public benefits and amenities The total value of the community amenities package is \$183,000

- Thurgood Marshall School/Playground Construction – The Applicant shall design and construct a playground facility at the Thurgood Marshall School located within the Fort Lincoln community. As a second phase to the pre-school playground, the Applicant shall work with the school administration to design a playground on the land that is now occupied by an obsolete cycling facility. The cost of this playground is approximately \$50,000.
- Scoreboard for the Baseball Field within Fort Lincoln – The Applicant shall purchase and install an electronic scoreboard for the baseball field located within the park at Fort Lincoln. The estimated cost is approximately \$40,000.
- Landscaping Package along Fort Lincoln Drive – The Applicant will contribute \$40,000 for installation and maintenance of plantings in accordance with a landscaping plan for the medians located along Fort Lincoln Drive and 31st Place, NE, adjacent to the Village at Washington Gateway property. The Applicant shall maintain this landscaping for a period of three years from the date of its installation. The Applicant shall also provide for enhanced landscaping and maintenance of the area at the corner of Fort Lincoln Drive and 33rd Place.
- Trail Connection to the Adjacent Fort Lincoln Recreation Center – The Applicant shall create an environmentally-sensitive trail that connects the proposed development to the adjacent Fort Lincoln Recreation Center. The trail shall be sited and constructed of materials that will minimize disruption to the wooded area between the project and the recreation center. The cost of this component of the amenity package is approximately \$12,000.
- Fort Lincoln Community Day – The Applicant shall continue its sponsorship of the Fort Lincoln Community Day for an additional two years. The Fort Lincoln Community Day brings together residents of the greater Fort Lincoln neighborhood to celebrate their community and meet their neighbors. The Applicant will provide food, entertainment, and publicity for this event. The cost of this component of the amenity package is \$10,000 (\$5,000 per year).
- Fort Lincoln Resident Participation in the National Senior Olympics – The Applicant shall continue to send eligible Fort Lincoln residents to the National Senior Olympics. The National Senior Olympics will be held in Louisville, KY this year. The cost of this contribution is expected to be \$2,000.

- Publication of Community Newsletter – The Applicant shall underwrite the publishing of a community newsletter prepared by ANC 5A. The newsletter will be published two times per year. The community newsletter will provide information to residents of the Fort Lincoln community on various matters that affect their community and their everyday lives. The cost of this component of the amenity package is \$4,000.
- Renovation and Upgrade of the Theodore Hagans Cultural Center – The Applicant shall contribute \$25,000 for the renovation of space within the Theodore Hagans Cultural Center located within the Fort Lincoln community. These funds will be used to purchase and install exercise equipment, patio furniture and furnishings, and Hi-Definition televisions for the cultural center.

All of the above-referenced contributions shall be funded and the capital projects shall be completed (except for the three-year maintenance period for landscaped medians along Fort Lincoln Drive) within one year from the delivery of the first certificate of occupancy at the Village at Washington Gateway (Exhibit 42).

- 36 Comprehensive Plan The District of Columbia Generalized Land Use Map includes the Subject Property in the medium-density residential land use category. The medium-density residential land use category anticipates multiple-unit housing, as well as row houses and other low- and medium-density housing options. Thus, the PUD is consistent with the Generalized Land Use Map designation for the Subject Property (Exhibit 22, p. 23).
- 37 The proposed project is consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan. The project is consistent with the following major themes of the Comprehensive Plan:
- Stabilizing the District's Neighborhoods The PUD will create a 357-unit townhouse and townhouse condominium development, which will help stabilize the Fort Lincoln neighborhood (Exhibit 22, p. 24).
 - Respecting and Improving the Physical Character of the District The project has been designed to be complementary to the surrounding neighborhood. All of the buildings will be built up to the street to create an attractive walkable community that is oriented towards the surrounding neighborhood. The development also provides multiple areas of usable, secure green space that can be utilized for many forms of recreation (Exhibit 22, p. 25, Exhibit A).

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- Preserving and Ensuring Community Input The Applicant met with community representatives and ANC 5A on numerous occasions. The ANC adopted a unanimous resolution in support of the application (Exhibit 32)
 - Providing for Diversity and Overall Social Responsibilities The project will help further expand the range of housing options in the Fort Lincoln neighborhood. The inclusion of 30 workforce housing units targeted to DCPS employees will provide opportunities for couples and families to purchase new residential units in the neighborhood (Exhibit 22, p 26, Exhibit 42, Exhibit A)
- 38 The PUD is consistent with many Major Elements of the Comprehensive Plan, including the Housing, Transportation, and Urban Design Elements, as well as the Generalized Land Use Map and portions of the Ward 5 Goals and Policies
- Housing Element The proposed development is consistent with the housing provisions of the Comprehensive Plan as it creates 357 new townhouses and condominium townhouses in an area that is identified on the Generalized Land Use Map to be a medium-density residential area. The proposed project will create new dwelling units in a community with significant for-sale housing needs on property that is currently vacant. The proposed residential community will serve as an anchor that strengthens and enhances the surrounding residential neighborhood.
 - Transportation Element The Applicant will enhance the existing road network by creating an internal street system on the Subject Property that allows for two-way traffic and several access and egress points to the proposed development. Furthermore, the sidewalks of the proposed development will be connected to the existing sidewalk system on Commodore Joshua Barney Drive and Fort Lincoln Drive. The sidewalks and streets will be designed and constructed to DDOT standards. The sidewalks on these streets will be safer and more user-friendly with the removal of overgrown vegetation, as well as the integration of a complete pedestrian sidewalk system for the surrounding neighborhood. The orientation of the townhouses to the sidewalk also enhances the appearance and walkability of the pedestrian streetscape. Finally, more than two parking spaces per dwelling unit are provided, which is well above the parking ratio required in the R-5-D District.
 - Urban Design Element The proposed development will reflect the beneficial architectural qualities of the surrounding residential

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neighborhoods. In site planning and architectural detailing, the project will emphasize and help strengthen a neighborhood identity for this area. The project proposes an appropriate number and density of residential units, while allowing for sufficient private and public open space for the residents. The townhomes are oriented towards the street at the front, yet also have auto access through the rear alleys.

The area between Fort Lincoln Drive and Commodore Joshua Barney Drive currently lacks "a strong, positive physical identity." The addition of the proposed development to this area will strengthen the identity of this site. Attractive views of the side and front elevations of the townhomes as one walks or drives along either road will also provide passersby with a stronger sense of place than previously existed at this location.

- Generalized Land Use Map The Comprehensive Plan Generalized Land Use Map includes the Subject Property in the medium-density residential land use category. The medium-density residential land use category envisions multiple-unit housing, as well as low- and moderate-density housing, such as row houses. The proposed project is consistent with the Generalized Land Use Map designation of this site.
- Ward 5 Goals and Policies Fort Lincoln New Town is designated as a Housing Opportunity Area in the Comprehensive Plan. The project will provide a quality residential development that respects the physical aspects of the Subject Property. The site is surrounded by streets with existing infrastructure that can accommodate the proposed use and intensity of the development, and the location of this project advances the objectives of the Ward 5 Plan. The PUD will also preserve approximately 4.14 acres of open space on the site. Finally, the application will help connect existing and proposed housing, recreation, and commercial projects into a cohesive and thriving Fort Lincoln community.

39 In response to issues raised by the Commission members at the December 18, 2006 public hearing, the Applicant filed a post-hearing submission (on January 22, 2007), which included the following information:

- The anticipated base price of the market rate units will range from \$375,000 - \$600,000 depending on unit size. Individuals and families with annual incomes of \$85,000 - \$120,000, which is roughly equivalent to 90% - 120% of AMI, will be able to afford these units.

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- A revised summary of the Affordable Housing Program showing that the workforce affordable units will continue to be marketed to DCPS employees and the term of the program will be ten years,
- Updated community amenities package showing greater specificity with regard to the various components of the package and the increase in amenities to \$183,000,
- A revised stormwater management plan that incorporates various aspects of low-impact design/development,
- Landscape plans showing additional details regarding the location of alley trees, the deck configuration on the rear units, and the landscape treatment for the traffic median on Fort Lincoln Drive,
- A memorandum specifying who is responsible for each transportation improvement and
- Summary of architectural controls that includes a description of the duties of the Architectural Review Board for the Village at Washington Gateway Homeowners Association, which will be created for this Project

(Exhibit 42)

GOVERNMENT REPORTS

- 40 In its December 8, 2006 report, the Office of Planning ("OP") recommended that the Commission approve the project. OP determined that the project is consistent with the goals and objectives of the Comprehensive Plan by stabilizing the neighborhood and increasing the range of housing options within Fort Lincoln. OP noted that the proposal is largely consistent with zoning requirements and is, in fact, a less intense development than could be achieved as a matter-of-right. The development will include public – and some private – open space, parking well above ordinance requirements, and pedestrian amenities to link it to the future commercial development and the rest of the neighborhood. (Exhibit 28, p 10)
- 41 The December 8, 2006 report included the following recommendations for additional action by the Applicant
- Provide more details about the amenity package,
 - Require that the project not be a gated community,

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- Commit to demarcation of the tree save area, prior to the clearing and grading, through the placement of adequately designed and installed fencing,
 - Provide an executed First Source Agreement prior to final action,
 - Install an automatic, underground watering system for retaining wall terrace areas at the time of retaining wall construction, and
 - Work with the Department of Parks and Recreation on the alignment and design of the trail to the recreation center (Exhibit 28, p 1)
- 42 In its December 14, 2006 report, DDOT stated that it had no objection to the proposed PUD provided that all proposed traffic improvements are implemented (Exhibit 31 and 41) These improvements include
- Extend the median on Fort Lincoln Drive North to better define travel paths for vehicles coming out of Premium Driveway and Commodore Joshua Barney Drive,
 - Install traffic calming devices such as speed humps, speed tables, and/or raised crosswalks along Fort Lincoln Drive, particularly in the vicinity of the proposed crosswalk between the Village at Washington Gateway and the Washington Gateway Shopping Center,
 - Construct Commodore Joshua Barney Drive/Fort Lincoln Drive North/Premium Driveway as an all-way stop due to the unnatural configuration of the T-intersection (i.e., the major movement is not a through movement, it is a left-turn movement),
 - Construct the Village at Washington Gateway middle (full access) site driveway on Fort Lincoln Drive as an all-way stop including a stamped-concrete, raised speed table in order to prevent pedestrian/vehicle conflicts that would occur as the result of the proposed pedestrian crossing between the Village at Washington Gateway and the Washington Gateway Shopping Center, and
 - Landscape the medians along Fort Lincoln Drive between 33rd Place and Fort Lincoln Drive North, along Commodore Joshua Barney Drive, and along Fort Lincoln Drive North, pending DDOT approval
- 43 In order to identify the limits of the Army Corps Clean Water Act jurisdiction for the project, the U S Army Corps of Engineers conducted a field inspection of the Property and, by letter dated September 22, 2005, determined that there were "no

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Waters of the United States, including jurisdictional wetlands" within the area of review (Exhibit 22, Exhibit G)

- 44 The RLA Revitalization Corporation ("RLARC") submitted a letter in support of the PUD, dated December 18, 2006 RLARC Board of Directors approved the project at a public meeting on November 15, 2006 (Exhibit 33)

ANC REPORT

- 45 Based on the testimony of Timothy Thomas, ANC Commissioner of 5A08 and Vice Chair for ANC 5A, and by letter dated December 15, 2006, ANC 5A adopted a resolution to support the PUD on December 11, 2006 by a vote of 7-0 (Exhibit 32) On October 25, 2006, at the annual community meeting hosted by ANC 5A12, the project was approved (Tr December 18, 2006, p 135)

PARTIES AND PERSONS IN SUPPORT

- 46 Outgoing Ward 5 Councilmember Vincent Orange testified in support of the project, adding that he has been working on it for quite some time He looked forward to seeing both the proposed project and the retail development begin (Tr December 18, 2006, pp 9-11),
- 47 Incoming Ward 5 Councilmember Harry Thomas, Jr testified in support of the project and praised the Applicant for enhancing a gateway to Washington, D C In addition, he commented that the development in this area will generate 650 new jobs, which the neighborhood needs Furthermore, he believes that the housing will be second to none in the region and was impressed by both the Applicant's attention to detail and involvement with the community (Tr December 18, 2006, pp 66-69)

PARTIES AND PERSONS IN OPPOSITION

- 48 Robert E Boone, President of the Anacostia Watershed Society, and James F Connolly, Executive Director, both testified at the December 18, 2006 hearing that, although they are not against the project, they believe the proposed stormwater controls are obsolete technology (Tr December 18, 2006, pp 155, 156) They also would like to see a proposal that identifies temporary erosion and sediment control measures prior to the start of the project (Tr p 161) and considers the cumulative effects of all the nearby projects on the Anacostia River (Tr December 18, 2006, p 164)
- 49 Leroy Morgan, a resident of Ward 5, testified during the December 18, 2006 hearing Though not opposed to the project, Mr Morgan expressed his concern

regarding global warming and the need to consider the environment as the project moves forward (Tr December 18, 2006, p 166)

- 50 David Hilmy, teacher, environmental educator, and LID administrator, submitted a letter (Exhibit 30) outlining environmental concerns and suggesting policy recommendation for development. Mr. Hilmy also testified at the December 18, 2006 hearing regarding wetlands, open space, low-impact development, and the affordability of the homes for teachers (Tr December 18, 2006, pp 167-173). In addition, he submitted into the record copies of an EPA pamphlet and US DOD low-impact development handbook (Exhibits 39 and 40)

CONCLUSIONS OF LAW

- 1 Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide public benefits (11 DCMR § 2400 1) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience ” (11 DCMR §2400 2)
- 2 Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards. In this application, the Commission finds that the requested relief from the front, rear, and side yard requirements and the request to allow more than one principal structure on a single lot can be granted with no detriment to surrounding properties and without detriment to the zone plan or map.
- 3 The development of this PUD project will advance the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments that offer a variety of building types with more attractive and efficient overall planning and design than that achievable under matter-of-right development.
- 4 The Commission agrees with the written submissions and testimony of the Applicant’s representatives that the project will provide superior features that benefit the surrounding neighborhood to a greater extent than a matter-of-right project on the Subject Property would provide. The Commission finds that the mix of residential unit sizes and types, the large open recreational spaces, the pedestrian connections to the adjacent streets, the orientation of the residential units to front on adjacent public or private streets, the Community Green, and the use of landscaped retaining walls are appropriate project amenities and exemplify desirable features of urban design, architecture, and site planning.

- 5 The Commission determines that the provision of 30 workforce affordable units made available to DCPS employees is a project amenity. The Commission also concludes that the proposed community amenities package will provide appropriate benefits to members of the surrounding area and the District as a whole.
- 6 The Commission finds that the proposed low-impact development strategy proposed by the Applicant is an environmentally-sensitive approach to development on the Property and is a public benefit and project amenity. The Commission believes that the on- and off-site landscape elements of the project will enhance the attractiveness of the immediate area and are, therefore, deemed to be another amenity of the project.
- 7 The Commission agrees with the written submissions of the Applicant as well as the recommendations of OP that approval of the proposed project is not inconsistent with the Comprehensive Plan. The Commission finds that the project is consistent with and fosters numerous themes and elements of the Comprehensive Plan. Specifically, the Commission believes that the project furthers the themes of stabilizing the Fort Lincoln neighborhood, respecting and improving the physical character of the neighborhood, providing for diversity and overall social responsibilities, and preserving and ensuring community input. The Commission also finds that the proposed PUD is also consistent with the Fort Lincoln Urban Renewal Area Plan.
- 8 The Commission agrees with the conclusions of the Applicant's traffic and parking expert and DDOT that the proposed project will not create adverse traffic or parking impacts on the surrounding community. The Commission believes that the proposed traffic calming measures along Fort Lincoln Drive and the raised pedestrian crosswalk to the retail shopping center are important features of the project.
- 9 In accordance with D.C. Official Code § 1-309.10(d)(2001), the Commission must give great weight to the issues and concerns of the affected ANC. ANC 5C adopted a resolution of support for the project on October 11, 2006 (Exhibit 32).
- 10 Approval of the application will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
- 11 Notice of the public hearing was provided in accordance with the Zoning Regulations.

- 12 The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1
- 13 The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia ORDERS APPROVAL of the application for consolidated review of a planned unit development application for Parcel 173/145 in Square 4325. The approval of this PUD is subject to the following guidelines, conditions, and standards:

- 1 The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 22, 35, and 42 of the record, as modified by the guidelines, conditions, and standards of this Order.
- 2 The Applicant shall make the following financial contributions as part of the PUD project:
 - Thurgood Marshall School/Playground Construction – The Applicant shall design and construct a playground facility at the Thurgood Marshall School located within the Fort Lincoln community. As a second phase to the pre-school playground, the Applicant shall work with the school administration to design a playground on the land area that is now occupied by an obsolete cycling facility. The cost of this playground is approximately \$50,000.
 - Scoreboard for the Baseball Field within Fort Lincoln – The Applicant shall purchase and install an electronic scoreboard for the baseball field located within the park at Fort Lincoln. The estimated cost is approximately \$40,000.
 - Landscaping Package along Fort Lincoln Drive – The Applicant shall contribute \$40,000 for installation and maintenance of plantings in accordance with a landscaping plan for the medians located along Fort Lincoln Drive and 31st Place, N.E. adjacent to the Village at Washington Gateway property. The Applicant shall maintain this landscaping for a period of three years from the date of its installation. The Applicant shall also provide for enhanced landscaping and maintenance of the area at the corner of Fort Lincoln Drive and 33rd Place.

- Trail Connection to the Adjacent Fort Lincoln Recreation Center – The Applicant shall create an environmentally-sensitive trail that connects the proposed development to the adjacent Fort Lincoln Recreation Center. The trail shall be sited and constructed of materials that will minimize disruption to the wooded area between the project and the recreation center. The cost of the trail is approximately \$12,000.
- Fort Lincoln Community Day – The Applicant shall continue its sponsorship of the Fort Lincoln Community Day for an additional two years. The Fort Lincoln Community Day brings together residents of the greater Fort Lincoln neighborhood to celebrate their community and meet their neighbors. The Applicant will provide food, entertainment, and publicity for this event. The cost of this component of the amenity package is \$10,000 (\$5,000 per year).
- Fort Lincoln Resident Participation in the National Senior Olympics – The Applicant shall continue to send eligible Fort Lincoln residents to the National Senior Olympics. The National Senior Olympics will be held in Louisville, KY this year. The cost of this contribution is expected to be \$2,000.
- Publication of Community Newsletter – The Applicant shall underwrite the publishing of a community newsletter prepared by ANC 5A. The newsletter will be published two times per year. The community newsletter will provide information to residents of the Fort Lincoln community on various matters that affect their community and their everyday lives. The cost of this contribution is expected to be \$4,000.
- Renovation and Upgrade of the Theodore Hagans Cultural Center – The Applicant shall contribute \$25,000 for the renovation of space within the Theodore Hagans Cultural Center located within the Fort Lincoln community. These funds will be used to purchase and install exercise equipment, patio furniture, and furnishings and Hi-Definition televisions for the cultural center.

All of the above-referenced contributions shall be funded and the capital projects shall be completed (except for the three-year maintenance period for landscaped medians along Fort Lincoln Drive) within one year prior to the issuance of the first certificate of occupancy at the Village at Washington Gateway.

- 3 The Applicant shall offer 30 residential units to qualified DCPS employees through an established NCRC/DCPS program. The sale of the affordable units

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will be targeted to DCPS employees with annual household incomes (four-person family size) between \$54,180 and \$72,240 (60% to 80% of the Washington D C Metropolitan Area Median Income) The 30 workforce housing units offered will be the first and second floor units within the stacked ("2 over 2") townhouse condominium buildings The gross floor area for this unit type is approximately 1,600 square feet and these houses contain three bedrooms and two and one-half bathrooms Each unit has a one-car garage and a tandem driveway space

- 4 Landscaping of the medians in Fort Lincoln Drive shall be provided in accordance with the plans marked as Exhibit No 42 of the Record
- 5 The Applicant shall make an initial capital contribution to the reserve fund for the Village at Washington Gateway Homeowners Association This capital contribution will be \$250 per residential unit
- 6 The Village at Washington Gateway Homeowners Association's Bylaws shall be required to include an Architectural Review Board The Architectural Review Board shall regulate the external design and appearance of the PUD project in a manner so as to preserve and maintain the harmonious relationships among the structures on the Property and the Property's natural vegetation and topography
- 7 All fences and embellishments located on private property between the entrance to the individual units and the adjacent public space shall be similar to the plans and materials filed as Exhibit 22 and Exhibit 35
- 8 The Project shall include the low-impact development features specified in Exhibit 42, including the following features
 - Two large underground storm filter facilities located at the downstream end of this project, which will have integral sediment traps and provide water filtration through multiple media filled cartridges
 - Multiple bioretention facilities will be spread throughout the site, strategically situated where site grading, sufficient drainage, and planting space allow
 - Water quantity control will be provided off-site in a proposed regional stormwater management pond The regional stormwater management pond will provide peak reduction requirements to meet District environmental regulations for this site as well as adjoining properties
- 9 Prior to the issuance of a building permit for the project, the Applicant shall enter into a Memorandum of Understanding with the Department of Small and Local

Business Development in substantial conformance with the Memorandum of Understanding submitted as Exhibit K of Exhibit 22

- 10 Prior to the issuance of a building permit for the project, the Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services in substantial conformance with the First Source Agreement submitted as Exhibit K of Exhibit 22
- 11 The Applicant shall have flexibility with the design of the PUD in the following areas
 - To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways; mechanical rooms elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures,
 - To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials, and
 - To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings, and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit
- 12 The following roadway improvements shall be constructed by the Applicant by the issuance of the 100th Certificate of Occupancy for the PUD project
 - Close the existing median break located along 33rd Place and construct median improvements to provide additional storage for the left-turn lane onto South Dakota Avenue from 33rd Place,
 - Extend the median on Fort Lincoln Drive North to better define travel paths for vehicles coming out of Premium Driveway and Commodore Joshua Barney Drive,
 - Install traffic calming devices such as speed humps, speed tables, and/or raised crosswalks along Fort Lincoln Drive, particularly in the vicinity of the proposed crosswalk between the Village at Washington Gateway and the Washington Gateway Shopping Center,
 - Construct Commodore Joshua Barney Drive/Fort Lincoln Drive North/Premium Driveway as an all-way stop due to the unnatural

configuration of the T-intersection (i.e., the major movement is not a through movement, it is a left-turn movement),

- Construct the Village at Washington Gateway westernmost (full access) site driveway on Fort Lincoln Drive as an all-way stop including a stamped-concrete, raised speed table in order to prevent pedestrian/vehicle conflicts that would occur as the result of the proposed pedestrian crossing between the Village at Washington Gateway and the Washington Gateway Shopping Center, and
 - Landscape the medians along Fort Lincoln Drive between 33rd Place and Fort Lincoln Drive North, along Commodore Joshua Barney Drive, and along Fort Lincoln, pending DDOT approval
- 13 The PUD shall be valid for a period of two years from the effective date of Zoning Commission Order No 06-08. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1, the filing of the building permit application will vest the Zoning Commission Order.
- 14 The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of Department of Consumer and Regulatory Affairs ("DCRA"), and no building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof by the Zoning Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
- 15 The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the

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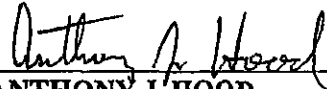
Applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order

For these reasons above, the Commission concludes that the Applicant has met the burden; it is thereby **ORDERED** that the application is **GRANTED**

On February 12, 2007, the Zoning Commission **APPROVED** the application by a vote of 4-0-1 (Carol J Mitten, Anthony J Hood, John G Parsons, and Michael G Turnbull to approve, Gregory N Jeffries not having participated, not voting)

This Order was **ADOPTED** by the Zoning Commission at its public meeting on April 9, 2007, by a vote of 4-0-1 (Anthony J Hood, John G Parsons, Carol J Mitten, and Michael G Turnbull to adopt, Gregory N Jeffries not having participated, not voting)

In accordance with the provisions of 11 DCMR 3028, this Order shall become final and effective upon publication in the *D C Register* on NOV 23 2007


ANTHONY J. HOOD
Chairman
Office of Zoning


JERRILY R. KRESS, FAIA
Director
Office of Zoning

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



Z.C. CASE NO.: 06-08

As Secretary to the Commission, I hereby certify that on NOV 19 2007 copies of this Z.C. Order No 06-08 were mailed first class, postage prepaid or sent by inter-office government mail to the following

- | | | | |
|---|--|----|--|
| 1 | <i>D C Register</i> | 6 | Councilmember Harry Thomas |
| 2 | Paul A. Tummonds, Jr, Esq
Pillsbury Winthrop Shaw Pittman
2300 N Street, N W
Washington, D C 20037-1128 | 7 | Office of Planning (Harriet Tregoning) |
| 3 | William Boston, Chair
ANC 5A
1322 Irving Street, NE
Washington, DC 20017 | 8. | Ken Laden, DDOT |
| 4 | Commissioner Robert King
ANC/SMD 5A12
3102 Apple Road, NE
Washington, DC 20018 | 9 | Zoning Administrator (Matt LeGrant) |
| 5 | Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N W.
Washington, D C 20004 | 10 | Jill Stern, Esq.
General Counsel - DCRA
941 North Capitol Street, N E
Suite 9400
Washington, D C 20002 |
| | | 11 | Office of the Attorney General
(Alan Bergstein) |

ATTESTED BY:

A handwritten signature in dark ink, appearing to read "Sharon S. Schellin", is written over a horizontal line.

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

441 4th Street, N W, Suite 200/210-S, Washington, D C 20001

Telephone (202) 727-6311

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

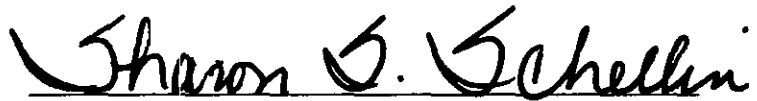


July 20, 2010

Re: Z.C. Case No. 06-08A – Fort Lincoln/Gateway Village, LLC

To Whom It May Concern

I hereby certify that attached hereto, and bearing my initials in red ink in the lower right corner of each page, is a true copy of Order No 06-08A – consisting of 4 pages – of the official record of the Zoning Commission for the District of Columbia in Z C Case No 06-08A


SHARON S SCHELLIN
SECRETARY TO THE ZONING COMMISSION

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

ZONING COMMISSION ORDER NO 06-08A

Z.C. Case No. 06-08A

Minor Modification of an Approved Planned Unit Development

(Square 4325, Parcel 173/145)

November 19, 2007

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public meeting on November 19, 2007. At the public meeting, the Commission approved an application from Fort Lincoln/Gateway Village, LLC (the "Applicant") for a minor modification to an approved planned unit development ("PUD") to approve minor modifications to the original PUD application.

FINDINGS OF FACT

The original PUD application, Z.C. Case No. 06-08, approved a 357-unit townhouse and townhouse condominium development consisting of three sizes of single-family townhouses (16-foot, 20-foot, and 24-foot-wide models) and "2 over 2" townhouse condominiums on approximately 23 acres of vacant land in Ward 5 and in the Fort Lincoln Urban Renewal Plan Area. The site plan in the original PUD application included a tot lot, a Mews Green, and a central Community Green that consisted of 1.18 acres of open space that is intended for non-organized, passive, and active recreational use. The original PUD application also required that 30 workforce affordable housing units be targeted for sale to District of Columbia Public School ("DCPS") employees. Z.C. Order No. 06-08 became effective on November 23, 2007.

On October 29, 2007, the Applicant filed an application to obtain approval of certain minor modifications to

- the footprints of the various unit sizes,
- provide the flexibility of a "loft" option in the 16-foot, 20-foot, and 24-foot-wide townhomes,
- provide the flexibility for the interior 24-foot-wide units to have the option of a detached garage, or a larger rear yard and a parking pad instead of the detached garage,
- provide the flexibility for the 20-foot-wide units to have the option to convert the interior parking garage to living space, and
- to increase the maximum height of the 16-foot-wide unit from 43 to 47 feet, to increase the maximum height of the 20-foot-wide unit from 42 to 47 feet, and to increase the maximum height of the 24-foot-wide unit from 40 to 42 feet.

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In addition, the modification application modified the overall site plan to include differing townhome widths in the various strings of townhomes throughout the site. The modification application did not request any change in the approved PUD's amenities package (including the amount of workforce housing), lot configuration, Low-Impact Development ("LID") components, Community Green and Mews Green, tot lot, or the total number of residential units.

On November 9, 2007, the Office of Planning ("OP") submitted a report to the Commission that concluded the proposed modifications to the approved PUD project are not significant and are not inconsistent with the intent of the original application and Zoning Commission approval. OP had no objection to the proposed modifications being processed as a minor modification.

ANC 5A did not take a formal position on the modification application. The ANC 5A Single Member District Commissioner (ANC/SMD 5A12) submitted a letter in support of the modification application.

At the November 19, 2007, public meeting, the Commission voted 4-0-1 to approve the modification application as a minor modification.

CONCLUSIONS OF LAW

The Commission notes that the previous calculation of the gross floor area for each townhome and townhome condominium inadvertently did not include the interior garages. Therefore, the total gross floor area in the original PUD application was 864,550 square feet and density of 0.86 FAR. The Commission notes that if all of the townhome purchasers exercise the option to include lofts, the total square footage of the project will be 820,575 square feet, for a total density of 0.82 FAR. The Commission finds that the proposed increase in height and the inclusion of the lofts within certain units will have no appreciable visual impact on the surrounding properties.

The Commission notes that the reduction in the footprint of these buildings has allowed the amount of green space in the front and/or backyards to increase. Approximately 80% of the additional green space will be added to the front yards of the units and approximately 20% of the additional green space will be provided in the rear yards. The total amount of greenspace on the property has increased from 331,690 square feet (33%) to 399,330 square feet (40%) as a result of the decreased building footprints. The overall average lot occupancy of the project has decreased from 58.64% to 47.31%.

Upon consideration of the record of this application, the Commission concludes that the Applicant's proposed modifications are minor and consistent with the intent of the previous PUD approval made in Z C Order No 06-08. The Commission concludes that the proposed modifications are in the best interest of the District of Columbia and are consistent with the intent and purpose of the Zoning Regulations and Zoning Act. The approval of the modifications

are not inconsistent with the Comprehensive Plan. The modifications are of such a minor nature that their consideration as a consent calendar item without public hearing is appropriate.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of this application for minor modification of the approved PUD project in Z C Order No 06-08. The approval of this minor modification application is subject to the following guidelines, conditions, and standards:

- 1 The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant and marked as Exhibits 22, 35, and 42 of the record in Z C Case No 06-08, as modified by the plans and materials submitted by the Applicant and marked as Exhibit 1 of Z C Case No 06-08A.
- 2 The interior 24-foot-wide units will have the option of a detached garage or a larger rear yard and a parking pad. The 20-foot-wide townhome unit purchasers will have the option to convert the interior parking garage to living space.
- 3 The 16-foot, 20-foot, and 24-foot-wide townhomes will have the option of providing a "loft" option.
- 4 All other provisions and conditions of Z C Order No 06-08 remain in effect.

Vote of the Zoning Commission taken at its public meeting on November 19, 2007 4-0-1 (Anthony J Hood, Michael G Turnbull, Curtis L Etherly, Jr, and John G Parsons to approve, Gregory N Jeffries, having recused himself, not voting)

In accordance with the provisions of 11 DCMR 3028.29, this Order shall become final and effective upon publication in the *D C Register* on **MAY 16 2008**



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning

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[REDACTED]
[REDACTED]

Z.C. CASE NO.: 06-08A

MAY 12 2008

As Secretary to the Commission, I hereby certify that on _____ copies of this Z C Order No were mailed first class, postage prepaid or sent by inter-office government mail to the following

- | | | | |
|---|--|----|---|
| 1 | <i>D C Register</i> | 6 | Councilmember Harry Thomas, Jr |
| 2 | Paul A Tummonds, Esq.
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N W
Washington, D C 20037-1128 | 7 | DDOT (Karina Ricks) |
| | | 8 | Zoning Administrator (Matthew LeGrant) |
| 3 | Angel Alston, Chair
ANC 5A
1322 Irving Street, NE
Washington, DC 20017 | 9 | Jill Stern, Esq
General Counsel - DCRA
941 North Capitol Street, N E
Suite 9400
Washington, D C 20002 |
| 4 | Commissioner Robert King
5A12
3102 Apple Road NE
Washington, DC 20018 | 10 | Office of the Attorney General (Alan Bergstein) |
| 5 | Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N W
Washington, D C 20004 | | |

ATTESTED BY:



Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



July 20, 2010

Re: Z.C. Case No. 06-08B – Fort Lincoln/Gateway Village, LLC

To Whom It May Concern

I hereby certify that attached hereto, and bearing my initials in red ink in the lower right corner of each page, is a true copy of Order No 06-08B – consisting of 7 pages – of the official record of the Zoning Commission for the District of Columbia in Z C Case No 06-08B

A handwritten signature in black ink that reads "Sharon S. Schellin". The signature is written in a cursive style with a horizontal line underneath the name.

SHARON S SCHELLIN
SECRETARY TO THE ZONING COMMISSION

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO 06-08B**

Z C. Case No 06-08B

**Modification of an Approved Consolidated Planned Unit Development and
Time Extension Request**

(Fort Lincoln/Gateway Village, LLC)

March 8, 2010

This Order pertains to two related requests by Fort Lincoln/Gateway Village, LLC (the "Applicant") The Applicant seeks approval of a modification to an approved planned unit development ("PUD") and an extension of the period of approval of the PUD project for the property known as Parcel 173/145 in Square 4325 (the "Property") The original PUD order was approved in Z C Case No 06-08, which became effective on November 23, 2007 The original PUD order was previously modified through a minor modification approved in Z C Case No 06-08A; which became effective on May 16, 2008

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on February 1, 2010 to consider the modification and time extension request The February 1, 2010 public hearing was conducted in accordance with the provisions of 11 DCMR § 3022 At the public hearing on February 1, 2010, the Commission took proposed action to approve the modification

The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter NCPC concluded that the proposed modification of the approved PUD is not inconsistent with the Comprehensive Plan for the National Capital, and found that the project is not consistent with the Fort Lincoln Urban Renewal Plan A complete discussion of the NCPC's comments and the Commission's response is set forth in Finding of Fact No 8

The Commission took final action to approve the modification and time extension requests on March 8, 2010

FINDINGS OF FACT

- 1 The original PUD application, Z C Case No 06-08, approved a 357-unit townhouse and townhouse condominium development consisting of three sizes of single-family townhouses (16-foot, 20-foot, and 24-foot-wide models) and "two-over-two" townhouse condominiums on approximately 23 acres of vacant land in Ward 5 and in the Fort Lincoln Urban Renewal Plan Area The site plan approved in the original PUD application included a tot lot, a Mews Green, and a central Community Green that consisted of 118 acres of open space that is intended for non-organized, passive and

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active recreational use The original PUD application also required that 30 workforce affordable housing units be targeted for sale to District of Columbia Public School ("DCPS") employees Z C Order No 06-08 became effective on November 23, 2007 (Exhibit 1)

- 2 On November 19, 2007, the Commission approved the Applicant's minor modification application (Z C Case No 06-08A), which authorized the following changes to the approved plans

- Changes to the footprints of the various unit sizes,
- Flexibility to provide a "loft" option in the 16-foot, 20-foot, and 24-foot-wide townhomes,
- Flexibility for the interior 24-foot-wide units to have the option of a detached garage, or a larger rear yard and a parking pad instead of the detached garage,
- Flexibility for the 20-foot-wide units to have the option to convert the interior parking garage to living space, and
- An increase to the maximum height of the 16-foot-wide units from 43 to 47 feet, an increase to the maximum height of the 20-foot-wide units from 42 to 47 feet, and an increase to the maximum height of the 24-foot-wide units from 40 to 42 feet

The minor modification application modified the overall site plan to include differing townhome widths in the various strings of townhomes throughout the site The minor modification application did not request any change in the approved PUD's amenities package (including the amount of workforce housing), lot configuration, Low Impact Development ("LID") components, Community Green and Mews Green, tot lot, or the total number of residential units Z C Order No 06-08A became effective on May 16, 2008 (Exhibit 1)

- 3 On October 15, 2009, the Applicant submitted an application requesting approval of a modification of the approved PUD and an extension of the period of approval of the original PUD project, pursuant to its consent calendar provisions The Applicant requested the following modifications to the project

- A reduction in the total number of residential units from 357 units to 334 units The 334 residential units will be allocated as follows 91 sixteen-foot-wide townhouses, 103 twenty-foot-wide townhouses, 28 twenty-two and twenty-four foot-wide townhouses, and 112 two-over-two condominium units,
- While the overall site plan proposed in this modification application maintains the general configuration approved in ZC Order No 06-08A, the Applicant requests a return to the original PUD's design scheme of having consistent townhouse widths in each string of townhouses,

- The total amount of green space proposed in this modification application is 396,628 square feet (39.5% of the Property), an increase of 64,938 square feet (6.7%) of greenspace from the originally approved PUD, and
- The Applicant's time extension request seeks approval to develop the project in three phases. A building permit for the first phase of development, roughly the eastern third of the Property, will be applied for within one year of the date of approval of this modification application. A building permit for the second phase of development, the middle portion of the Property, will be applied for within three years of the date of approval of this modification application. A building permit for the third phase of development, the western third of the Property, will be applied for within five years of the date of approval of this modification application. Approval of this request requires the Commission to extend the time of validity of the original PUD order, which would otherwise expire November 23, 2009.

The proposed modifications do not impact the approved PUD's amenities package (including the amount of workforce affordable housing), building heights (as approved in Z C Order No 06-08A), Low-Impact Development ("LID") components, Community Green and Mews Green, or the tot lot (Exhibit 1)

- 4 At the Commission's November 9, 2009 public meeting, the Commission removed the minor modification request from its consent calendar, and instead set it down for a public hearing. The Commission noted that the hearing would be a limited scope hearing. The Commissioners requested specific information regarding the evolution of the plans from the initial approval to the second modification application and information on the need for the proposed phasing of the project and time period of approval. (Transcript of Z C Public Meeting, November 9, 2009, pp 31-35) The public hearing was subsequently scheduled for February 1, 2010.
- 5 In its January 22, 2009 report to the Zoning Commission, the Office of Planning ("OP") recommended approval of the PUD modification and time extension requests. OP concluded that the requested modifications and development phasing would be consistent with the intent of the previous approvals, Z C Order Nos 06-08 and 06-08A, and not inconsistent with the Comprehensive Plan. The OP Report noted that "the applicant's phasing request is based on their assessment of the market's ability to absorb the number of rowhouses contained in this project. OP does not object to phasing on those grounds and notes that a project of this size would likely take a number of years to complete in any event."
- 6 At the February 1, 2010 public hearing, the Applicant provided testimony as to the need for the time extension request and the proposed phasing of the project. Will Collins, on behalf of the Applicant, noted that the proposed phasing plan allows the Applicant to develop the project and construct the project's infrastructure in a reasonable fashion, as

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well as react to current market conditions in terms of sales absorption. Mr. Collins noted that the project will now be internally financed with the help of Ryan Homes, the builder of the proposed townhomes, and no longer dependent on third party financing. Mr. Collins noted that in order for this project to proceed, it is critical that the cost of the infrastructure be absorbed in phases. The cost of the first phase of infrastructure is expected to be approximately \$4 million, the second phase is expected to be \$4 million, and the third phase is expected to be approximately \$8 million. Mr. Collins testified that based on current economic conditions, it would be too difficult to try and finance all of these infrastructure costs at one time. (Testimony of W. Collins, Transcript of February 1, 2010 Public Hearing, pp. 9-10, 18-20.)

7. Advisory Neighborhood Commission ("ANC") ANC 5A did not take a formal position on the modification and time extension request application. The ANC Single Member District ("ANC/SMD") Commissioner for ANC/SMD 5A12 submitted a letter in support of the modification application.
8. NCPC, in an action dated March 4, 2010 and forwarded to the Commission on March 8, 2010, commented that
 - The proposed modification to the PUD for the Village at Washington Gateway in the Fort Lincoln Urban Renewal Area is not inconsistent with the Comprehensive Plan for the National Capital, and
 - The project is not consistent with the Fort Lincoln Urban Renewal Area ("PLAN"). The PLAN needs to be changed to address a land use discrepancy. A change would allow for the portion of the site that is currently identified as office/warehouse to be designated as residential. The District will need to submit this change according to D.C. Official Code § 2-1225.31, which sets forth the procedure for changing urban renewal plans. NCPC supports this change.

At the Commission's March 8, 2010 public meeting, the Commission considered the NCPC comments. The Commission noted that NCPC's comment that the application was not inconsistent with the Comprehensive Plan favored approval of the application. With respect to NCPC's comment that the project is not consistent with the PLAN, and that the PLAN needs to be changed to address a land-use discrepancy, the Commission noted that it lacked the authority to modify the PLAN. Only the District's Mayor, with the consent of the Council, has the authority to make such a modification.

9. At the March 8, 2010 public meeting, the Commission voted to approve the PUD modification application.

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CONCLUSIONS OF LAW

The Commission notes that the reduction in the overall number of units is primarily the result of the reduction in the number of two-over-two condominium units (a reduction of 62 of these units). The Commission relies on the Applicant's belief that the reduced number of two-over-two units is more appropriate given the expected market demand for this type of unit. The Commission notes that the total amount of greenspace proposed in this modification application is greater than the amount of greenspace approved in the original PUD.

Upon consideration of the record of this application, the Commission concludes that the Applicant's proposed modifications to the approved plans are consistent with the intent of the previous PUD approvals made in Z.C. Order Nos 06-08 and 06-08A. The Commission concludes that the proposed modifications are in the best interest of the District of Columbia and are consistent with the intent and purpose of the Zoning Regulations and Zoning Act. The approval of the modifications are not inconsistent with the Comprehensive Plan.

The Commission may extend the time period of an approved PUD provided the requirements of 11 DCMR §§ 2408.10 and 2408.11 are satisfied. Section 2408.10(a) requires that the applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. The Applicant served the only party to the original PUD application, ANC 5A, when it filed the PUD modification and time extension application on October 15, 2009. ANC 5A has had more than 30 days to respond to this application. Section 2408.10(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD. As noted above, the Commission finds that approval of the proposed modifications to the approved plans are consistent with the intent of the previous PUD approvals made in Z.C. Order Nos 06-08 and 06-08A. The Commission similarly concludes that extending the time period of approval is appropriate as there are no substantial changes in the material facts that the Commission relied on in approving the original PUD application. Finally, § 2408.10(c) requires that the applicant demonstrate with substantial evidence that there is a good cause for the proposed extension, as provided in § 2408.11. The Applicant's satisfaction of § 2408.11 is addressed in the following paragraph.

Pursuant to § 2408.11, an extension of validity of a PUD may be granted if the applicant has demonstrated with substantial evidence one or more of the following criteria:

- (a) An inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond the applicant's reasonable control,
- (b) An inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control, or

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- (c) The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the PUD order

After making diligent efforts, the Applicant was unable to obtain financing for the entire project and therefore needs to reconfigure the project to obtain financing in increments. The need to proceed with the project in phases meant that the Applicant could not apply for a building permit based upon the original order, and needed the Commission's approval of the phasing proposed. The Commission also finds the testimony of the Applicant's representative, and the report of OP, persuasive that the proposed time extension and phasing plan is necessary to allow the housing market to adequately absorb the large number of residential units proposed in this project. For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11 DCMR § 2408 11(a).

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D C Official Code § 6-623 04), to give great weight to OP recommendations (as discussed in paragraph 5 above). OP recommended approval of the modification and time extension request and the Commission concurs in its recommendation.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of this application for a time extension and modification of the approved PUD project in Z C Order Nos 06-08 and 06-08A. The approval of this modification is subject to the following guidelines, conditions, and standards, which supersede those listed in Z C Order No 06-08A.

- 1 The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 22, 35, and 42 of the record in Z C Case No 06-08, as modified by the plans and materials submitted by the Applicant marked as Exhibit 1 of Z C Case No 06-08B.
- 2 The interior 22- and 24-foot-wide townhouse units will have the option of a detached garage or a larger rear yard and a parking pad.
- 3 All other provisions and conditions of Z C Order 06-08 remain in effect.

In addition, the PUD Project shall be subject to the following timing and phasing terms, which replace Condition 13 of the Z C Order No 06-08.

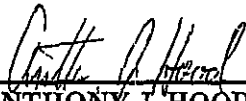
- 13 The Applicant shall file a building permit application for the first phase of development within one year of the date of approval of this Order. Construction of the first phase shall start within two years of the date of approval of this Order. A building permit for the

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second phase of development shall be applied for within three years of the date of approval of this Order Construction of the second phase shall start within four years of the date of approval of this Order A building permit for the third phase of development shall be applied for within five years of the date of approval of this Order Construction of the third phase shall start within six years of the date of approval of this Order

On March 8, 2010, upon motion by the Chairman, as seconded by Commissioner Schlater, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of 5-0-0 (Anthony J Hood, William W Keating, III, Konrad W Schlater, Peter G May, and Michael G Turnbull to approve)

In accordance with the provisions of 11 DCMR 3028.29, this Order shall become final and effective upon publication in the *D C Register* on April 30, 2010



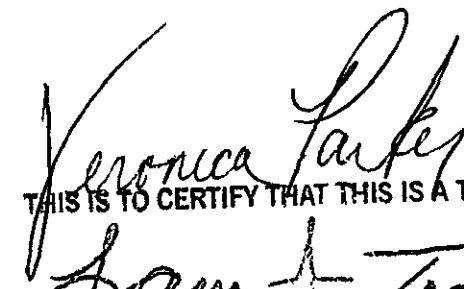
ANTHONY J HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L WEINBAUM
DIRECTOR
OFFICE OF ZONING

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Recorder of Deeds, D.C.

JUN 27 2011