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May 7, 2013

**BY HAND DELIVERY**

Ms. Sharon Schellin  
Office of Zoning  
441 4th Street, NW, Room 210  
Washington, DC 20001

Re: Fort Lincoln/Gateway Village LLC (the "Applicant") - Proposed  
Minor Modification of Condition No. 2 of Zoning Commission  
Order No. 06-08C

Dear Ms. Schellin:

The Zoning Commission has issued four Orders (ZC Order Nos. 06-08, 06-08A, 06-08B and 06-08C) which have guided the development and construction of 334 residential units (consisting of townhouses and townhouse condominiums) in the Fort Lincoln neighborhood of Ward 5. This community is known as the Villages at Washington Gateway. ZC Order No. 06-08C (which became effective on October 12, 2012) listed all of the conditions of approval for the Villages at Washington Gateway project. A copy of ZC Order No. 06-08C is attached.

Condition No. 2 of ZC Order No. 06-08C lists the seven separate financial contributions that the Applicant was required to make within one year of the issuance of the first certificate of occupancy at the Villages at Washington Gateway. The first certificate of occupancy was issued on April 23, 2012. The Applicant has satisfied six of those conditions and is seeking to modify only one contribution.

**Modification to Condition No. 2 of Zoning Commission Order No. 06-08C**

The only requirement of Condition No. 2 of ZC Order No. 06-08C which the Applicant desires to modify currently reads as follows:

Renovation and Upgrade of the Theodore Hagans Cultural Center – The Applicant will make a financial contribution of \$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.

ZONING COMMISSION  
District of Columbia

The District of Columbia Public School system recently decided to close the Thurgood Marshall School. Discussions in the Ft. Lincoln community, at the City Council, and in the Gray Administration have raised the possibility of turning the Thurgood Marshall School facilities (which include an indoor Olympic sized swimming pool) into a community center. The existing Theodore Hagans Cultural Center is small and less accessible than the Thurgood Marshall School. In addition, the Cultural Center is so lightly used at this point that the DC Department of Parks and Recreation has cut back staffing and has ceased making it available for evening use. As a result of these changed circumstances, the sentiment in the Ft. Lincoln community (and echoed by the Ward 5 Councilmember) is that the previous contribution for the renovation and upgrade of the Theodore Hagans Cultural Center would be better used to help further the creation of a Thurgood Marshall Community Center, located within the existing Thurgood Marshall School facilities.

Therefore, the Applicant requests that the financial contribution of \$25,000 that was previously programmed for renovations and upgrades to the Theodore Hagans Cultural Center should instead be used to help turn the Thurgood Marshall School facilities into the Thurgood Marshall Community Center. In addition, the time period in which this financial contribution is required to be made should be extended for an additional two years. That is, the Applicant shall be required to make the expected contribution of \$25,000 by April 23, 2015.

#### **Request for Placement on Consent Calendar**

The Applicant requests that this minor modification be placed on the Zoning Commission's Consent Calendar, and reviewed in accordance with 11 DCMR §3030 et seq. As discussed in this submission, the proposed modification to the approved PUD project satisfies the standards of 11 DCMR §3030.13. The proposed minor modification is consistent with the intent of the Zoning Commission in approving the original PUD and approving the minor modification will not substantially impair the intent, purpose, or integrity of the zone plan.

The Applicant notes that the only party to the original application and previous modification applications was Advisory Neighborhood Commission ("ANC") 5A. As a result of the ANC redistricting that occurred based on the 2010 Census Data, the property is now located in ANC 5C. The ANC 5C Single Member District Commissioner who represents the area, Bob King (ANC 5C03), has been the Single Member District Commissioner throughout the initial PUD application and each modification application. The Applicant has discussed this modification request with Commissioner King.

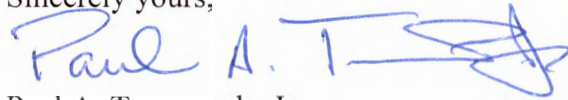
Ms. Sharon Schellin

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The Applicant requests that the Zoning Commission review this minor modification request at its earliest convenience. If you have any questions or comments regarding the proposed minor modification, please feel free to contact the undersigned.

Sincerely yours,

A handwritten signature in blue ink that reads "Paul A. Tummonds, Jr." with a stylized flourish at the end.

Paul A. Tummonds, Jr.

Encl.

cc: See attached Certificate of Service

**CERTIFICATE OF SERVICE**

I hereby certify that I sent a copy of the foregoing document to the following addresses on May 7, 2013 by first class mail:

Matt Jesick  
Office of Planning  
1100 4<sup>th</sup> Street, SW  
Suite E650  
Washington, DC 20024

ANC 5C  
P.O. Box 26183  
Washington, DC 20003

Bob King  
ANC 5C03  
3102 Apple Road, NE  
Washington, DC 20018

A handwritten signature in blue ink, appearing to read "Paul Tummonds", is written over a horizontal line.

Paul Tummonds

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



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

**Z.C. Case No. 06-08C**

**Fort Lincoln/Gateway Village, LLC**

**(Modification of an Approved Consolidated Planned Unit Development @ Square 4325)  
September 10, 2012**

This Order pertains to a request by Fort Lincoln/Gateway Village, LLC ("Applicant"). The Applicant seeks approval of a modification to an approved planned unit development ("PUD") for the property known as Parcel 173/145 in Square 4325 ("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 modification approved in Z.C. Case No. 06-08A, which became effective on May 16, 2008, and a modification and time extension request approved in Z.C. Case No. 06-08B, which became effective on April 30, 2010.

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on July 19, 2012 to consider the modification request. The July 19, 2012 public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

At a public meeting held July 30, 2012, the Commission voted to refer the application to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter.

The Commission took final action to approve the modification request on September 10, 2012.

**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 "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 approved 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. (Exhibit [Ex.] 1.)
2. On November 19, 2007, the Commission approved the Applicant's 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;
  - 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; and
  - A modification to 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.
3. On April 30, 2010, the Commission approved a modification of the approved PUD and an extension of the period of approval of the original PUD project in Z.C. Case No. 06-08B. The Commission approved the following modifications to the project:
- A reduction in the total number of residential units from 357 units to 334 units;
  - A return to the original PUD's design scheme of having consistent townhouse widths in each string of townhouses;
  - An increase in the amount of overall greenspace included in the project; and
  - A three-phase development timeline and an extension of the time period of PUD of PUD approval with the requirement that a building permit application for the first phase of development be filed within one year from April 30, 2010 and that construction commence on the first phase of development within two years from April 30, 2010.
4. On March 15, 2012, the Applicant submitted an application requesting approval of a modification of the approved PUD, pursuant to its consent calendar provisions. The Applicant requested the following modifications to the project:
- a) The Applicant requested a modification to Condition No. 3 of Z.C. Order No. 06-08 to allow the workforce affordable housing units to be made available to the general public, and not limited to only DCPS employees;
  - b) The Applicant requested that the Commission grant it the following flexibility with regard to the workforce affordable housing units:

- To use either of the “2 over 2” condominium unit models (the two-story, three bedroom and two and one-half bathroom unit; or the one-story, two bedroom and two bathroom unit) as the 30 workforce affordable housing units, assuming that the homebuyers meet the approved income levels for the workforce units;
  - To satisfy the 30 workforce affordable housing units with the 16-foot townhome, if it is unable to effectively market the condominium product as a workforce housing unit; and
  - That the 10 year restriction on the sale of the workforce units be removed; and
- c) The Applicant requested the flexibility to replace some or all of the “2 over 2” condominium units approved for Phases II and III, with the approved 16-foot, 20-foot, and 24/22-foot townhome types. This will result in the approved PUD project consisting of a range (314-334) of residential units.
5. The Office of Planning (“OP”) in a setdown report dated March 30, 2012 did not object to most of the requests in the Applicant’s initial application but suggested that the Applicant commit to provide a significant number of family-sized workforce units, that the Commission deny the request to remove the 10-year affordability commitment on the workforce units, and that the Commission set this case down for a public hearing. (Ex. 4.)
6. At the Commission’s April 9, 2012 public meeting, the Commission removed the modification request from its consent calendar, and instead set it down for a public hearing. The public hearing was subsequently scheduled for July 19, 2012.
7. In a pre-hearing submission dated April 30, 2012, the Applicant made the following changes to the PUD modification application:
- In response to comments from OP that it would prefer that a majority of the workforce units be sized to accommodate larger families, the Applicant agreed to a condition that at least 50% of the workforce units shall be of unit types that have three bedroom floor plans; and
  - In response to OP’s objection to the removal of the 10 year restriction on the sale of the workforce affordable units, the Applicant agreed to remove that modification request and maintain the 10-year income restriction on the affordable workforce units. (Ex. 5.)
8. In a supplemental statement dated June 20, 2012, the Applicant made the following changes to the PUD modification application:
- The Applicant proposed that all of the workforce affordable units will be the 16 foot wide townhome model and that, in response to the OP request that the



Applicant evenly distribute the workforce units, the Applicant agreed to a condition that workforce units will not constitute more than 50% of the units in any “stick” of 16 foot townhomes. (Ex. 13.)

9. The OP final report, filed July 9, 2012, recommended approval of the PUD modification request, but suggested refinements to the application, including language regarding the unit pricing, the addition of an extra workforce unit to recover lost workforce floor area, and a commitment to a greater geographical distribution of workforce units. Specifically, OP had no objection to the request to allow the workforce units to be marketed to the general public. OP did not object to offering the 16-foot townhome model as a workforce affordable unit, but recommended that the Order contain language noting that reconfiguration to a three bedroom unit would not increase the cost of the unit. OP also noted that if all of the 30 workforce units were 16-foot townhomes the total amount of square footage of workforce units would be reduced by 2,760 square feet. Therefore, OP stated that “The Applicant should consider adding a 31<sup>st</sup> workforce unit to recover some of that lost floor area.” Finally, OP did not object to replacement of the approved stacked condominium units with standard rowhouses. OP noted that 314 residential units on the property would not be inconsistent with the Comprehensive Plan’s Future Land Use Map, which calls for moderate density residential use on the entire site. (Ex. 14.)
10. On July 11, 2012, the District Department of Transportation (“DDOT”) filed a report in this case as well as a request for a waiver to file the report late. The Commission granted the waiver and accepted the DDOT report. The DDOT report noted that the proposed modifications by the Applicant do not substantially alter the site plans, site access, parking spaces or number of dwelling units. DDOT concluded that it had no objections to the requested modifications. (Ex. 15.)
11. At the public hearing on July 19, 2012, the Applicant testified that it was amending the request made in the June 20, 2012 Supplemental Statement and desired to retain the flexibility to use either of the “2 over 2” condominium units or the 16-foot-wide townhome model to satisfy the workforce affordable housing requirement. In response to the OP comment regarding the pricing of the 16-foot-wide affordable townhouse unit, the Applicant’s representative noted that the 16-foot-wide townhome model could be a two or three bedroom unit and that the price of the 16-foot-wide townhome would remain the same, regardless of whether a two or three bedroom model was chosen. The Applicant’s representative also noted that the Applicant agreed to OP’s desire that less than 50% of any one stick of townhouses will be reserved as workforce affordable units.
12. At the public hearing on July 19, 2012, five members of the public testified in opposition to the PUD modification application. These witnesses opposed the Applicant’s request to include the 16-foot-wide townhome model as a possible workforce affordable unit. These witnesses (who were purchasers of other 16-foot-wide townhome models in the project) expressed concern that the value of their townhomes would be diminished if the 16-foot-wide townhome model was permitted to be sold as a workforce affordable unit.



13. In response to questions raised at the July 19, 2012 public hearing, the Applicant filed a post-hearing submission on July 25, 2012 which provided additional details on the 10-year period of affordability for the workforce affordable units and provided new language as to when the 10-year period of affordability will commence. The post-hearing submission identified Finding of Fact No. 29 of Z.C. Order No. 06-08 which stated, in pertinent part:

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.

The post-hearing submission noted that it was the understanding of the Applicant and the District of Columbia Department of Housing and Community Development (“DHCD”) that the period of affordability for each of the workforce affordable housing units is a total of 10 years, and that the 10-year time period does not “re-start” if the unit is sold before the expiration of the 10-year time period. In the post-hearing submission, the Applicant proposed that the 10-year period of affordability will start to run from the date of the sale of the affordable unit. (Ex. 22)

14. Thus, the Applicant’s ultimate modification request consists of the following:
- A modification to Condition No. 3 of Z.C. Order No. 06-08 to allow the workforce affordable housing units to be made available to the general public, and not limited to only DCPS employees;
  - Flexibility to satisfy the 30 workforce affordable housing unit requirement with the 16-foot townhome model (with less than 50% of the individual townhomes in a stick of 16-foot townhomes dedicated as workforce affordable units), or with either of the “2 over 2” condominium unit models (the two-story, three bedroom and two and one-half bathroom unit, or the one-story, two bedroom and two bathroom unit);
  - Flexibility to replace some or all of the “2 over 2” condominium units approved for Phases II and III with the approved 16-foot and 24/22-foot townhouse types; and
  - Providing that the 10-year period of affordability commences on the date that each unit is first sold, rather than on the date the C of O for the building is issued. This latter start date was never identified in a condition in the original order, but was mentioned only in Finding of Fact No. 29. The modified starting point has been added to Condition No. 3 of this order.

(Ex. 18, 22 in Z.C. Case No. 06-08.)

15. Advisory Neighborhood Commission ("ANC") ANC 5A, by letter dated July 12, 2012, stated that on July 2, 2012, ANC 5A voted to support the PUD modification application. (Ex. 21.)
16. At the July 30, 2012 public meeting the Commission took proposed action to approve the PUD modification application. At the September 10, 2012 public meeting the Commission took final action to approve the PUD modification application.
17. The Commission finds that the Applicant has diligently tried to market the workforce affordable housing units to DCPS and then DC Government employees and has not been able to find any interest in these units from these pools of potential buyers. Therefore, the Commission believes that it is entirely appropriate to allow the Applicant to market the workforce affordable units to anyone that meets the income threshold requirements established in the original PUD.
18. The Commission also believes that it is appropriate to grant the flexibility requested by the Applicant with regard to the unit types that may be used to satisfy the workforce affordable housing component of the PUD. The Applicant has adequately shown that there is likely to be a market for the workforce affordable housing units with both types of "2 over 2" condominium units and with the 16-foot-wide townhome model. The Commission agrees with OP's request that reconfiguration of the 16-foot-wide townhome to a three bedroom unit should not increase the cost of the unit.
19. The Commission finds that the Applicant's proposal that less than 50% of the units in any stick of townhouse units will be reserved as workforce affordable units to be an appropriate means to assure that the workforce units are adequately distributed throughout all phases and areas of the PUD project. The Commission agrees that the commencement date of the 10- year affordability period should be from the date of the initial sale of the affordable unit is appropriate rather than from the issuance date of the certificate of occupancy. The Commission agrees with the Applicant and DHCD that the 10-year period does not "re-start" if the unit is sold before the expiration of the 10-year time period.
20. The Commission also finds that granting the Applicant the flexibility to replace some, or all, of the "2 over 2" stacked condominium units in phases II and III of the PUD project is appropriate. The Commission agrees with OP and the Applicant that approval of a range of residential units (314-334) is not inconsistent with the Comprehensive Plan's designation of moderate density residential for this property.

### **CONCLUSIONS OF LAW**

Upon consideration of the record of this application, the Commission concludes that the Applicant's proposed modifications to the approved plans and conditions are consistent with the intent of the previous PUD approvals made in Z.C. Order Nos. 06-08, 06-08A, and 06-08B. The

- Thurgood Marshall School/Playground Construction – The Applicant will 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, which is being constructed by Fort Lincoln New Town Corporation and The Concordia Group, the Applicant will work with the school administration to design a playground on the land area which 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 will 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 planting and maintenance of a landscaping plan for the medians located along Fort Lincoln Drive and 31<sup>st</sup> Place, NE adjacent to the Village at Washington Gateway property. The applicant will agree to maintain this landscaping for a period of three years from the date of its installation. The Applicant will also provide for enhanced landscaping and maintenance of the area at the corner of Fort Lincoln Drive and 33<sup>rd</sup> Place;
- Trail Connection to the Adjacent Fort Lincoln Recreation Center – The Applicant will create an environmentally sensitive trail that connects the proposed development to the adjacent Fort Lincoln Recreation Center. The trail will 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 Resident Participation in the National Senior Olympics – The Applicant will 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 will 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; and
- Renovation and Upgrade of the Theodore Hagans Cultural Center – The Applicant will make a financial contribution of \$25,000 for the renovation of space within the Theodore Hagans Cultural Center located within the Fort Lincoln community.

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 modification application is not inconsistent with the Comprehensive Plan.

The project benefits and amenities, as modified, remain reasonable tradeoffs for the requested development flexibility.

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. OP recommended approval of the modification request and the Commission concurs in its recommendation except with regard to the OP request that the Applicant consider adding a 31<sup>st</sup> workforce affordable unit. The Applicant has not offered the additional unit and since OP did not request the Commission to require it there is nothing more than the Commission needs to address on this issue.

The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (DC Law 1-21, D.C. Official Code § 1-309.10(d)), to give “great weight” to the issues and concerns of the affected ANC. As reflected in the Findings of Fact, ANC 5A voted to support the application. By virtue of the preceding discussion, the Commission has accorded ANC 5A the great weight to which it is entitled.

### **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 modification of the approved PUD project in Z.C. Order Nos. 06-08, 06-08A, and 06-08B. The approval of this Planned Unit Development, as modified, is subject to the following guidelines, conditions, and standards, which supersede those listed in Z.C. Order Nos. 06-08, 06-08A, and 06-08B<sup>1</sup>:

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, and as modified by the materials submitted by the Applicant marked as Exhibit 1 of Z.C. Case No. 06-08C. The PUD project will include a range of 314-334 residential units.
2. The Applicant will make the following financial contributions as part of the PUD project:

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<sup>1</sup> Conditions 1, 3, and 13 are modified through this order. Conditions 2, 4-12, 14-15 of Z.C. Order 06-08 remain in effect and are listed as conditions in this order, except that the requirement that the Applicant continue its sponsorship of Fort Lincoln Community Day for two additional years from the effective date of Z.C. Order 06-08 has been deleted since that time period has passed.

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 will 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 as workforce affordable housing units to the general public with annual household incomes of 60%-80% of the Washington, D.C. Metropolitan Area Median Income. The 30 workforce affordable housing units will be either type of the approved "2 over 2" condominium units (the two-story, three bedroom and two and one-half bathroom unit; or the one-story, two bedroom and two bathroom unit) or the 16-foot-wide townhome. At least 50% of the workforce affordable units shall be of unit types that have three bedroom floor plans. If the 16-foot-wide townhome is sold as a workforce affordable housing unit, the price of such a unit will be the same regardless of whether the purchaser chooses a two bedroom or a three bedroom unit. Less than 50% of the units in any stick of townhouses will be reserved for workforce affordable housing units. These 30 housing units shall be reserved as for workforce affordable housing units for a period of 10 years, commencing on the date that the unit is first sold. Upon expiration of the 10-year term, these units may be sold at market rates.
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 of Z.C. Case No. 06-08.
5. The Applicant will 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 will 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 of the record of Z.C. Case No. 06-08.
8. The Project shall include the low-impact development features specified in Exhibit 42 of the record in Z.C. Case No. 06-08, 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; and
  - 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 DC 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 Office of Local Business Development in substantial conformance with the Memorandum of Understanding submitted as Exhibit K of Exhibit 22 of the record of Z.C. Case No. 06-08.
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 of the record of Z.C. Case No. 06-08.
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 will be constructed by the Applicant by the issuance of the 100<sup>th</sup> Certificate of Occupancy for the PUD project.



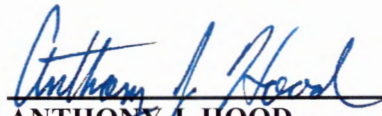
- Close the existing median break located along 33<sup>rd</sup> Place and constructing median improvements to provide additional storage for the left-turn lane onto South Dakota Avenue from 33<sup>rd</sup> Place;
  - Extend the median on Fort Lincoln Drive North to better define travel paths for vehicles 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 retail development;
  - 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 control pedestrian/vehicle conflicts that would occur as the result of the proposed pedestrian crossing between the Village at Washington Gateway and the Washington Gateway retail development; and
  - Landscape the medians along Fort Lincoln Drive between 33<sup>rd</sup> Place and Fort Lincoln Drive North, along Commodore Joshua Barney Drive, and along Fort Lincoln, pending DDOT approval.
13. A building permit for the second phase of development shall be applied for by April 30, 2013. Construction of the second phase shall start by April 30, 2014. A building permit for the third phase of development shall be applied for by April 30, 2015. Construction of the third phase shall start by April 30, 2016.
14. 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 constrict 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. 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, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the

above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On July 30, 2012, upon the motion of Chairman Hood , as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to approve; 3<sup>rd</sup> Mayoral appointee position vacant, not voting.)

On September 10, 2012, upon the motion of Chairman Hood, as seconded by Vice Chairman Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1**(Anthony J. Hood, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to adopt; 3<sup>rd</sup> Mayoral appointee position vacant, 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 October 12, 2012.

  
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ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION  
\_\_\_\_\_  
SARA A. BARDIN  
DIRECTOR  
OFFICE OF ZONING