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July 21, 2009

VIA HAND DELIVERY

Zoning Commission for the
District of Columbia
441 4th Street, N.W.
Suite 210-S
Washington, DC 20001

**Re: Response to ANC 3E Submission: Request for Extension of Time, Zoning
Commission Order No. 06-31 and 06-31A (5220 Wisconsin Avenue, N.W.)
ZC Case No. 06-31B**

Dear Members of the Commission:

On behalf of the John Akridge Development Company ("Applicant"), the Applicant in the above-referenced case, this letter is in response to Advisory Neighborhood Commission 3E's ("ANC 3E") resolution which was filed with the Zoning Commission on July 17, 2009. ANC 3E requests that the Zoning Commission deny the Applicant's application for an extension of time (the "Application") until after such time as the Applicant agrees to "work with the ANC" to renegotiate the subject matter, scope and timing of the public benefits and project amenities approved by the Commission in Order No. 06-31. ANC 3E focuses its objection on that portion of the amenities and benefits that includes cash payments totaling \$170,000 to be made as follows: \$100,000 to Janney Elementary School PTA for facility and program improvements; \$30,000 to IONA Senior Services for expanded services of the IONA Bus; and \$40,000 to the District Department of Transportation for a dedicated transportation consultant (collectively defined by ANC 3E as the "Benefits"). ANC 3E states that these Benefits were a material fact of the original PUD approval, and the approval of the Application will result in a substantial change in this material fact.

The Applicant disagrees. The Benefits identified by ANC 3E are only one portion of a substantial package of the public benefits and project amenities offered by the Applicant and accepted by the Commission. As is set forth in detail in Finding No. 85 of Order No. 06-31, the project incorporates a significant number of public benefits and project amenities, including the following: housing and affordable housing, including a \$500,000 contribution to the Lisner Home; LEED certification and agreement to post a security to ensure achievement of this amenity; enhancements to the façade of the PEPCO substation; above-standard streetscape treatments; transportation management measurements including two car-sharing spaces; a construction management plan; and the cash payments defined above as the Benefits. In Finding No. 90, the Commission found that the relative value of the project amenities and public benefits offered was

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sufficient given the degree of development incentives requested and any potential adverse impacts. The Commission further recognized each of the items listed in Finding No. 85 as deserving recognition and concluded that the entire package of amenities offered was a sufficient trade-off for the flexibility and development incentives requested as required by Section 2403.8 of the Zoning Regulations (See Conclusion of Law No. 7).

In approving the text amendments that set forth the extension process, the Commission recognized that a PUD benefits both an applicant and the city and a neighborhood and thus an extension of the approval for events and circumstances beyond the applicant's control would be in the public interest. (See Zoning Commission Order No. 810). The Commission did not incorporate in the evaluations standards against which an extension request is to be judged any requirement to adjust the monetary amount of benefits and amenities to reflect increases or decreases in the real value of money as of the date when the benefits and amenities would be delivered. The Commission has further not raised this issue in recent extension approvals, despite the fact that each extension application approved by the Commission involves the deferral of some or all of the public benefits and project amenities. Thus, the Commission need not address this issue in this case.

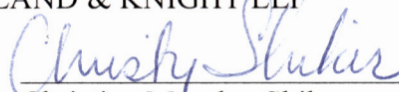
Furthermore, the extension process was not intended to be an opportunity to rehear a previously approved PUD but rather was to provide additional time for an applicant (1) when there is good cause shown and (2) unless there is a substantial change in any of the material facts that would call into question that original approval. (See Zoning Commission Order No. 810). The concerns raised by the ANC – including its desire to renegotiate the approved amenities and benefits to address the "highest priority needs" at the time of delivery – do not constitute substantial changes in any material fact and are not in accordance with the intent of the extension process. The Applicant is committed to providing the benefits and amenities approved by the Commission and in accordance with the timeframes set forth therein. As in any PUD, if an applicant can not fulfill an amenity as approved by the Commission, the applicant must return to the Commission for approval of a change. Accordingly, the Applicant believes that any discussion of the subject matter, scope and timing of delivery of benefits and amenities is not relevant to this extension request and should not be considered.

The Applicant respectfully renews its request that the Commission approve a two-year extension of the approved PUD. The Applicant looks forward to the Commission's consideration of this request at its July 27, 2009, meeting.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By:


Christine Moseley Shiker

cc: Matt Jesick, Office of Planning (Via E-Mail)

PROOF OF SERVICE

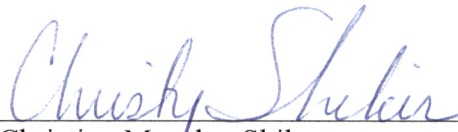
I hereby certify that on July 21, 2009, a copy of the foregoing Applicant's Response to ANC 3E was served on the following persons or organizations as stated below:

Advisory Neighborhood Commission 3E (Via Hand Delivery)
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