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November 18, 2008

Ms. Jerrily R. Kress, FAIA
Director
Office of Zoning
441 4th Street, N.W., Suite 200 South
Washington, D.C. 20001

Mr. Matthew LeGrant
Zoning Administrator
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 2000
Washington, DC 20002

RECEIVED
D.C. OFFICE OF ZONING
2008 NOV 21 PM 12:39

Re: Recorded Planned Unit Development Covenant for Z.C. Case No. 08-08

Dear Ms. Kress and Mr. LeGrant:

As required by section 6 of the enclosed Planned Unit Development ("PUD") Covenant, we are providing your office with a certified copy of the PUD Covenant in Z.C. Case No. 08-08 for the Georgia Commons development project. The PUD Covenant was filed and recorded among the land records of the Office of the District of Columbia Recorder of Deeds on November 17, 2008 as instrument number 2008117281.

If you have any questions, please contact me.

ZONING COMMISSION
District of Columbia

CASE NO. 08-08
EXHIBIT NO. 65
ZONING COMMISSION
District of Columbia
CASE NO. 08-08
EXHIBIT NO. 65



GREENSTEIN DELORME & LUCHS, P.C.

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Ms. Jerrily R. Kress
Mr. Matthew LeGrant
November 18, 2008
Page 2

Best regards,

A handwritten signature in black ink, appearing to read "Lyle M. Blanchard". The signature is fluid and cursive, with a large, looping flourish at the end.

Lyle M. Blanchard

LMB:348767
Enclosure

cc: Mr. Jair K. Lynch (w/encl.)
Jacques B. DePuy, Esquire (w/o encl.)



PLANNED UNIT DEVELOPMENT COVENANT

THIS COVENANT, made this 14th day of November, 2008, by the Mayor of the District of Columbia ("Mayor") on behalf of said District of Columbia ("District" or "Declarant"), which is the owner of the subject property and intended beneficiary of the declarations made herein after said property is sold.

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property in the District of Columbia as described in Exhibit "A" attached hereto (the "Subject Property"); and

WHEREAS, the 3910 GEORGIA AVENUE ASSOCIATES LIMITED PARTNERSHIP 1-A, a District of Columbia limited partnership ("LP1-A"), and 3910 GEORGIA AVENUE ASSOCIATES LIMITED PARTNERSHIP II, a District of Columbia limited partnership ("LPII" and, collectively with LP1-A, the "Developer") has entered into a contract to purchase the Subject Property; and

WHEREAS, the Developer intends to develop the Subject Property 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 No. 08-08, effective October 3, 2008, as may be amended and/or modified from time to time (the "Order") and the Order is attached hereto as Exhibit "B"; and

WHEREAS, said Chapter 24 further requires that the owner of the Subject Property enter into this Covenant for the benefit of the District assuring the owner's development and use of the Project as approved by the Zoning Commission of the



THIS IS TO CERTIFY THAT THIS IS A TRUE COPY

[Handwritten signature]
Recorder of Deeds, D.C.

NOV 18 2008

[Handwritten initials]

District of Columbia (hereinafter referred to as the "Zoning Commission") in the Order and all modifications, alterations or amendments thereto.

NOW, THEREFORE, in consideration of the foregoing recitals, which are a material part hereof, it is acknowledged and declared by the Declarant as follows:

1. Approved Plans. The terms and conditions of the Zoning Commission's approval of the Planned Unit Development under the Order are incorporated herein by reference and made a part hereof as Exhibit "B" and shall be considered a part of this Covenant. As required by the Order, the Subject Property shall be developed and used in accordance with the plans approved by the Order and in accordance with the conditions and restrictions contained in the Order, subject to such changes thereto as the Zoning Administrator of the District of Columbia and/or the Zoning Commission may authorize, pursuant to 11 DCMR §§ 2409.6 and 2409.9, respectively. The Declarant, for itself and its successors in title to the Subject Property (including, but not limited to, the Developer), covenants that it will use the Subject Property only in accordance with the terms of the Order, as the same may be further amended and/or modified from time to time by the Zoning Commission, subject to the terms and conditions contained herein and the provisions of Chapter 24 of the Zoning Regulations.

2. Additional Time To Construct Planned Unit Development. In the event that a building permit is not filed for the Project or construction of the Project does not commence within the time specified in the Order, the Zoning Commission may duly consider an application for an extension of time in accordance with section 2408.10.

3. Termination of Benefits. In the event that a building permit is not filed and construction of the approved Project does not commence within the time specified in

the Order or within any extension of time granted by the Zoning Commission for good cause shown pursuant to section 2408.10, the benefits granted by the Order shall terminate pursuant to section 2400.7 of the Zoning Regulations.

4. Future Conveyance. The Declarant covenants that if any conveyance of all or any part of the Subject Property takes place, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns to develop and use the Subject Property in accordance with the terms and conditions of this Covenant, including those stated in this paragraph.

5. Successors and Assigns. The covenants and restrictions contained herein shall be deemed real covenants running with the land, and shall bind the Declarant, its successors and assigns in title, and shall inure to the benefit of said Declarant, its successors and assigns. Such covenants are not binding upon any party that no longer holds title to property constituting all or a portion of the Subject Property. . In the event all or part of the Subject Property that is owned by the District is sold or otherwise conveyed, the purchaser and its successors and assigns shall be considered the Declarant and the District shall continue to be deemed a party to and beneficiary of the Covenant for the purposes of enforcing all covenants, conditions and restrictions contained herein.

6. Recordation. This Covenant, as fully executed, shall be recorded among the Land Records of the District of Columbia, and a copy of this Covenant shall be filed with the Zoning Administrator and the Zoning Commission.

7. 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.

8. Rescission/Alteration of Chapter 24 Covenant. If the Order is modified or amended by the Zoning Commission, no formal amendment of this Covenant shall be required, provided that the owner of the Subject Property, or its successors or assigns, records a notice of modification in the Land Records of the District of Columbia. No other amendment of the obligations created by this Covenant is permitted without the written consent of the District and, if determined by the District to be necessary, without the prior approval of the Zoning Commission.

[SIGNATURES FOLLOW]

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 his/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.

WITNESS:

DISTRICT OF COLUMBIA, a
municipal corporation

Tabatha Bray
Signature

By: Stephanie D. Scott
Secretary, D.C.

Tabatha Bray
Printed Name

(Corporate Seal)

DISTRICT OF COLUMBIA, ss:

I, Tabatha Bray, a Notary Public in and for the District of Columbia, do hereby certify that Dr. Stephanie D. Scott who is personally well known to me as the person named as Secretary of the DISTRICT OF COLUMBIA in the foregoing Covenant bearing date of the 14 day of November, 2008, and 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 him/her vested, acknowledged the same to be the act and deed of the Mayor of the DISTRICT OF COLUMBIA.

WITNESS my hand and official seal this 14 day of November, 2008.

Tabatha Bray
Notary Public

[Notarial Seal]

My commission expires: May 14, 2012

APPROVED:

Matt Zick

11-10-08

Zoning Division, Department of
Consumer and Regulatory Affairs

APPROVED AS TO LEGAL SUFFICIENCY:

Alan Beyster

Assistant Attorney General
Office of the Attorney General for the District of Columbia

APPROVED:

Matthew Zuph

11-10-08

Zoning Division, Department of
Consumer and Regulatory Affairs

APPROVED AS TO LEGAL SUFFICIENCY:

Assistant Attorney General
Office of the Attorney General for the District of Columbia

EXHIBIT "A"

Legal Description
Lot 91, Square 2906

All that certain lot or parcel of land together with all improvements thereon located and being in the City of Washington in the District of Columbia and being more particularly described as follows:

Lot numbered Ninety-one (91) in Square numbered Twenty-Nine Hundred Six (2906) in the subdivision made by the District of Columbia, as per plat recorded in the Office of the Surveyor for the District of Columbia in Book 203 at page 27.

EXHIBIT "B"

Zoning Commission Order No. 08-08

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



**GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION OF THE DISTRICT OF COLUMBIA**

Z.C. ORDER NO. 08-08

Z.C. Case No. 08-08

**(Consolidated Planned Unit Development - 3910 Georgia Avenue Associates Limited
Partnerships I and II)**

July 14, 2008

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on June 12, 2008 to consider an application from 3910 Georgia Avenue Associates Limited Partnerships I and II (the "Applicant") on behalf of the District of Columbia, owner ("Owner") of Lot 91 (formerly known as Lots 848 and 849), Square 2906, located at 3910-3912 Georgia Avenue, N.W., for the consolidated review and approval of a planned unit development ("PUD") on the subject property 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. For the reasons discussed below, the Commission hereby approves the application.

FINDINGS OF FACT

1. On April 9, 2008, the Applicant filed an application for the consolidated review and one-step approval of a PUD.
2. The project site consists of Lot 91 (formerly known as Lots 848 and 849) in Square 2906, and has an address of 3910-3912 Georgia Avenue, N.W. (the "Property"). The Property is located in the Petworth neighborhood in Ward 4. The Property consists of approximately 31,000 square feet of land. The Property is located in the C-3-A Zone District and is located within the Georgia Avenue Commercial Overlay District ("GA Overlay District").
3. The Property is owned by the District of Columbia. The Applicant is authorized by the District of Columbia to prosecute the subject application.
4. On April 14, 2008, the Commission approved the application for a public hearing and authorized the immediate publication of the public hearing notice. The Commission also approved a waiver of a hearing fee for 45,300 square feet of gross floor area of the proposed building, which will be dedicated to subsidized housing, and approved a waiver of the requirements under § 2406.7 concerning the notice of intent to file. The Commission also requested that the Applicant provide additional information on the following issues: 1) the location and distribution of affordable units within the proposed

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development; 2) a description of the affordability plan and income levels of the affordable unit households; 3) a transportation circulation plan showing the loading and parking access through the alley; 4) axonometric and volumetric plans of the courtyard; 5) a landscape plan for the courtyard; 6) examples of similar-sized courtyards; 7) a color roof plan showing the green areas and recreation areas; 8) elevations of roof plan, including dimensions of penthouse and set backs; and 9) an explanation why the elevators are not more centrally located within the building.

5. On May 22, 2008, the Applicant submitted supplemental materials, including revised architectural plans for the proposed project, LEED for Neighborhood Development ("ND") Pilot Project checklist, corrected building plat, revised zoning tabulation, landscape plans, courtyard case studies, an updated traffic report with circulation plans and photographs of the alleyways, and stormwater management plans (Exhibits 40-46).
6. The Commission held a public hearing to consider the application on June 12, 2008, pursuant to the provisions of 11 DCMR § 3022.
7. As preliminary matters prior to the public hearing, the Commission determined that an affidavit of maintenance (Exhibit 56) was accepted for the record and Iain Banks, of O.R. George + Associates, was recognized by the Commission as an expert in transportation.
8. There were no requests for party status. The Advisory Neighborhood Commission ("ANC") 4C, the ANC in which the Property is located, was automatically a party to the case.
9. At the June 12, 2008 public hearing, the Applicant presented its evidence, including testimony from three principal witnesses, Donald E. Tucker, AIA, John J. Maisto, AIA, and Iain Banks; the presentation of plans (aerial axonometric perspectives, day-lighting studies of the courtyard, green roof plan, site plan, and material samples) (Exhibit 51); and submission of a Subdivision Plat for Square 2906, recorded on June 10, 2008, showing the creation of record Lot 91 from former Lots 848 and 849 (Exhibit 52).
10. As discussed below, the Office of Planning ("OP") and ANC 4C testified in support of the application at the public hearing.
11. At a special public meeting on June 12, 2008, the Commission took proposed action by a vote of 4-0-1 to approve the application and plans that were submitted into the record.
12. On July 3, 2008, the Applicant filed a post-hearing submission with a draft Construction Management Plan (Exhibit 58) that had been submitted by the Applicant to the ANC on July 2, 2008; a Supplemental Alleyway Memorandum (Exhibit 53), prepared by Mr. Banks, that had been submitted to DDOT for review on July 1, 2008, and which included proposed traffic control measures for the alleyways and diagrams showing the

revised alignment of the east-west alleyway farthest to the north and west of the site, which does not alter the ability of trucks to access the loading berths and presents an enhanced situation where vehicle conflicts are further minimized; a fully-executed First Source Agreement with the Department of Employment Services (“DOES”) (Exhibit 58); a draft Memorandum of Understanding with the Department of Small and Local Business Development (“DSLBD”) (Exhibit 58), that has been submitted to DSLBD for approval; and revised architectural drawings of the East and South elevations and enlarged detail drawings of the East elevation showing the ground floor retail and second floor levels (Exhibit 58).

13. The approved Memorandum of Understanding with DSLBD was filed by the Applicant on July 14, 2008 (Exhibit 61).
14. The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPC”) pursuant to § 492 of the Home Rule Act. NCPC’s Executive Director, through a Delegated Action dated July 3, 2008, found that the proposed PUD would not be inconsistent with the Comprehensive Plan for the National Capital, nor would it have an adverse impact on any federal interests. (Exhibit 60).
15. The Commission took final action to approve the Application at a public meeting on July 14, 2008 by a vote of 4-0-1.

PUD SITE AND SURROUNDING AREA

16. The Property includes approximately 30,088 square feet of land and is located in the Petworth neighborhood approximately two blocks north of the Georgia Avenue/Petworth Metro Station. The Property is trapezoidal-shaped and is located between Randolph Street and Shepherd Street, N.W. on the west side of Georgia Avenue, N.W. It is bounded by Georgia Avenue to the east, 15-foot-wide public alleys to the west and the north, and a commercially developed property to the south.
17. The Property is currently improved with a deteriorating vacant commercial structure and parking lot. The vacant structure will be razed. Commercial buildings are located across Georgia Avenue from the Property, and north and south of the Property along Georgia Avenue. A mix of single family homes and multi-family buildings are located west of the Property, within Square 2906, along both Randolph and Shepherd Streets.
18. The grade of the Property slopes approximately 10 feet from Georgia Avenue on the east to the alleyway on the west.

DESCRIPTION OF THE PUD PROJECT

19. The PUD project will create a 130-unit multi-family residential apartment building with ground floor retail, service, and/or medical uses, underground and surface parking, and loading docks ("Georgia Commons"). The residential units will consist of studios; studios with loft; one-, two-, and three-bedroom units; and one-, two-, and, three-bedrooms with loft units. Rooftop space of approximately 9,248 square feet will consist of green roof and pavers, with the latter accessible to residents of the building. A resident community room and exercise room will also be located on the rooftop.
20. Approximately 21,838 square feet of retail/service space will be located on the ground floor. At the time of the public hearing, the Applicant indicated it was in negotiations with Mary's Center, a health care center with family medical care and supportive services, for the use of the ground floor space. In the event Mary's Center occupies the ground floor space, an additional lower-level mezzanine (of which 2,632 square feet will count toward density) will also be constructed and dedicated to its use. This will result in approximately 28,418 square feet of gross floor area dedicated to the medical clinic use. However, if Mary's Center does not occupy the ground floor space, and such space is dedicated to neighborhood retail and service uses, the lower-level mezzanine will not be constructed.
21. The building will have a height of 78 feet and a maximum density of 4.7 floor area ratio ("FAR"). In the event that the lower-level mezzanine, which would be dedicated to neighborhood retail and service uses, is not constructed, the gross floor area would be 139,861 square feet and the density would be 4.65 FAR.
22. The PUD project will include a reservation of 62 of the 130 dwelling units in the development as affordable housing. Six units will be reserved for rental to households with incomes that do not exceed 50% of the area median income; 14 of the units will be held for rental to households with incomes that do not exceed 30% of the area median income; and 42 units will be held for rental to households with incomes which do not exceed 60% of the area median income.¹ The location and distribution of the affordable units will be throughout the six-floor building.
23. One hundred twenty parking spaces will be provided at the Property. The underground parking garage will include 111 parking spaces. Nine surface parking spaces will also be located within the rear yard of the Property. Sixty-five of the parking spaces will be reserved for use by residents. The remaining 55 parking spaces will be available for use

¹ As a part of the New Communities Initiative, the 14 dwelling units held for rental for households with an income of 30% of area median income or less, will be held for rental by the District of Columbia Housing Authority ("DCHA") on a first right-of-refusal basis to provide a relocation resource for DCHA in connection with its changing program needs. If these units are not leased by DCHA with vouchers as they become available, the units will then be leased to households with incomes that do not exceed 60% of the area median income.

by patrons, patients, and employees of the retail, service, and/or medical uses. The loading facilities will include two 30-foot loading berths, two 100-square-foot loading platforms, and one 20-foot service/delivery space. All parking and loading facilities will be accessible from Georgia Avenue, N.W., Shepherd Street, N.W., or Randolph Street, N.W. via the two alleyways located on the north and west sides of the Property.

24. The building will include a mix of split-face masonry, cast stone, cementitious siding, corrugated metal siding, and a “green screen” (light-gauge metal and truss system). The green screen will be incorporated into the front façade of the proposed building from the second to the sixth floor. A closed court of approximately 3,412 square feet will be located in the center of the building. The courtyard and the roof of the building will be improved with green roof landscaping.
25. In Board of Zoning Adjustment (“BZA”) Application No. 17636A and its Order dated July 12, 2007, the BZA approved the proposed development as a mixed-use building with ground floor retail and 115 residential units located on floors two through six with structured and surface parking. The initial plan for the development under the BZA Application was to construct a mixed-use building with 130 residential units and was based on the Inclusionary Zoning (“IZ”) regulations, which provide for greater percentage of lot occupancy and floor area ratio requirements than allowed as a matter-of-right. However, due to the delay in the implementation of the IZ program, the Applicant was forced to modify its plans so that the lot occupancy and floor area ratio did not exceed the matter-of-right limitations. Consequently, the Applicant sought approval by the BZA for the plans with 115 residential units, which met matter-of-right lot occupancy and floor area ratio requirements, and intended to request a modification for the plans for 130 residential units which met the requirements of the IZ regulations. However, because of on-going uncertainty as to the date that the IZ regulations would be legally effective, the Applicant elected to file the PUD Application in order to obtain approval for a building with 130 residential units.

ZONING RELIEF REQUESTED

26. The Applicant seeks the following relief from the Zoning Regulations:
 - Height – The building will have a maximum height of 78 feet. A maximum height of 65 feet is allowed as a matter-of-right in the C-3-A Zone District by § 770 of the Regulations;
 - Density – The building will have a density of 4.7 FAR. A maximum density of 4.0 FAR is permitted as a matter-of-right by § 771 of the Regulations. A maximum density of 4.5 FAR is permitted through a PUD. An additional five percent increase is permitted by § 2405.3 of the Regulations;

- Lot Occupancy – The building will have a lot occupancy of 80%. The maximum lot occupancy permitted as a matter-of-right is 75% by § 772 of the Regulations, and an additional five percent is authorized by § 2405.4 of the Regulations;
 - Parking – The building will provide a total of 120 parking spaces. A total of 128 spaces is required as a matter-of-right by §§ 2101.1 and 2115.4 of the Regulations; and
 - Loading Requirements – The building will have two 30-foot-deep loading berths, two 100-square-foot loading platforms, and one 20-foot-deep loading space. The residential component of the building requires one 55-foot-deep loading berth, one 200-square-foot loading platform, and one 20-foot-deep loading space, while the retail component requires one 30-foot-deep loading berth, one 100-square-foot loading platform, and one 20-foot-deep loading space per § 2201.1 of the Regulations.
27. The PUD project also requires special exception relief from the requirements of the GA Overlay District. Specific relief is necessary from § 1330.1(b) of the Zoning Regulations to allow the construction of a building on a lot that has 12,000 square feet or more of land area within the GA Overlay District and from the requirements of § 1330.2 with respect to the “uniform” floor-to-ceiling height and “clear” height requirements for the building’s ground floor level.

SATISFACTION OF PUD EVALUATION STANDARDS

28. Through written submissions and testimony to the Commission, the Applicant and its representatives noted that the PUD project will provide high-quality residential development on the Property with public benefits to the neighborhood and the District as a whole.
29. Housing and Affordable Housing: The Applicant has committed to reserve 62 of the 130 dwelling units in the development as affordable housing, as explained more fully in Finding of Fact No. 22.
30. Effective and Safe Vehicular and Pedestrian Access: The development is located in close proximity to several Metrobus routes, as well as the Georgia Avenue/Petworth Metrorail Station. A bus stop for many Metrobus routes is located near the intersections of Georgia Avenue and both Shepherd and Randolph Streets, N.W. Additionally, there are several Metrobus routes which run along nearby New Hampshire Avenue, N.W. The Georgia Avenue/Petworth Metrorail Station is located just two blocks south of the development. As such, excellent public transit options exist near the Property.

31. The development will provide residents and retail patrons with 120 parking spaces, two 30-foot-loading berths with two 100-square-foot loading platforms, and one service delivery space. The Applicant's traffic and parking expert provided written documentation that the proposed parking, loading, and access elements of the site development plan should adequately meet the needs of the development.
32. The Applicant's traffic and parking expert also provided written documentation that current traffic operational conditions at adjacent intersections are acceptable and well within the District of Columbia Level-of-Service standards and, furthermore, that the projected trip generation of the development would have a minimal impact on traffic and parking conditions within the local area.
33. First Source Employment Program: The Applicant has entered into an agreement to participate in the DOES First Source Employment Program to promote and encourage the hiring of District of Columbia residents during the development and construction process.
34. Local, Small, and Disadvantaged Businesses: The Applicant will enter into a Memorandum of Agreement with DSLBD in an effort to utilize local, small, or disadvantaged business enterprises certified by the D.C. Local Business Opportunity Commission in the development of this project.
35. Environmental Benefits: The development is a demonstration site for the LEED Neighborhood Development (ND) certification during its pilot period. The Applicant is pursuing a LEED ND Gold certification level. LEED ND focuses on smart growth, transit-oriented, mixed-use, and pedestrian-friendly urban infill developments, such as Georgia Commons. Certification of the proposed development by the U.S. Green Building Council will occur at completion of its construction.
36. Sustainable design features of the proposed development include a "green roof" that will help reduce stormwater run-off from the Property and reduce the heat island effect of the building, as well as providing a site-amenity for the residents. As well, an energy model is being used to help design an energy efficient building envelope and to optimize natural day-lighting. In addition, the development will require recycling of on-site construction waste and will feature low-VOC (volatile organic compound) adhesives, paints, and other construction materials in order to promote indoor air quality. Finally, many of the building materials for construction will include recycled contents.
37. Neighborhood-Serving Ground Floor Retail/Services: The development will also include ground floor retail and/or services uses which will benefit the Petworth community. Mary's Center is a likely occupant for the majority of the ground floor space (and potential lower mezzanine) with a medical clinic and supportive family services as the primary use. The Mary's Center would function as a community health center using a model proposed by the D.C. Primary Health Care Association, providing essential

family-oriented medical services at a neighborhood level. Medical services would include primary health care on an out-patient basis, including family practice, women's health services, dental services, pharmacy services, and associated programs, such as WIC programs and Even Start programs. In the event that Mary's Center is not the occupant of the ground floor, the Applicant will locate neighborhood-serving retail in such space.

38. Comprehensive Plan: The PUD project is consistent with and fosters many of the goals and policies stated in the District Elements of the Comprehensive Plan for the National Capital ("Comprehensive Plan"). The District of Columbia Future Land Use Map recommends moderate-density commercial and medium-density residential land use for the Property.
39. The PUD project serves the goals of several of the citywide elements of the Comprehensive Plan:
- Consistency with the Land Use Elements – The Applicant seeks to construct a new building in a commercial corridor which is planned for revitalization by the District of Columbia government. The Property currently contains a vacant retail store and parking lot. The new development will help to prompt revitalization in the block, enhancing the vibrancy of the Georgia Avenue, N.W. corridor. The design of the building will utilize modern "green screen" façade features and fenestration to give the building a distinct presence on Georgia Avenue. Furthermore, the new building will also bring much desired retail or service uses to the neighborhood. Finally, the building will introduce 130 needed new dwelling units in the community, of which 62 will be affordable.
 - Consistency with the Housing Element – The project will introduce a new concentration of both retail/service and residential uses along Georgia Avenue, N.W., bringing energy to the neighborhood. The modern design of the building is oriented towards Georgia Avenue and will help to stimulate subsequent housing development in Petworth. The residential portion of the Project will provide amenities such as a roof level community room, exercise room, and a green roof for its occupants.
 - Consistency with the Community Services and Facilities Element – The development will likely include Mary's Center, which will provide primary health care services to the community at an accessible and convenient location.
 - Consistency with the Economic Development Element – The Applicant will locate new neighborhood-serving retail and service uses at the development if Mary's Center is not an occupant. The development will establish neighborhood-serving retail and service uses for the area along Georgia Avenue, near the Georgia Avenue/Petworth Metrorail Station, as sought after by the community. As well, new

retail is anticipated pursuant to the Georgia Avenue/Petworth Metrorail Station Area and Corridor Plan, in order to increase neighborhood livability and economic development along the corridor.

40. Compliance with Area Element - The PUD project also complies with priorities and policies of the Rock Creek East Elements of the Comprehensive Plan.
 - Planning and Development Priorities of the Rock Creek East Area – While the Rock Creek East Elements of the Comprehensive Plan seek to protect the established neighborhoods of Rock Creek East, there is an emphasis on the need to provide a variety of housing choices that are economically integrated. As well, the importance of upgrading and expanding neighborhood-serving commercial facilities, and “enhancing neighborhood identity through façade improvements, landscaping, signage, and lighting” is also noted. The construction of the project will redevelop the currently underutilized commercial site along Georgia Avenue, N.W., and introduce a new housing choice as well as neighborhood-serving facilities.
 - General Policies of the Rock Creek East Area Element – The development also meets several General Policies for the Rock Creek East community, as follows: first, to promote economic development around the Georgia Avenue/Petworth Metrorail Station area with improved “visual and urban design qualities in order to create a unique destination for the local community to enjoy” and to “[m]aintain and encourage the development of multi-use neighborhood shopping and services in those areas designated for commercial or mixed uses on the Future Land Use Map”; second, to “improve housing affordability ... [with] the production of new mixed income housing along Georgia Avenue ...”; and third, to “[p]rovide additional facilities to meet the mental and physical health needs of Rock Creek East residents” The development will encourage this revitalization process by promoting the re-establishment of the neighborhood-serving retail/service corridor along Georgia Avenue, providing affordable housing, and seeking to place a neighborhood serving medical facility at the site.
41. The Commission has the authority to approve an increase of not more than five percent of the density of the underlying zone district pursuant to § 2405.3, provided that the increase is essential to the successful functioning of the project and consistent with the purpose and evaluation standards of Chapter 24 of the Zoning Regulations. The PUD project has a density of 4.7 FAR and, therefore, requires additional relief pursuant to § 2405.3.
42. The requested increase in density of 0.2 FAR will provide additional light and air to residential units, including the affordable units. These affordable housing and other residential units advance the purpose of the PUD regulations to promote the public welfare and meet the PUD evaluation standards by providing a level and quality of affordable and other housing that is superior to that which could be provided as a matter-

of-right. Moreover, this request for increased density is also consistent with § 1331.1(a) in that the additional density will be for the residential portion of the proposed development. Thus, as required by § 2405.3, the requested increase in density is, “essential to the successful functioning of the project” and “consistent with the purpose and evaluation standards of [Chapter 24].”

43. The Commission also has the authority pursuant to § 2405.4, to approve a lot occupancy greater or lesser than the normal requirement, depending upon the exact circumstances of the particular project. The development has a lot occupancy of 80%, and therefore requires relief for the requested five percent increase in percentage of lot occupancy.
44. The requested five percent increase in lot occupancy is necessary to provide a substantial amount of the affordable dwelling units. The affordable units (as well as the other residential units) advance the purpose of the PUD regulations to promote the public welfare and meet the PUD evaluation standards, by providing a level and quality of affordable and other housing that is superior to that which could be provided as a matter-of-right. In addition, because of the courtyard, rear yard, and rooftop terraces, adequate light and air, as well as open space, will be provided at 80% lot occupancy. Thus, the circumstances of the development justify the requested lot occupancy of 80%.
45. The Commission also has the authority pursuant to § 2405.6, to reduce the amount of off-street parking spaces required under § 2101.1 and loading berths required under § 2201.1, depending on the uses and the location of the project.
46. The development will provide the number of parking spaces required under the Zoning Regulations, if the ground floor space is used for medical center purposes. In the event that Mary’s Center is not the occupant of the proposed building’s ground floor space, the Applicant will locate neighborhood-serving retail in the ground floor space. The number of parking spaces required for such alternative retail use is greater than that which is required for the medical center use. With the alternative retail use, the proposed development would be required to provide 65 parking spaces for the residential portion of the building and 63 parking spaces for the retail portion of the building, for a total of 128 required parking spaces. The Applicant is able to provide 120 parking spaces and thus seeks relief for eight parking spaces. The Applicant also seeks relief from the requirement that compact parking spaces be placed in groups of at least five contiguous spaces due to the location of necessary stairs, elevator core, and ramps. The uses and location of the project support the Applicant’s request to reduce the parking requirement. First, the proposed retail is neighborhood-oriented and will seek its customer base from occupants of the building, as well as from the immediate neighborhood. Second, the close proximity of the Georgia Avenue/Petworth Metrorail Station and the numerous Metrobus routes in the area substantially reduce the demand for retail parking and negate any detriment to the public good, since a percentage of occupants of the building are expected to utilize Metro for transportation.

47. In accordance with the Zoning Regulations, the proposed development is required to provide one loading berth of a depth of 55 feet, one 200-square-foot loading platform, two loading berths of a depth of 30 feet, two 100-square-foot loading platforms, and two service delivery loading spaces of a depth of 20 feet. The Applicant will provide two loading berths of a depth of 30 feet, two 100-square-foot loading platforms, and one service delivery loading space of a depth of 20 feet. Thus, the Applicant seeks relief from the requirements for one 55-foot loading berth, one 200 square-foot loading platform, and one 20-foot service/delivery loading space. The uses of the project support the Applicant's request to reduce the loading requirements. The loading berths and service/delivery loading space to be provided by the Applicant are sufficient for both the residential and retail/service users and adequate to service the public. Use of the loading facilities by residents will be necessary when they move in, but will otherwise be very occasional. As such, resident use will be restricted to times which pose the least amount of conflict with retail/service users. Likewise, retail and service users will be restricted from the use of loading facilities to times which cause the least amount of conflict with the loading needs of the residents.

SPECIAL EXCEPTION RELIEF

48. The Applicant has requested special exception relief from the GA Overlay District's design requirement that the building have a uniform clear floor-to-ceiling height on the ground floor of 14 feet, and also seeks special exception approval to construct a building on a lot with over 12,000 square feet of land area as required by the GA Overlay District. These two special exceptions require compliance with §§ 1304, 1330, and 3104.
49. Section 1304.1(a) first states that a requested special exception must advance the stated purposes of the Neighborhood Commercial Overlay District ("NC Overlay District"), and the particular NC Overlay District, in this case the GA Overlay District. That is clearly the case here, as this project will be one of the anchors around which the revitalization of the Georgia Avenue corridor will develop. In addition, the project does advance several of the purposes stated both generally for NC Overlay Districts and specifically for the GA Overlay District. The new construction on the Property will replace a deteriorating vacant commercial building. As well, the mixed-use building will bring a significant number of new residential units and neighborhood-serving retail to the Petworth area, as envisioned by the Georgia Avenue/Petworth Metrorail Station Area and Corridor Plan. Furthermore, because the PUD site is located near a Metrorail Station, the PUD project will encourage transit use and the construction of other transit oriented development in the neighborhood along Georgia Avenue.
50. Next, both § 1304.1(a) and § 3104 state generally that the special exception must not adversely affect the use of neighboring property or the safety or welfare of people in the vicinity, and that they must be harmony with the purpose and intent of the Zoning Regulations and Map. The Applicant has successfully mitigated any serious negative

impact on the use of nearby property. All the uses proposed here – residential, office, and retail – are matter-of-right uses in the C-3-A zone, and the project itself is in harmony with the purpose and intent of the Zoning Regulations, including with those of the new GA Overlay District.

51. Section 1304.1(b) requires that exceptional circumstances exist pertaining to the property or to the economic or physical conditions in the immediate area to justify the exception. In this case, the topography of the Property along Georgia Avenue slopes from a high point at the south to a low point at the north. Thus, while the ground floor ceiling height is fourteen feet or more for the majority of the ground floor along Georgia Avenue, it is only 12.5 feet on the south side of the building's front façade. Structural drops at beams and column caps are located throughout the ground floor level, dropping ceiling heights in various locations and resulting in a floor-to-finished-ceiling height of 12 feet, even though the height from the floor to the underside of the slab above is at 14 feet.
52. Both §§ 1304 and 1330 require that parking and traffic associated with the project not cause dangerous or objectionable conditions in the neighborhood. Vehicular ingress and egress is located and designed so as to encourage safe and efficient pedestrian movement, and does not create dangerous or otherwise objectionable traffic conditions. The development will provide sufficient parking for the proposed uses and, in addition, the close proximity of the Georgia Avenue/Petworth Metrorail Station and multiple Metrobus lines along Georgia and nearby New Hampshire Avenues will satisfy the transportation needs of many residents of and visitors to the Property.
53. Section 1330.2(a) further requires that the architectural design enhance the urban design features of the immediate vicinity. The architectural design of the project includes urban design features, including the "green screen" façade, that will enliven Georgia Avenue and give the building a distinct presence. The project's design as whole enhances the immediate vicinity.
54. Finally, § 1330.2(d) requires that noise associated with the operation of the proposed use not significantly affect adjacent or nearby residences. There was no evidence in the record that objectionable conditions due to noise would arise from any of the uses within the project. There is no expectation of inordinate noise. Moreover, the nearest residences are set sufficiently far away and the project will be buffered with landscaping so as to prevent any possible noise disturbance.

GOVERNMENT REPORTS

55. In its June 2, 2008 report, OP recommended approval of the project. OP stated it believed that the proposal is consistent with the Comprehensive Plan, the GA Overlay District, and the standards of the inclusionary zoning regulations. OP noted that the

Property is classified as a mixed-use medium-density residential and moderate-density commercial site, and that the proposed uses and development density is not inconsistent with that designation. OP also noted that the redevelopment of the site will help continue the revitalization of the Georgia Avenue corridor and would provide affordable housing and a primary care medical facility (Exhibit 48).

56. In its June 6, 2008 report, the District Department of Transportation (“DDOT”) had no objections to the project (Exhibit 49).
57. On July 1, 2008, the Applicant sent a Supplemental Alleyway Memorandum to DDOT to address a question raised by the Commission at the public hearing about traffic control at the intersections of the east-west alleyways and the north-south alley adjacent to the site and requested a meeting with DDOT. A copy of this memorandum was submitted to the Commission as part of the Applicant’s July 3, 2008 post-hearing submission.

ANC REPORT

58. ANC 4C supported the PUD project by a vote of 6-1 in its letter dated June 12, 2008 (Exhibit 50). Commissioner Ronald Bland, SMD 4C03, ANC 4C’s Vice Chair, testified in support of the project at the hearing.
59. In response to the request by the Commission at the public hearing, the Applicant prepared a draft Construction Management Plan and submitted it to the ANC for discussion. A copy of this draft Construction Management Plan was also sent to the Commission as part of the Applicant’s July 3, 2008 post-hearing submission. The ANC considered this issue at the ANC meeting on July 8, 2008 and filed a supplemental ANC report on July 9, 2008 (Exhibit 59) stating that it supported the Construction Management Plan.

PERSONS IN SUPPORT

60. Anduaem S. Abatagel, who owns property at 920 and 926 Shepherd Street, N.W., originally stated he was opposed, but changed his testimony to support of the Project after he voiced concerns about construction management issues.

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 the application as a consolidated PUD. The Commission is also authorized to approve design elements or uses that are only permitted by special exception, and would otherwise require approval by the Board of Zoning Adjustment. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards. In this application, the Commission finds that the requested relief from height, lot occupancy, parking, loading, and density requirements can be granted with no detriment to surrounding properties and without detriment to the zone plan or map.
3. Section 2403 provides the standards for evaluating a PUD application and § 2403.9 provides categories of public benefits and project amenities for review by the Commission. The objective of the PUD process is to encourage high-quality development that provides public benefits and project amenities by allowing applicants greater flexibility in planning and design than may be possible under matter-of-right zoning. The instant application will achieve the goals of the PUD process by providing superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right project would provide. The Commission finds that the affordable residential units and the ground-floor service/retail are significant project amenities. The Commission finds that the proposed low-impact development proposed by the Applicant is an environmentally-sensitive approach to development on the Property and is a public benefit and project amenity.
4. The project benefits and amenities are commensurate to the zoning relief requested in the application and the potential adverse effects of the project. The use, height, bulk, and design are appropriate for the site and neighborhood.
 - The Applicant seeks an increase in height as permitted by § 2405.1. The Applicant’s request is well within the maximum height allowed by § 2405.1. Furthermore, the additional height is being used for residential purposes as authorized by the Georgia Avenue Commercial Overlay requirement in § 1331.1.
 - The Applicant seeks an increase in density as permitted by § 2405.3. The Applicant has met the burden of proof required by § 2405.3 for approval of a five percent bonus density because the increase is essential to the successful functioning of the project and consistent with the purpose and evaluation standards of Chapter 24 of the Zoning Regulations.
 - The Applicant also seeks an increase in lot occupancy as permitted by § 2405.4. The Applicant has met the burden of proof required by § 2405.4 for approval of an

increase of five percent lot occupancy and is consistent with the purpose and evaluation standards of Chapter 24 of the Zoning Regulations.

- The Applicant requests special exceptions pursuant to the requirements of § 1330.1(b) to allow the construction of a building on a lot that has 12,000 square feet or more of land area within the Georgia Avenue Commercial Overlay District and § 1330.2 for relief from the “uniform” floor-to-ceiling height and “clear” height requirements for the building’s ground floor. The Applicant has met the burden of proof required by §§ 1304.1, 1330.2, and 3104.1 for the special exceptions.
 - The Applicant requests relief from the parking requirements of § 2101.1 and the loading requirements of § 2201.1, pursuant to § 2405.6. The Applicant has met the burden of proof required by § 2405.6 for such zoning relief.
5. The Commission concludes that special exception approval of relief from the requirement of a uniform clear floor-to-ceiling height on the ground floor of fourteen (14) feet, and special exception approval to allow construction a building on a lot with over 12,000 square feet of land area as required by the Georgia Avenue Commercial Overlay District, is warranted. The project meets the applicable standards of §§ 1304, 1330, and 3104.
 6. 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 PUD project is consistent with and fosters the goals of numerous citywide elements of the Comprehensive Plan, including: the Economic Development Element; Land Use Element; Community Services and Facilities Element; and Housing Element. The Commission also finds that the project furthers objectives and policies of the Rock Creek East Area Elements, including new housing and new retail/service space.
 7. In accordance with D.C. Official Code § 1-309.10(d)(3)(A), the Commission must give great weight to the issues and concerns of the affected ANC expressed in its written report to the Commission. The Commission has carefully considered the ANC’s written recommendation for approval of the project dated June 12, 2008, and its written recommendation in favor of the Construction Management Plan dated July 9, 2008, and concurs in its recommendations.
 8. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP’s recommendations. For the reasons stated above, the Commission agrees with OP’s recommendation for approval of the PUD application.

9. 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.
10. Notice of the public hearing was provided in accordance with the Zoning Regulations.
11. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.
12. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977 (D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 *et seq.*). (“Act”). The failure or refusal of the 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.

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 for Lot 91 (formerly known as Lots 848 and 849), Square 2906. The approval of this PUD is subject to the following guidelines, conditions, and standards of this Order:

1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 41-43, 46, 51, 52, and 58 of the record, as modified by the guidelines, conditions, and standards of this Order.
2. The PUD project shall not include the “temporary ad location or permanent art installation” shown in South Elevation on Sheet 2 of 3 of Exhibit 58.
3. Forty-eight percent of the residential units shall be reserved as affordable housing units.
4. The Applicant shall abide by the First Source Employment Agreement it entered into with the Department of Employment Services. (Exhibit 58)
5. The courtyard and portions of the rooftop of the PUD project shall be constructed as a green roof.
6. A “green screen” will be constructed on the front façade of the building from the second to the sixth floor.
7. The Applicant shall abide by the Memorandum of Understanding it entered with the Department of Small and Local Business Development. (Exhibit 58)

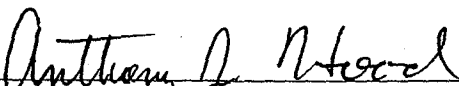
8. The Applicant shall make good faith and commercially reasonable efforts to enter into a Construction Management Plan with ANC 4C and to fulfill its commitment to ANC 4C to provide the following benefits to the Petworth neighborhood:
 - To work with Roosevelt Senior High School to develop job readiness skills and access to the workplace;
 - To work with the existing small businesses in the Georgia Avenue Corridor to help them access the District's improvement programs and grants; and
 - To work with the neighborhood-based Petworth Action Committee to hire workers from the neighborhood as the construction of the Project moves forward.
9. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - To have the option to not construct the lower level mezzanine which, if constructed, would be dedicated to neighborhood retail and service uses.
 - To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and bathrooms, 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 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.
10. The consolidated PUD shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit and construction of the project must start within three (3) years of the effective date of this Order, pursuant to 11 DCMR §§ 2408.8 and 2408.9.
11. No building permit shall be issued for the PUD project until the owner of the Property has executed and recorded a covenant in the land records of the District of Columbia, between the owner and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the owners and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof approved by the Commission. The owner shall file a certified copy of the covenant among the records of the Office of Zoning.

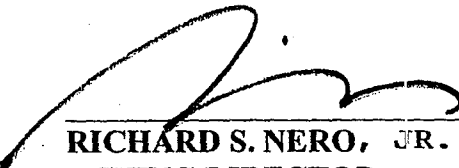
12. The Owner is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act"). This Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does 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 that 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. The failure or refusal of the Owner to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On June 12, 2008, the Zoning Commission **APPROVED** the application by a vote of **4-0-1** (Anthony J. Hood, Gregory N. Jeffries, Peter G. May, and Michael G. Turnbull to approve; Curtis L. Etherly, Jr., not present, not voting).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on July 14, 2008 by a vote of **4-0-1** (Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to adopt; Peter G. May to adopt by absentee ballot; and Curtis L. Etherly, Jr., 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 OCT 3 2008.


ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION


RICHARD S. NERO, JR.
ACTING DIRECTOR
OFFICE OF ZONING

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WASH DC RECORDER OF DEEDS LARRY TODD

RECORDING	\$	202.00
SURCHARGE	\$	6.50