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November 9, 2007

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VIA HAND DELIVERY

Mr. Anthony Hood
Chairman
District of Columbia Zoning Commission
441 4th Street, N.W.
Second Floor
Washington, D.C. 20001

#03-27A

Re: Motion for Extension of Time; Zoning Commission Order No. 03-27;
Case No. 03-27, Consolidated Planed Unit Development for Clemens
4600 Partners, LLC

Dear Chairman Hood and Members of the Zoning Commission:

On behalf of Clemens 4600 Partners, LLC, successor in interest to 4600 Brandywine Associates, LLC, (the "Applicant") the owner of Lots 817 and 820 in Square 1732 in the District of Columbia, we hereby request a two year extension of Zoning Commission Order No. 03-27 (the "Order"), attached as Exhibit A. The Applicant has applied for and is processing a subdivision application to create one (1) record lot for the property. This request for an extension is made pursuant to Section 2408.10 of the Zoning Regulations for the good cause shown herein. Enclosed please find the requisite filing fee, pursuant to Section 3040.5, in the amount of \$400.00 in a check made payable to the D.C. Treasurer.

ZONING COMMISSION
District of Columbia

CASE NO. 03-27A
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EXHIBIT NO. 1
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I. Overview of the PUD

A. The Site

Lots 817 and 820 in Square 1732 are comprised of 12,661 square feet of land area and have an address of 4600-4614 Wisconsin Avenue, N.W. (the “Property”). The Property is located at the intersection of Wisconsin Avenue and Brandywine Street, approximately one block away from the Tenleytown Metrorail Station and is located in the C-2-A Zone District. The Property is currently vacant and awaiting demolition. At the time of this case, the land use map for the District of Columbia Comprehensive Plan for the National Capital designated this site as medium density residential/moderate density commercial. This designation has not changed with the New Comprehensive Plan and land use map, adopted in 2006. (See Exhibit B).

B. PUD Approval

On November 8, 2004 the Zoning Commission (“Commission”) approved a Planned Unit Development (“PUD”) for the Property located at 4600-4614 Wisconsin Avenue, N.W. and subsequently adopted Zoning Commission Order No. 03-27 on December 13, 2004. The PUD approval was for a mixed-use, primarily residential, project that includes 42 residential units occupying approximately 36,333 square feet of gross floor area and ground-floor retail along Wisconsin Avenue, consisting of approximately 1,650 square feet of gross floor area. The approved density was 3.0 FAR, a building height of 65 feet, a lot occupancy of 60 percent, approximately 49 parking spaces, and one affordable housing unit. (Exhibit A, Order p.12, par.2).

The Order approving this PUD is valid for a period of two years, expiring on November 18, 2007, during which time the Applicant needs to file for a building permit,

or file to extend the PUD. Due to reasons beyond the Applicant's control, and despite the Applicant's best efforts, as detailed below, the project has not proceeded and the necessary building permits have not yet been secured. As a result, the Applicant requests a two year extension of time to obtain the necessary approvals, resulting in a new deadline of November 18, 2009 to secure permits and a date of November 18, 2010 to begin construction.

II. Background

On July 22, 2003, 4600 Brandywine Associates, LLC originally filed a PUD with a rezoning from C-2-A to C-2-B, consistent with the Comprehensive Plan designation of medium density residential/moderate density commercial. This project included 43 residential units, a total height of 65 feet, 5.0 FAR and 92% lot occupancy and had 4,500 square feet of ground floor retail along Wisconsin Avenue. (Exhibit A, Order p.1, par.2)

At its March 8, 2004 public meeting, the Commission noted concerns with the application and voted 2-2-1 whether to set down the application for public hearing, despite the fact that the Office of Planning ("OP") recommended set down of the proposed PUD and related map amendment for public hearing. (March 8, 2004 Transcript, p.38, lines 14-16.) (Exhibit C). OP's report found that the Applicant, even with its proposed map amendment, stayed within the height of C-2-A PUD but sought additional residential under the PUD standards for C-2-B. Furthermore, OP found the Applicant responsive to the policy guidance that the generalized land use policy map dictates and that the project was not inconsistent with the Comprehensive Plan and with the zoning on the site. (Exhibit C, Transcript, p.51, lines 10-16).

During this timeframe, OP was preparing an Upper Wisconsin Avenue Corridor Study. OP pointed out that, despite proceeding without the completion of this study, “it [the study] only constitutes supplemental guidance to the comprehensive plan.” OP went on to say that the study “cannot supplant or change in major ways the recommendations of the comprehensive plan.” Instead, “it can provide additional guidance.” (Exhibit C, Transcript, p.39, lines 3-14). In looking at the Comprehensive Plan, OP found that the intended uses of Tenleytown were clear and they did “quite clearly encompass a project like this one.” (Exhibit C, Transcript, p.39, lines 15-20).

In the meantime, an organization called the Coalition to Stop Tenleytown Overdevelopment (“CSTO”), was formed to oppose development projects that included a rezoning. The Applicant had several community meetings, including meetings with the CSTO, and ultimately decided to restructure the project by filing the subject PUD with no rezoning (Exhibit A, Order, p.8, par. 29). The CSTO believed that a PUD with no rezoning would be marketable and supported the PUD as modified. Thereafter, the Applicant modified the proposed PUD project and withdrew the Zoning Map amendment request. At that time, given the current residential market, the Applicant believed that the C-2-A PUD could at last be developed, although not with the same economic return as the PUD project as rezoned to C-2-B. On May 10, 2004, the Commission set down the revised PUD project for a public hearing.

The Commission held a public hearing, without the zoning map amendment request, on October 14, 2004. The Commission met on November 8, 2004 to review this requested information and voted 5-0-0 to approve the proposed action. Later, on December 13, 2004, the Commission voted 5-0-0 to approve for final action.

Now the Applicant requests the following extension of time to extend the PUD time limit pursuant to 11 DCMR Section 2408.10.

III. Jurisdiction of the Zoning Commission

The sole criteria for determining whether a PUD should be extended is whether there is “good cause.” According to the Zoning Regulations, the Commission may extend time periods set forth in Section 2408.8 (two year requirement to file for a building permit) and Section 2408.9 (three year requirement to begin construction) for good cause as long as the request is filed prior to the expiration of the approval. The Applicant is filing this motion for extension of time prior to the November 18, 2007 expiration of the Order. Therefore, the Commission must determine whether certain requirements are met, including:

1. The extension request is served to all parties allowing them 30 days to respond;

Here, the Applicant has distributed this modification for extension of time to all the appropriate parties, allowing them the required time period to respond, as evidenced by the attached Certificate of Service.

2. There is no substantial change in any material facts upon which the Commission based its original approval of the PUD that would undermine the Commission’s justification for approving the original PUD; and

The Comprehensive Plan was amended in 2006. But despite the amendment there was no change to the Comprehensive Plan Land Use designation of the Subject Property as medium density residential/moderate density commercial (see Exhibit B showing the site as medium density residential/moderate density commercial). The Wisconsin Avenue Study referenced above was not completed.

3. The Applicant must demonstrate with substantial evidence that there is good cause for such an extension, as provided in Section 2408.11.

The Applicant's good cause argument is addressed below.

Showing of Good Cause Under Section 2408.11

In order to demonstrate that there is good cause for an extension, the Applicant must demonstrate one or more of the following:

- a) An inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of change in economic and market conditions beyond the applicant's reasonable control;
- b) An inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or
- c) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the PUD order.

IV. Rationale for Extension of Zoning Commission Order No. 03-27

The Applicant is able to demonstrate good cause, via Section 2408.11(a), (b) and (c), for the following reasons:

A. Actions Undertaken by Applicant to Date Include the Following

1. Application for Subdivision:

The application for subdivision is currently being processed.

2. Project Team has Moved Forward with Plans and Design:

Cunningham and Quill Architects are developing the drawings, which are approximately 75% complete. The remaining drawings will be based on the general contractor cost engineering recommendations and the final construction budget, allowing the Applicant to be as efficient as possible while realizing the most savings across the

board. In addition, due to the shift in the residential market from condominiums to rental, the Applicant has studied various changes to the unit count size and configuration.

The project team consists of additional consultants, engineers, and architects as outlined in Exhibit D. Importantly, in terms of this motion for extension of time, and to prove the Applicant's efforts demonstrating good cause effects, the Applicant has retained the services of several firms to assist with the marketing and sales efforts. These team members are also listed in Exhibit D. All referenced experts have been retained either directly by the Applicant or through the architect. The costs to date associated with the project team's fees have exceeded more than \$500K.

3. The Secured Site:

The Applicant has taken exhaustive efforts to secure the entire site and maintain the premises. See photographs of the site attached in Exhibit E, showing the current state of the site, which includes a decorative banner advertising the future development. The Applicant has terminated the tenants and made sure that the property is secure and vandal proof. The Applicant has a good relationship with the neighboring property owners, who will report anything out of the ordinary to the Applicant. The Applicant also maintains an open dialogue with the local police department, who monitors the property based on the current vacant status.

4. Demolition Status:

The Applicant secured the services of Mary Clute, who is assisting with the raze permit application. A raze permit may be obtained once the public space deposit is paid (approximately \$109K) and upon termination of the last and final water and sewer connection to 4600 Wisconsin Avenue. All other utilities have been terminated.

5. The executed PUD covenant is being processed through appropriate city agencies:

The PUD Covenant, which is required by Condition 10 of the Order (Exhibit A), shall be recorded in the land records of the District of Columbia, between the Applicant and the District, prior to the issuance of a building permit. The PUD regulations require that the Zoning Administrator, as well as the Office of Attorney General (“OAG”), sign off on the PUD Covenant as “satisfactory.” Although this Covenant has been preliminarily reviewed and approved by the OAG, the Applicant awaits written approval from both the Zoning Administrator and the OAG on the PUD Covenant (draft attached as Exhibit F).

B. Applicant’s Efforts to Obtain the Financing to Develop Site

1. Inability to Secure Required Financing:

Despite diligent good faith efforts, the Applicant has been unable to secure the required financing. To date, the Applicant has undertaken the following actions:

When the Applicant originally purchased the property, they secured an acquisition only loan that provided a limited amount of pre-development funds. The intent was for the Applicant to further develop the construction budget (validate estimates through a third party general contractor), develop a marketing and sales campaign and secure a pre-determined number of “pre-sales”. The Applicant secured the initial funding with the assistance of Cushman & Wakefield’s Capital Markets Department, who helped the Applicant source term sheets from senior lenders that would ultimately refinance the original loan and replace it with a larger loan that would provide the construction financing. See Exhibit G showing a proposed term sheet from American Bank for the

condominium building in the amount of \$21.7M. This exercise determined the pre-sale requirements by the Applicant's various lenders.

Ultimately, if the Applicant could validate the sales numbers by executing "pre-sale" contracts and lock in on a guaranteed maximum contract with the general contractor, the two major variables would be solidified to the point that the senior lenders would be willing to refinance the loans and feel relatively comfortable.

In September of 2006 the Applicant hosted a grand opening function that kicked off its sales efforts. The Applicant has spent an estimated \$600K predevelopment budget and has either committed or spent more than \$400K in additional funds running advertising campaigns and developing marketing materials and developing a sophisticated website (the website is described in more detail below). The initial sales efforts exceeded their proforma sales numbers and it remained strong for approximately three weeks. At the time, condominium pre-sales and re-sales within the submarket confirmed the demand for new residential units, as explained in the Cushman & Wakefield's July 2006 financing memorandum to the Applicant on the development of condominiums, attached as Exhibit H. Then, suddenly, the for-sale market disappeared and the sales contracts that the Applicant had secured were withdrawn and terminated. There was a tremendous amount of product being offered, which saturated the market. This was due in large part to the number of apartment to condominium conversions. During the Applicant's initial sales efforts there were approximately 38,200 condominiums available in the "pipeline," of which less than half were available to deliver at that time, and the others were being added to the "to be delivered in 24 month" category. See Exhibit I.

The Applicant spent the next several weeks trying to figure out how to secure the required construction financing and ultimately were forced to implement an apartment rental scenario in order to conform to what the banks were willing to underwrite. Cushman & Wakefield's December 2006 financing memorandum to the Applicant for the development of apartments found that the condominium market has seen an end to rapid absorption and appreciation and many potential condominium projects have been aborted. As a result of the slower absorption and appreciation, renting has become much more of an attractive option. See Exhibit J. Naturally, the banks were taking a far more conservative stance and the proceeds for the deal as an apartment development were no less than \$3M less than the proceeds quoted under the previously sought for-sale condominium development deal. See Exhibit K, showing these apartment term sheets ranging from \$17M to \$19M. This "gap" in the capital structure has had a significant impact on the Applicant's ability to secure construction financing. Although the Applicant has been able to secure term sheets from lenders willing to underwrite based on a rental apartment scenario, there are several qualifications coupled with the "gap" that have stalled efforts to move forward. Since the time the PUD Order was approved, the banking industry's entire underwriting process has changed dramatically, resulting in much greater and more stringent standards. For instance, the term sheets that the Applicant received to underwrite as apartments were essentially "qualified" and a "joint venture or equity" partner would now be required to guaranty the loans. Previously, underwriting for these types of project was not so arduous. For instance, a loan would often be granted without additional guarantor requirements.

2. In seeking to secure financing and complete the project, the Applicant had extensive meetings with banks, brokers, and other developers:

As noted above, the Applicant hired Cushman & Wakefield to assist in the securing of financing. See exclusive representation agreement, dated June 8, 2005 and exclusive listing agreement signed in March 2007 between the Applicant and Cushman & Wakefield, Exhibit L. This group has very strong relationships with senior lenders, equity lenders and mezzanine lenders and has reached out to everyone within their list to determine who might be interested in participating in this deal. Over 100 organizations were approached and the above referenced term sheets, from American Bank, Northwest Savings Bank, and LaSalle Bank, were the only ones that Cushman & Wakefield was able to secure. Exhibit K.

In addition, the Applicant has also been working with other brokers, both locally and nationally - reaching out to New York, Florida, California and the state of Washington in addition to the local areas of Washington DC. These brokers include, David Dochter of Cushman & Wakefield, Bob Slade of Vallarta Commercial Lending, Steve Geisler at TCRM, Andrew McAllister at Cushman & Wakefield, Craig Pelouze at CBRE, David Montgomery at Wachovia. The Applicant also sought out participation from local developers and potential equity partners including Akridge, Clark Realty, Intrepid, Ellis-Denning, and Level Two, and still continue to court various entities into participating in this deal.

3. In spite of these efforts, the Applicant has been unable to secure financing to begin construction:

Essentially, the market place has changed dramatically and the land cost basis for the project, coupled with the carry and predevelopment funds spent to date, have made

the project less appealing than other projects. To the Applicant's knowledge, the only projects that may have been successful during the same time period are ones that essentially converted to apartment deals where they had the density and land basis that allowed for the numbers to work as an apartment project. With the Applicant's diminished size and high land basis, they simply cannot make the apartment model attractive.

4. The Applicant continues efforts to secure financing:

The Applicant continues to seek out and meet with entities that could participate in a joint venture or equity role. The Applicant is involved in ongoing discussions with a few groups that may be able to assist in capitalizing this opportunity. However, the Applicant has learned that no one is reacting quickly in today's market place and the recent credit and sub prime market issues have added to the hastiness of the process. The Applicant has spent a tremendous amount of time exploring other options for the site that relate to "by-right" development scenarios. Unfortunately, the cost basis mentioned above has made this virtually impossible to satisfy.

5. The Applicant continues to stay up to date on the condo market and the real estate market in general:

The Applicant is constantly monitoring the status of the market from a for-sale and rental approach. Exhibit I shows the Washington Metro Area New Condominium pipeline from 2005 to the 3rd quarter of 2007. The chart shows how the pipeline has rapidly declined as inventory is either absorbed or reprogrammed to rental. The result is that many planned projects are no longer viable as for-sale condominiums. Both the broker (Cushman & Wakefield) and the sales company (McWilliams and Ballard) provide regular updates that have been internally calculated by their research analysts.

See Exhibit M for project profiles, rental comps, condo comps, and resales. This effort is critical in helping source equity and joint venture participants. The analysis highlights the change in the pipeline, which reinforces the fact that the Applicant will have less competition when, and if, it can deliver product at the location. The state of the current real estate market, the prediction that housing values will continue to decline, and the more stringent underwriting guidelines all exacerbate the Applicant's present difficulty.

C. Marketing Efforts to Date

The Applicant developed a very strong marketing and sales campaign. Attached as Exhibit N are the marketing materials, including a photo copy of the brochure describing the project in more detail. In addition, a website, which launched in the third quarter of 2006, is up and running (www.maximcondos.com), which was used to manage the pre-registration process. This very comprehensive website details the amenities, floor plans, information about the neighborhood, contains a photo gallery, background on the developer, and contact information. Additional information on the website may also be found in Exhibit O. It also offers a chance to schedule a private appointment to learn more about the high-performance condominiums. To date, 1,694 people interested in the project have registered on the website.

On top of the expense incurred with the development of the website, which remains fully operational to date, an estimated \$400K was spent on print advertising that ran in the Washington Post, The Blade and other local publications from March to September 2006. Some examples of these publications may be found in Exhibit P.

D. Current Plans

As referenced above, the drawings are approximately 75% complete and the Applicant is working diligently to secure both construction financing and a general contractor that can assist in satisfying the project's construction budget. The Applicant considers the current design to be appropriate for the buyer that they are pursuing. However, as mentioned above, the FAR, coupled with the cost basis, is making it a very difficult project to underwrite.

E. Status Regarding Obtaining Permits

The raze and demolition permit process is discussed above and the subdivision application is currently being processed. The Applicant submitted and received approval from the Washington Area Metropolitan Area Transit Authority (WMATA) to construct the underground parking structure, as planned. Essentially based on the fact that the project is adjacent to the red line tunnel and the parts of our building fall within the angle of repose of their tunnel, the Applicant is required to submit its sheeting and shoring, excavation and structural plans that outline the method that they will follow associated with excavating the site (removing the load on their tunnel) and building the new structure (replacing the load on their tunnel) and the Applicant's proposed approach was found to be acceptable to WMATA, as evidenced by the attached July 27, 2006 letter attached as Exhibit Q. In that letter, WMATA states that, "this project will not adversely impact WMATA facilities or installations and will not require further review at this time." Going forward, the Applicant will take all necessary precautions to safeguard WMATA facilities and operations from any adverse impact.

F. Given Current Economic Situations, the Applicant has evaluated an Option for Modifying the PUD

Based on the underwriting criteria today, lenders are not willing to finance speculative condominium projects. So, in order to secure construction financing, the project has to work financially as an apartment building (regardless of what is done after construction).

Based on the Applicant's land, pre-development and soft costs incurred to date, and the approved project zoned C-2-A, the project analyzed as an apartment deal yields extremely thin margins. It is barely a break even development. Therefore, it is nearly impossible for the Applicant to convince equity or joint venture partners to participate moving forward. The senior lenders have become extremely conservative these days, which increases the "gap" previously mentioned. This project cannot move forward without private equity being infused into the project.

Now, should an increased density scenario be implemented with a rezoning, the dynamics of the project should increase significantly. Ultimately, investors and lenders want to see FAR square foot prices within a certain range and an increase here should work to the Applicant's benefit and provide the ability to convince investor and lenders to participate and underwrite this opportunity.

G. Summary

Due to the above-mentioned delays, the Applicant has been unable to secure the appropriate government approvals for the PUD by the expiration date. The decline in the real estate market as a whole, and the change in the condo market in particular, as well as the change in credit rates, are all beyond the Applicant's reasonable control and therefore, despite best efforts, the Applicant has not been able to make the project work at this

density. This request for an extension of time within which to complete the PUD project is consistent with the intent and purposes of the Zoning Regulations, the requirements of Chapter 24 of the Zoning Regulations, the PUD process and the District of Columbia's Comprehensive Plan.

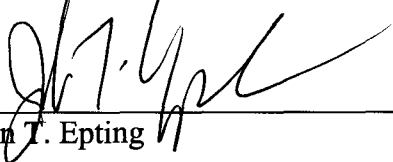
V. Conclusion

Despite substantial good faith efforts, the Applicant is unable to meet the deadline imposed by the Order. For all of the above reasons constituting good cause, the Applicant requests a two year extension of Order No. 03-27, making November 18, 2009 the new deadline to file an application for a building permit and November 18, 2010 as the new deadline to begin construction. In the meantime, the Applicant will continue to work diligently on its efforts outlined above to secure the required approvals and proceed with the PUD.

We appreciate the Commission's consideration of this matter. We believe it is in the interest of all parties to allow for the requested extension of time. Please contact the undersigned should you have any questions.

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP



John T. Epting



Kate Myers

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2007 a copy of the Motion for Extension of Time of Order No. 03-27 was served by hand and/or by U.S. Mail on the following:

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Zoning Administrator
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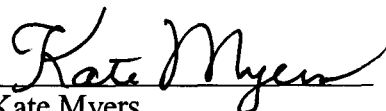
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