GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF PUBLIC WORKS

Office of the General Counsel

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March 1, 2005

Sharon Schellin
Zoning Specialist
D.C. Zoning Commission
One Judiciary Square, Suite 210-S
Washington, D.C. 20001

RE: Zoning Commission Case No. 03-28 (D.C. Department of Public Works, Fort Totten Solid Waste Transfer Station)

Dear Ms. Schellin:

Enclosed please find twenty copies each of the draft Order and draft PUD Covenant that I prepared on behalf of the D.C. Department of Public Works, the applicant in the subject Zoning Case. The draft Order is identical to the one e-mailed to you on February 28, 2005, and the draft Covenant is identical to the one e-mailed to you today.

While the draft Covenant refers to, and incorporates legal descriptions of the lots involved, those descriptions are not attached to the draft. The legal descriptions will be forwarded to you as soon as they are ready. If you require anything else, or have any questions, please let me know.

Thank you for your attention to this matter.

Yours truly,

Katherine V. Kelley
Attorney/Advisor, Department of Public Works
202/671-1576
katherine.kelley@dc.gov

Enclosures
cc (w/out enclosures): Christine Davis
Sybil Hammond
Thomas Henderson

ZONING COMMISSION
District of Columbia
CASE NO. 03-28
EXHIBIT NO. 36

ZONING COMMISSION
District of Columbia
CASE NO.03-28
EXHIBIT NO.36

#34

PUD COVENANT

THIS COVENANT, made as of this _____ day of _____, 2005, by the DISTRICT OF COLUMBIA, a municipal corporation, (hereinafter referred to as the "Declarant").

W I T N E S S E T H:

WHEREAS, the Declarant is the owner of Assessment and Taxation Lot 56 in Square 123, as more particularly described in Exhibit A; and

WHEREAS, the Declarant is the owner of Assessment and Taxation Lot 57 in Square 123, as more particularly described in Exhibit B; and

WHEREAS, the Declarant is the owner of Assessment and Taxation Lot 174 in Square 124, as more particularly described in Exhibit C; and

WHEREAS, the Declarant is the owner of Assessment and Taxation Lot 175 in Square 124, as more particularly described in Exhibit D; and

WHEREAS, Lots 56, Lot 57, Lot 174 and Lot 175, as described in Exhibits A, B, C, and D, comprise the entirety of the subject site (hereinafter referred to as the "Subject Site"); and

WHEREAS, the Declarant and its predecessors filed an application for a Planned Unit Development and Zoning Map Amendment, and the Declarant intends to develop the Subject Site for use as a Planned Unit Development (hereinafter referred to as the "Project") under Chapter 24 of the Zoning Regulations of the District of Columbia in accordance with Zoning Commission Order No. 03-28 effective _____, 2005; and

WHEREAS, said Chapter 24 and Zoning Commission Order No. 03-28 require that the Declarant enter into this Covenant assuring the Declarant's, and its successors and assigns, development and use of the Project as approved by the Zoning Commission

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ZONING COMMISSION
District of Columbia

CASE NO._____
EXHIBIT NO._____

of the District of Columbia (hereinafter referred to as the "Zoning Commission") in Order No. 03-28, and all modifications, alterations or amendments thereto.

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

1. Approved Plans. The terms and conditions of the Zoning Commission's approval of the Planned Unit Development and Amendment to the Zoning Map under Order No. 03-28 effective _____, 2005 (the "Order"), as the same may be amended and/or modified from time to time", are incorporated herein by reference and made a part hereof as Exhibit E, and shall be considered a part of this Covenant. The Subject Site will 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 Commission and/or the Zoning Administrator of the District of Columbia, pursuant to 11 DCMR § 2409.6, may authorize. The Declarant covenants that it will use the Subject Site 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. If Declarant, its successors or assigns should fail to file for a building permit within two years of _____, 2005, the date on which the Zoning Commission issued the Order (the "Decision Date"), and to commence construction of the approved Planned Unit Development within three years of the Decision Date, the Zoning Commission may duly consider an application for an extension of time in accordance with 11 DCMR § 2408.10.

3. Default. In the event that Declarant, its successors or assigns fails to file for a building permit and to commence construction of the approved Planned Unit Development within the time specified in paragraph two hereinabove or within any extension of time granted by the Zoning Commission for good cause shown, the benefits granted by the Orders shall terminate pursuant to Section 2408.14 of the Zoning Regulations.

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

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

6. Recordation. The Declarant, its successors or assigns shall record this Covenant, as fully executed by the parties hereto, among the Land Records of the District of Columbia, and shall file a certified copy of this Covenant with the Zoning Administrator and the Zoning Commission.

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. The covenants hereby created may not be modified or extinguished without the prior approval of the Zoning Commission and the written consent of the District. In the event any amendment, modification, rescission or alteration of the Order is adopted or authorized by the Zoning Commission, or in the event of a lapse of said Order by its terms, the District shall, upon the request of Declarant, its successors or assigns, execute an instrument, in recordable form, evidencing such action or lapse, which instrument shall amend, modify, rescind, nullify or alter this Covenant, as the case may be.

[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 her hand and affixed the seal of the District of Columbia hereto under authority of the Act of Congress entitled "An Act to Relieve the Commissioners of the District of Columbia of Certain Ministerial Duties," approved February 11, 1932.

DISTRICT OF COLUMBIA,
a municipal corporation

WITNESS:

_____ By: _____
Secretary, D.C.

(Corporate Seal)

DISTRICT OF COLUMBIA, ss:

I, _____, a Notary Public in and for the District of Columbia, do hereby certify that _____, who is personally well known to me as the person named as Secretary of the DISTRICT OF COLUMBIA in the foregoing Covenant bearing date of the _____ day of _____, 200_, 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 her vested, acknowledged the same to be the act and deed of the Mayor of the DISTRICT OF COLUMBIA.

GIVEN under my hand and seal this _____ day of _____, 200_.

_____
Notary Public, D.C.

My commission expires: _____.
[NOTARIAL SEAL]

APPROVED:

_____

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 of Assessment and Taxation Lot 56, Square 123

EXHIBIT B

Legal Description of Record Lot 57, Square 123

EXHIBIT C

Legal Description of Record Lot 174, Square 124

EXHIBIT D

Legal Description of Record Lot 175, Square 124

Exhibit E

Zoning Commission Order No. 03-28