



LT1-5-2011101722-1



LT2-0-0-34

PLANNED UNIT DEVELOPMENT COVENANT
REQUIRED BY ZONING COMMISSION MODIFICATION ORDER NO 06-14B

THIS COVENANT, is made this 5th day of October 2011 by and between **CK MRP WASHINGTON GATEWAY, LLC** a Delaware limited liability company the **WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**, a body corporate and politic created by Interstate Compact and the **DISTRICT OF COLUMBIA** a municipal corporation in its capacity as owner of a portion of the property that is the subject of this Covenant (collectively the Declarants") for the benefit of said District of Columbia which in its capacity as the beneficiary shall hereinafter be referred to as the District"

RECEIVED
OFFICE OF ZONING
OCT 25 PM 4 11

WITNESSETH

WHEREAS the Declarants separately have fee simple title to portions of real property that in combination constitute that certain real property known as Lot 26 (formerly Lots 23 811 812 and 813) in Square 3584 in the District of Columbia located at the northeast intersection of Florida and New York Avenues N E (the " Property") and

WHEREAS on February 12 2007 the Zoning Commission for the District of Columbia (the "Zoning Commission) adopted Zoning Commission Order No 06 14 granting consolidated review and approval of a planned unit development ('PUD) for the Property and

WHEREAS in connection with said approval in accordance with Chapter 24 of the Zoning Regulations (DCMR Title 11) the Declarants or their predecessor(s) in interest entered into that certain Planned Unit Development Covenant originally recorded in the land records of the District of Columbia on September 21 2007 as Instrument No 2007123750 and re recorded on July 1 2008 as Instrument No 2008070807 (the 'Original PUD Covenant"),

WHEREAS on June 8 2009 the Zoning Commission adopted Zoning Commission Order No 06 14A granting a two year extension of time for the PUD approval to June 29 2011, and

WHEREAS, on April 25 2011 the Commission adopted Zoning Commission Order No 06 14B, granting approval of a modification to the PUD (the "PUD Modification"), and

WHEREAS, also on April 25, 2011, the Zoning Commission adopted Zoning Commission Order No 06 14C, granting a second two-year extension of time for the PUD approval to June 29, 2013

WHEREAS, Zoning Commission Order No 06 14B requires the Declarants as the owners of the Property, to enter into this Covenant in order to assure that the Declarants and their successors or assigns construct on and use the Property in accordance with Zoning Commission Order No 06 14B or amendment thereof by the Zoning Commission

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

1 Original Covenant Superseded The parties agree that this instrument supersedes, in its entirety the Original PUD Covenant The development and use of the Property shall be as provided herein

2 Approved Plans The terms and conditions of the Zoning Commission's approval of the PUD Modification as provided in Zoning Commission Order No 06 14B (the "Order") are incorporated herein by reference and made a part hereof as Exhibit "A" and shall be considered a part of this Covenant As required by the Order the 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 Declarants covenant that they will use the 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.

3 Additional Time to Construct Planned Unit Development If Declarants should fail to file for a building permit and to commence construction of the approved Planned Unit Development within the time specified in Zoning Commission Order No. 06-14C, a certified copy of which is attached Exhibit "B", the Zoning Commission may duly consider an application for an extension of time for good cause shown pursuant to Section 2408.10.

4 Termination of Benefits In the event the Declarants fail to file for a building permit and to commence construction of the approved Planned Unit Development within the time specified in Zoning Commission Order No. 06-14C or within any further 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 2408.14 of the Zoning Regulations.

5 Future Conveyance The Declarants covenant that if any conveyance of all or any part of the Property takes place, such conveyance shall contain a specific covenant binding the grantee, their successors and assigns to develop and use the Property in accordance with the terms and conditions of this Covenant.

6 Successors and Assigns The covenants and restrictions contained herein shall be deemed real covenants running with the land and shall bind the Declarants, their

successors and assigns and shall inure to the benefit of the Declarants hereto their successors and assigns Such covenants are not binding upon any Declarant that no longer holds title to property constituting all or a portion of the subject property In the event that the portion of the subject property owned by the District is sold or otherwise conveyed the District shall continue to be deemed a party to the Covenant for the purposes of enforcing all covenants conditions and restrictions contained herein applicable to the subject site and/or Declarant

7 Recordation The Declarants shall record this Covenant as fully executed by the parties hereto among the Land Records of the District of Columbia and shall file a copy of this Covenant with the Zoning Administrator and the Zoning Commission

8 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

9 Rescission/Modification of Chapter 24 Covenant If the Order is modified or amended by the Commission no formal amendment of this Covenant shall be required provided that the Declarants or their successors or assigns records a Notice of Modification in the Land Records of the District of Columbia together with a copy of the written order authorizing the modification or amendment No other amendment of the obligation created by the Covenant is permitted without the written consent of the District and if determined by the Office of the Attorney General to be necessary without the prior approval of the Commission

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF CK MRP WASHINGTON GATEWAY LLC a Delaware limited liability company intending to be legally bound, has caused this PUD Covenant to be executed by ROBERT J. MURPHY as the duly authorized member of MIDATLANTIC REALTY PARTNERS LLC the Managing Member of MRP FLA AVE LLC the Manager of CK MRP WASHINGTON GATEWAY LLC

CK MRP WASHINGTON GATEWAY,
LLC

By MRP FLA AVE LLC, its Manager

By MIDATLANTIC REALTY PARTNERS
LLC its Managing Member

By

Signature

Robert J. Murphy

Printed Name

President

Title

DISTRICT OF COLUMBIA)
SS)

I, JENNIFER DEMEO a Notary Public in and for the jurisdiction aforesaid, do hereby certify that ROBERT J. MURPHY, as an authorized member of Midatlantic Realty Partners LLC, the Managing Member of MRP FLA AVE LLC the Manager of CK MRP Washington Gateway LLC, personally appeared before me and being personally well known to me acknowledged said PUD Covenant to be the act and deed of the of CK MRP Washington Gateway LLC and that s/he delivered the same as such

GIVEN under my hand and seal this 10th day of AUGUST 2011

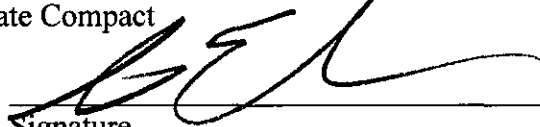
Notary Public

My commission expires 09 14 2013

IN WITNESS WHEREOF the Washington Metropolitan Area Transit Authority
a body corporate and politic created by Interstate Compact intending to be legally bound
has caused this PUD Covenant to be executed by Steven E Goldin its Director of Station
Area Planning and Asset Management

WASHINGTON METROPOLITAN AREA TRANSIT
AUTHORITY a body corporate and politic created by
Interstate Compact

By


Signature

Steven E Goldin

Printed Name

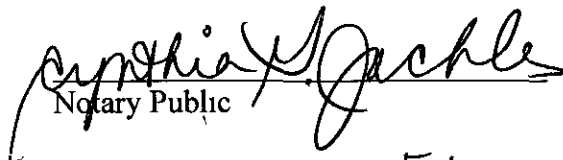
Director

Title

District of)
Columbia) ss

I Cynthia G. Jachles, a Notary Public in and for the jurisdiction aforesaid
do hereby certify that Steven E Goldin as a Director of the Washington Metropolitan
Area Transit Authority personally appeared before me and being personally well known
to me acknowledged said PUD Covenant to be the act and deed of the Washington
Metropolitan Area Transit Authority and that he delivered the same as such

GIVEN under my hand and seal this 27th day of September, 2011


Notary Public

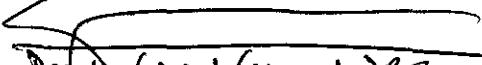
My commission expires February 28, 2014

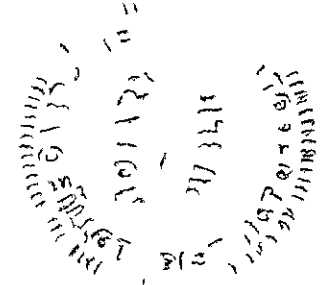
IN WITNESS WHEREOF the District of Columbia a municipal corporation
intending to be legally bound has caused this PUD Covenant to be executed by Brian
Hanlon its Interim Chief Property Management Officer

DISTRICT OF COLUMBIA,
a municipal corporation

By 
Brian Hanlon
Interim Chief Property Management
Officer for the District of Columbia

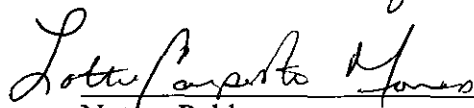
Approved as to legal sufficiency


Deputy General Counsel, DRES
Office of the Attorney General for the District of Columbia
DISTRICT OF)
COLUMBIA) SS
)



I LOTTIE CARPENTER MURPHREE a Notary Public in and for the jurisdiction aforesaid
do hereby certify that Brian Hanlon as the Interim Chief Property Management Officer
of the District of Columbia personally appeared before me and, being personally well
known to me, acknowledged said PUD Covenant to be the act and deed of the District of
Columbia and that s/he delivered the same as such

GIVEN under my hand and seal this 29th day of August 2011

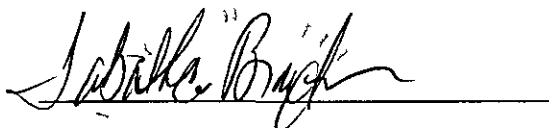

Notary Public

My commission expires 10/13/31

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

WITNESS

DISTRICT OF COLUMBIA
a municipal corporation

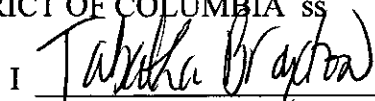


(Corporate Seal)

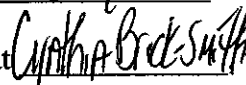
By


Secretary D C

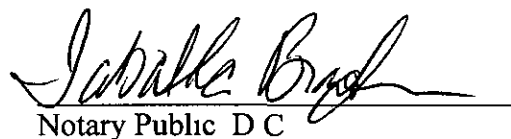
DISTRICT OF COLUMBIA ss

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 5th day of October 2011 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 5 day of October 2011


Notary Public D C

My commission expires

[NOTARIAL SEAL]

TABATHA BRAXTON
Notary Public District of Columbia
My Commission Expires May 14, 2012

APPROVED

Matthew Le Grant

Zoning Division Department of
Consumer and Regulatory Affairs

APPROVED AS TO LEGAL SUFFICIENCY

Handwritten signature of Alan Beyrsten in cursive script.

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

EXHIBIT A

Zoning Commission Order No 06-14B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

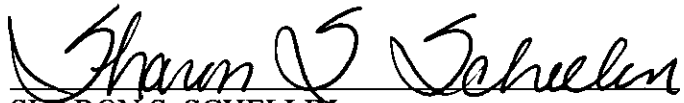


August 2 2011

Re Z C Case No 06-14B (MidAtlantic Realty Partners, LLC)

To Whom It May Concern

I hereby certify that attached hereto and bearing my initials in red ink in the lower right corner of each page is a true copy of Z C Order No 06-14B – consisting of 14 pages – of the official record of the Zoning Commission for the District of Columbia in Z C Case No 06 14A


SHARON S. SCHELLIN
SECRETARY TO THE ZONING COMMISSION

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO 06-14B
Z.C Case No 06-14B
MidAtlantic Realty Partners, LLC
(Modification to Approved Planned Unit Development)
April 25, 2011

Pursuant to notice the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on March 7, 2011, to consider an application from MidAtlantic Realty Partners (the "Applicant"), on behalf of the owners of Lot 26 (formerly, Lots 23 811 812 and 813) in Square 3584, for the approval of a modification to the planned unit development ("PUD") approved pursuant to Z C Order No 06-14. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR §3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

The Application, Parties, and Hearing

- 1 Pursuant to Z C Order No 06 14, dated June 8, 2009, effective June 19, 2009, the Commission granted consolidated approval of a PUD for Lots 23 811, 812 and 813 in Square 3584. The subject property has since been subdivided into a new single record lot and is now known as Lot 26 in Square 3584 (the "Property").
- 2 The Property has a land area of approximately 134,665 square feet. It is a triangular parcel bounded by New York and Florida Avenues NE and the Metrorail tracks. The Property is designated mixed-use High Density Residential/High-Density Commercial on the Comprehensive Plan Future Land Use Map and is zoned C-3-C.
- 3 The approved PUD is a mixed use project that consists of 594,896 square feet of office use, approximately 229,690 square feet of residential use, approximately 120,443 square feet of hotel use, and approximately 7,000 square feet of retail use. Of the residential gross floor area for the project, eight percent will be devoted to affordable housing for households with incomes that do not exceed 80% of the area median income ("AMI") in accordance with Z C Order No 06-14. The approved project has a density of 7.06 floor area ratio ("FAR") and a building height of 130 feet. Parking will be provided at a parking ratio of 0.6 space per dwelling unit for the residential use, 0.25 space per guest.

441 4th Street N.W. Suite 200 S Washington D.C. 20001

Telephone (202) 727-6311

Facsimile (202) 727-6072

E-Mail dcz@dc.gov

Web Site www.dcoz.dc.gov

52

room for the hotel use plus one parking space for each 300 square feet of floor area in either the largest function room or largest exhibit space whichever is greater and one parking space for each 1 800 square feet of gross floor area of office use At least two of the parking spaces shall be reserved for use by a car sharing service

- 4 Pursuant to Z C Order No 06 14A the Commission granted a two year extension of time for the PUD extending the approval until June 29, 2011 within which time an application must be filed for a building permit as specified in § 2409 1 of the Zoning Regulations Construction must commence no later than June 29 2012
- 5 On May 17 2010 the Applicant filed an application with the Commission for a modification of the PUD (Exhibits 3 4A 4B and 5) Under the modification the Applicant would have the option of (a) constructing and operating the residential/hotel building proposed in the approved PUD or (b) eliminating the hotel component of the building and constructing and operating a single apartment building with approximately 346 405 square feet of residential floor area and approximately 5 070 square feet of ground floor retail (the 'PUD Modification") Under the PUD Modification, the apartment building would have a maximum of 430 dwelling units and eight percent of the residential floor area would be reserved for units for households with incomes that do not exceed 80% of the AMI The FAR for the PUD as modified is 7 08
- 6 At its public meeting held on July 26, 2010 the Commission voted to schedule a public hearing on the application
- 7 On December 21 2010 the Applicant submitted a Prehearing Statement (Exhibit 19) The Prehearing Statement included revised plans showing additional details on the project's design and materials and roof structure and addressed issues raised by the Commission and the Office of Planning (OP)
- 8 On February 1 2011 the Applicant submitted a Supplemental Filing which included a revised set of architectural plans and elevations with a cover sheet dated January 31 2011 (Exhibits 25 and 26) The revised drawings were in response to additional concerns about the design of the project from OP
- 9 After proper notice the Commission held a public hearing on the application on March 7 2011 The parties to the case were the Applicant and Advisory Neighborhood Commission (ANC) 5C the ANC within which the Property is located
- 10 At the public hearing on the modification application the Applicant submitted a Supplemental Statement in which the Applicant confirmed certain enhancements to the project design the distribution of the affordable housing units and provided revisions to the PUD calculations (Exhibit 29) Revised drawings dated March 7 2011 (Sheets 251 255) were also submitted as part of the filing

55

- 11 Three principal witnesses testified at the public hearing on behalf of the Applicant - Matthew Robinson, of MidAtlantic Realty Partners, LLC Marius Radulescu of SK&I Architectural Design Group LLC and Steven E Sher Director of Zoning and Land Use Services, at Holland & Knight LLP Based upon his professional experience as evidenced by the resume submitted for the record Mr Radulescu was qualified by the Commission as an expert in architecture Mr Sher previously qualified as an expert by the Commission testified as an expert in land use and zoning A copy of Mr Shers Report to the Commission was submitted at the hearing (Exhibit 32)
- 12 OP testified in support of the modification application at the public hearing
- 13 Commissioner Timothy Clark the Single Member District representative for ANC 5C05 testified in support of the modification application at the public hearing
- 14 At the public hearing the Applicant testified that the PUD Modification was presented to the Edgewood Civic Association the Eckington Civic Association and ANC 5C and each organization supported the proposed modification
- 15 At the conclusion of the public hearing held on March 7 2011 the Commission took proposed action to approve the modification application and the architectural plans and drawings that were submitted into the record The Commission requested an exhibit showing the distribution of the affordable dwelling units and a resolution in support of the application from ANC 5C The Applicant also offered to file a consolidated set of the current architectural plans and drawings for the PUD Modification
- 16 On March 11 2011 the Applicant filed ZC Case No 06-14C seeking a two year extension of time for the PUD approval as established in ZC Order 04 16A Under the extension request the original PUD and the proposed modification to the PUD would be valid until June 29 2013 within which time an application must be filed for a building permit as specified in § 2409.1 of the Zoning Regulations Construction must commence no later than June 29 2014
- 17 The proposed action of the Commission was referred to the National Capital Planning Commission (NCPC) on March 8 2011 under the terms of the District of Columbia Home Rule Act NCPC, by report dated April 7 2011 found that the proposed modification to allow the residential use in lieu of the previously approved hotel use as an option for the PUD will not affect the federal interests (Exhibit 41)
- 18 The Commission took final action to approve the modification application on April 25 2011

52

Modified PUD Project

- 19 The PUD as modified will give the Applicant the option of (a) constructing and operating on the Property the previously approved residential/hotel building or (b) eliminating the hotel component of the building and constructing and operating a single apartment building with approximately 346 405 square feet of residential floor area and approximately 5 070 square feet of ground floor retail
- 20 The PUD Modification requires an increase of approximately 40 residential parking spaces depending on the exact number of units constructed The parking ratio for the residential use will remain at 0 6 spaces per dwelling unit
- 21 As noted in the final OP Report dated February 25 2011 the general footprint height massing materials and color for the residential building for the PUD as modified would be similar to the approved building (Exhibit 27) As reflected on Sheet 253 of the architectural drawings filed on April 11 2011 the garage doors near the intersection of Florida and New York Avenues will employ frosted glass and a frosted glass window will be added to the brick veneer wall on Florida Avenue to the left of the loading dock (Exhibit 39) These refinements were made to reduce the visual impact of loading docks and 'blank walls and to provide a more welcoming and interesting treatment

Development Flexibility

- 22 For the PUD Modification the Applicant requested flexibility from the following requirements
 - a *Roof Structures* The Applicant requested flexibility from §§ 411 and 770 6 of the Zoning Regulations which require the penthouse to be setback from all exterior walls a minimum distance of 18 feet six inches The penthouse meets this requirement except on the southeast corner where it has a setback of 12 feet six inches which is due primarily to the narrowness of the building The penthouse has been designed to be the minimum size necessary to house all of the required rooftop equipment services and access The building is designed to step back from Florida Avenue and curve at New York Avenue in order to make it more architecturally appealing but these elements also significantly reduce the building width The reduced setback for the penthouse is necessary in order to accommodate exterior cladding structure equipment and the required clearances and the visual impacts are mitigated by the fact that this section of the penthouse faces the interior courtyard for the project and
 - b *Additional Areas of Flexibility* The Applicant requested flexibility in the following areas

- (i) To vary the location and design of all interior components including partitions structural slabs doors hallways columns stairways, and mechanical rooms elevators escalators and toilet rooms provided that the variations do not change the exterior configuration of the building
- (ii) To make refinements to the garage configuration including layout number of parking spaces and/or other elements so long as the number of parking spaces does not decrease below the minimum level required by the Zoning Regulations
- (iii) 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
- (iv) To make refinements to exterior materials details and dimensions including belt courses, sills bases cornices railings roof skylights architectural embellishments and trims or any other minor changes to comply with the District of Columbia Construction Codes or that are otherwise necessary to obtain a final building permit or any other applicable approvals

Public Benefits and Amenities

- 23 The PUD as modified has the same public benefits and amenities as originally approved for the project in Z C Order No 06-14
- 24 As required under Z C Order No 06 14 the Applicant has made the following contributions to the community
 - a \$50 000 contribution to the District of Columbia Commission on the Arts and Humanities for the arts related project for the Florida Avenue underpass,
 - b \$25 000 contribution to City Year to cover the five-year operating costs for the Young Heroes Program
 - c \$10 000 contribution to Emery Elementary School Student Activity Fund for field trips educational celebrations audio/visual upgrades and technology upgrades
 - d \$10 000 contribution to the Harry Thomas Community Service Center for the purchase and installation of a scoreboard and
 - e \$5 000 contribution to North Capitol Main Street Inc for the development of a database of the commercial/retail properties in the organization's service area

52

Documentation of the contributions is attached as Exhibit H of the Applicant's statement, dated May 17 2010 (Exhibit 3)

- 25 The Applicant entered into a First Source Employment Agreement with the Department of Employment Services ('DOES") ensuring cooperation with DOES for employee recruitment for jobs created by the project with the objective that 51% of the employees hired in connection with the development of the project are District of Columbia residents. A copy of the First Source Employment Agreement is attached as Exhibit K of the Applicant's Statement dated May 17 2010 (Exhibit 3)
- 26 The approved PUD is exempt from the Inclusionary Zoning provisions of Chapter 26 of the Zoning Regulations because it was set down prior to March 14 2008 (11 DCMR § 2608.2) The exemption applies to this modification as well
- 27 The approved PUD required the Applicant to devote a minimum of approximately 18 375 square feet or eight percent of the residential gross floor area to affordable housing for residents with incomes no greater than 80% of the AMI. The Applicant agreed to devote the same percentage of the residential gross floor area added by this PUD modification to affordable housing for residents with incomes no greater than 80% of the AMI. So if the Applicant builds the modified PUD it will be required to devote an additional 9 337 square feet of gross floor area to affordable housing resulting in a total of approximately 27,712 square feet of gross floor area devoted to affordable housing for residents with incomes no greater than 80% of AMI. Because the Applicant is not required by law to provide this affordable housing the proffer remains a relevant public benefit
- 28 The affordable units shall have the same proportion of unit types (studio one bedroom and two bedroom units) as the market rate units. The construction of the affordable units the affordability control period and the method of selecting the occupants/purchasers of the units shall be in accordance with the Planned Unit Development Inclusionary Housing Commitment Standards dated December 4 2006 and marked as Exhibit No 38 of the record of Z C Case Number 06 14. The affordable units required by the original PUD shall be distributed in accordance with the Planned Unit Development Inclusionary Housing Commitment Standards. The affordable units added through this PUD modification shall be distributed as depicted in the chart submitted as part of the Applicant's post hearing submission dated April 11 2011 (Exhibit 38)

Office of Planning Report

- 29 By report dated July 16 2010 OP stated that the requested modifications remain consistent with the Comprehensive Plan and the proposed alternative plans respect the general intent of the previously approved PUD. The report recommended that the Commission schedule a public hearing on the modification application (Exhibit 15)

- 30 By report dated February 25, 2011 OP recommended the Commission approve the modification application, contingent upon the Applicant providing a supplemental statement prior the hearing containing certain clarification and changes related to the building design and the distribution of the affordable units (Exhibit 27)
- 31 The OP report dated February 25 2011 stated that the District Department of Transportation indicated to OP that it had no concerns with the requested modification There were no other agency responses at the time the OP report was submitted

Post Hearing Submissions

- 32 On April 11 2011 the Applicant submitted a post hearing submission (Exhibits 38 and 39) The post hearing submission included (i) an exhibit that was presented at the public hearing depicting that area of the PUD covered under the modification application (ii) a chart showing the distribution of the affordable units, and (iii) a consolidated set of the architectural plans and drawings for the modification application
- 33 An electronic copy of the resolution in support of Z C Case No 06 14B from ANC 5C was posted on April 11 2011 (Exhibit 40)¹

CONCLUSIONS OF LAW

- 1 Pursuant to the Zoning Regulations the PUD process is designed to encourage high quality development that provides 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 of the Zoning Regulations the Commission has the authority to consider this application as a modification to a previously approved consolidated PUD Any modifications proposed to an approved PUD that cannot be approved by the Zoning Administrator shall be submitted to and approved by the Commission The proposed modification shall meet the requirements for and be processed as a second-stage application except for minor modifications and technical corrections as provided for in § 3030 (11 DCMR § 2409 9) The Commission treated this modification request as a second stage PUD application

¹ When the Commission took final action it observed a discrepancy between the number of ANC Commissioners listed as voting on this resolution and the number of Commissioners listed on the letterhead and agreed to keep the record open for the ANC to submit a corrected letter The ANC has advised Office of Zoning staff that a corrected letter will not be filed Because the discrepancy does not affect the prerequisite for giving the ANC great weight this Order is being issued and the record is now closed

52

- 3 The Commission may impose development conditions guidelines and standards that may exceed or be less than the matter of right standards identified for height density lot occupancy parking and loading or for yards and courts The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment
- 4 Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well planned developments that will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter of right development
- 5 The modified PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations
- 6 The modified PUD as approved by the Commission complies with the applicable height bulk and density standards of the Zoning Regulations The uses for this project are appropriate for the Property The impact of the project on the surrounding area and the operation of city services are acceptable given the quality of the public benefits in the project
- 7 The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan
- 8 The project benefits and amenities are reasonable tradeoffs for the requested development flexibility
- 9 Approval of this modified PUD is appropriate because the proposed development is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan In addition the proposed development 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 Map of the District of Columbia
- 10 The Commission is required under § 13(d) of the Advisory Neighborhood Commission Act of 1975 effective March 26 1976 (D C Law 1-21 D C Official Code § 1-309.10(d)) to give great weight to the issues and conditions expressed in the written report of an affected ANC In this case ANC 5C voted unanimously to support the modification application and recommended that the Commission approve the application (Exhibit 40) The Commission has given ANC 5C's recommendation great weight in approving the modification application
- 11 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 recommendations For the reasons stated above the Commission

concurs with OP's recommendation for approval and has given the OP recommendation the great weight it is entitled

- 12 The application for the modified is PUD is subject to compliance with D C Law 2-38 the Human Rights Act of 1977

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 modifications to the approved planned unit development located at Lot 26 (formerly Lots 23 811 812 and 813) in Square 3584 originally approved in Z C Order No 06 14 subject to the following conditions For the purposes of these conditions the term 'Applicant' shall mean the person or entity then holding title to the Subject Property If there is more than one owner the obligations under this Order shall be joint and several If a person or entity no longer holds title to the Subject Property, that party shall have no further obligations under this Order however that party remains liable for any violation of these conditions that occurred while an Owner

A PROJECT DEVELOPMENT

- 1 The Applicant has the option to develop the PUD consistent with Z C Order No 06 14 If the Applicant develops the original project, the conditions of Z C Order 06 14 will apply to the project If the Applicant develops the project as modified by this Order the following conditions will apply
- 2 The Applicant may develop the PUD as modified herein in which case the project shall contain approximately 594 896 square feet of office use approximately 346 405 square feet of residential use and approximately 12 070 square feet of retail use The maximum density shall be 7 08 FAR The maximum height of the building shall be 130 feet as shown on the Plans The building may include roof structures in excess of that height with a height not to exceed 18 5 feet above the roof upon which they are located as shown on the Plans
- 3 The PUD Modification shall be developed in accordance with the plans prepared by SK&I Architectural Design Group dated April 11 2011 marked as Exhibit 39 of the record (the Plans)
- 4 The Applicant shall continue to comply with affordable housing requirements of Condition No 3 of Z C Order 06-14 which is incorporated into this Order pursuant to Condition B 1 The PUD shall further devote an additional 9 337 square feet of gross floor area of the residential gross floor area for the project to affordable housing for households with income that do not exceed 80% of the

55

AMI (Affordable Units) The Affordable Units shall have the same proportion of unit types (studio one-bedroom and two bedroom units) as the market rate units The construction the affordability control period and the method of selecting the occupants/purchasers of the Affordable Units shall be in accordance with the Planned Unit Development Inclusionary Housing Commitment Standards dated December 4, 2006 and marked as Exhibit No 38 of the record of Z C Case Number 06-14 The Affordable Units shall be distributed as depicted in the chart submitted as part of the Applicant's post hearing submission dated April 11 2011 and marked as Exhibit 38 of the record

- 5 Parking for the modified PUD shall be provided at a ratio of 0.6 space per dwelling unit for the residential use one parking space for each 1 800 square feet of gross floor area of office use and one parking space for each 3 000 square feet of gross floor area for retail use At least two of the parking spaces shall be reserved for use by a car sharing service
- 6 The project shall include three 30-foot-deep loading berths and one 20 foot deep loading berth for the office use and one 55-foot deep and one 20-foot-deep loading berth for the residential/hotel use
- 7 The Applicant shall have flexibility with the design of the PUD in the following areas
 - a To have a roof structure that does not meet the setback as required under §§ 411 and 770.6 of the Zoning Regulations to the extent depicted in the Plans and the architectural plans and drawings approved in Z C Order No 06-14
 - b To vary the location and design of all interior components including partitions structural slabs doors hallways columns stairways atrium and mechanical rooms elevators escalators and toilet rooms provided that the variations do not change the exterior configuration of the building
 - c To make refinements to exterior materials details and dimensions including belt courses sills bases cornices railings roof skylights architectural embellishments and trim or any other minor changes to comply with the District of Columbia building code or that are otherwise necessary to obtain a final building permit or any other applicable approvals
 - d To make refinements to the garage configuration including layout number of parking spaces and/or other elements as long as the number of

parking spaces does not decrease below the minimum specified in the Zoning Regulations and

- e To eliminate the interior drive to the south section of the office building should operational and/or security needs require

B PUBLIC BENEFITS

- 1 The PUD as modified shall comply with Condition Nos 3 5 through 8 and Condition No 15 of Z C Order No 06 14

C MISCELLANEOUS

- 1 Prior to the issuance of a building permit for the project the Applicant shall record a covenant in the land records of the District of Columbia between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General Such covenant shall bind the Applicant and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Commission
- 2 The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Zoning Commission
- 3 The PUD shall be valid until June 29 2011 in accordance with Z C Order No 06 14A Within such time an application must be filed for a building permit as specified in 11 DCMR § 2409.1 Construction must commence no later than June 29 2012 Failure to take these actions will result in the expiration of the PUD approval as of the applicable date
- 4 In accordance with the D C Human Rights Act of 1977 as amended D C Official Code §§ 2-1401.01 et seq. (Act) the District of Columbia does not discriminate on the basis of actual or perceived race color religion national origin sex age marital status personal appearance sexual orientation gender identity or expression familial status family responsibilities matriculation political affiliation genetic information disability source of income or place of residence or business Sexual harassment is a form of sex discrimination which is prohibited by the Act In addition harassment based on any of the above protected categories is prohibited by the Act Discrimination in violation of the Act will not be tolerated Violators will be subject to disciplinary action

On March 7 2011 upon the motion of Commissioner Selfridge as seconded by Vice Chairman Schlater the Zoning Commission **APPROVED** this Application at the conclusion of its public

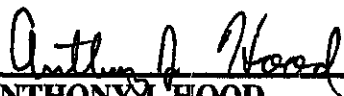
52

Z C Order No 06 14B
Z.C Case No 06 14B
Page 12

hearing by a vote of 5 0 0 (Anthony J Hood Konrad W Schlater Peter G May Greg M Selfridge and Michael G Turnbull to approve)

On April 25 2011, upon the motion of Vice Chairman Schlater as seconded by Commissioner Turnbull the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of 5-0 0 (Anthony J Hood Konrad W Schlater Peter G May Michael G Turnbull and Greg M Selfridge to adopt)

In accordance with the provisions of 11 DCMR §3028 this Order shall become final and effective upon publication in the *D C Register* that is on July 22 2011



ANTHONY J HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L WEINBAUM
DIRECTOR
OFFICE OF ZONING

APPENDIX TO ORDER 06-14B

The following are the conditions in Z C Order 06-14 that are referenced in Condition B(1) of Order 06-14B

- 3 Of the residential gross floor area for the project, a minimum of approximately 18,375 square feet, or eight percent of the residential gross floor area, shall be devoted to affordable housing for residents with incomes no greater than 80% of the area median income. The construction and distribution of the affordable units, the affordability control period, and the method of selecting the occupants/purchasers of the units shall be in accordance with the Planned Unit Development Inclusionary Housing Commitment Standards dated December 4, 2006, and marked as Exhibit No 38 of the record
 - 5 The Applicant shall design and implement a transportation management plan that includes the strategies set forth on pages 46 through 50 of the Transportation Impact Study by Wells & Associates, LLC dated November 9, 2006, and marked as Exhibit No 29 of the record
 - 6 The Applicant, at its sole expense, shall cause the design and installation of a traffic signal at the intersection of Florida Avenue and 2nd Street, N E , in accordance with DDOT standards and guidelines. The traffic signal shall be installed prior to the issuance of the first certificate of occupancy for the PUD
 - 7 The Applicant shall enter into an agreement with DDOT for the installation and maintenance of the improvements to the Metropolitan Branch Trail, along the eastern boundary of the PUD site. The improvements shall include, but not be limited to the enclosed atrium/rest area with a stair, elevator, seating, bike parking, drinking fountains, restroom access, signage, an information kiosk and landscaping
 - 8 Public access to the project to and from New York Avenue and the Metropolitan Branch Trail shall be permitted in accordance with the following schedule
 - (i) The New York Avenue staircase shall be open from 7 00 a.m to 7 00 p m
 - (ii) The Metropolitan Branch Trail Atrium and the stairs and elevators to the plaza shall be open from 6 00 a m to 9 00 p m
- Additionally the PUD shall include one public restroom for use during normal retail hours
- 15 The Applicant shall abide by the terms of the First Source Employment Agreement entered into with the Department of Employment Services in order to achieve the goal of utilizing District of Columbia residents for at least 51% of the jobs created by the PUD

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z C CASE NO 06 14B

JUL 20 2011

As Secretary to the Commission I hereby certify that on _____ copies of this Z C Order No 06-14B were mailed first class, postage prepaid or sent by inter-office government mail to the following

- | | | | |
|---|--|---|--|
| 1 | <i>D C Register</i> | 5 | Gottlieb Simon
ANC
1350 Pennsylvania Avenue N W
Washington D C 20004 |
| 2 | Leila Batties Esq
Holland & Knight
2099 Pennsylvania Avenue N W #100
Washington D C 20006 | 6 | Councilmember Harry Thomas Jr |
| 3 | ANC 5C
P O Box 26183
Washington DC 20001 | 7 | DDOT (Martin Parker) |
| 4 | Commissioner Tim Clark
<u>5C05@anc dc gov</u> | 8 | Melinda Bolling Acting General Counsel
DCRA
1100 4 th Street S W
Washington DC 20024 |
| | | 9 | Office of the Attorney General (Alan
Bergstein) |

ATTESTED BY


Sharon S Schellin
Secretary to the Zoning Commission
Office of Zoning

55

EXHIBIT B

Zoning Commission Order No 06-14C

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



August 2 2011

Re Z C Case No 06-14C (MidAtlantic Realty Partners, LLC)

To Whom It May Concern

I hereby certify that attached hereto and bearing my initials in red ink in the lower right corner of each page is a true copy of Z C Order No 06-14C – consisting of 6 pages – of the official record of the Zoning Commission for the District of Columbia in Z C Case No 06-14A


SHARON S SCHELLIN
SECRETARY TO THE ZONING COMMISSION

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO 06-14C
Z C CASE NO 06 14C
MidAtlantic Realty Partners, LLC
Two Year Time Extension for PUD at Florida and New York Avenues, N.E
(Square 3584, Lot 26)
April 25, 2011

Pursuant to notice a public meeting of the Zoning Commission for the District of Columbia (the Commission) was held on April 25 2011 At the meeting the Commission approved a request from MidAtlantic Realty Partners LLC (the Applicant') for a time extension for an approved planned unit development (PUD) for Lot 26 (formerly Lots 23 811 812 and 813) in Square 3584 (the Property) The Commission considered the request pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations The Commission determined that this request was properly before it under the provisions of § 2408.10 of the Zoning Regulations

FINDINGS OF FACT

- 1 The PUD was originally approved in Z C Order No 06 14 as a mixed use project that consists of 594 896 square feet of office use approximately 229 690 square feet of residential use approximately 170 443 square feet of hotel use and approximately 7 000 square feet of retail use Of the residential gross floor area for the project eight percent is devoted to affordable housing for households with incomes that do not exceed 80% of the area median income (AMI) The approved project has a density of 7.06 floor area ratio (FAR) and a building height of 130 feet Parking is provided at a parking ratio of 0.6 space per dwelling unit for the residential use, 0.25 space per guest room for the hotel use plus one parking space for each 300 square feet of floor area in either the largest function room or largest exhibit space whichever is greater and one parking space for each 1 800 square feet of gross floor area of office use At least two of the parking spaces are reserved for use by a car sharing program
- 2 The PUD approval was valid originally until June 29 2009 However pursuant to Z C Order No 06 14A the Commission granted a two-year extension of time for the PUD extending the approval until June 29 2011 By that date it was required that an application be filed for a building permit as specified in § 2409.1 of the Zoning Regulations and construction commence no later than June 29 2012

52

- 4 On May 17 2010 the Applicant filed Z C Case No 06 14B seeking a modification of the PUD Under the modification the Applicant has the option of (a) constructing and operating the residential/hotel building proposed in the approved PUD, or (b) eliminating the hotel component of the building and constructing and operating a single apartment building with approximately 346,405 square feet of residential floor area and approximately 5 070 square feet of ground floor retail (the 'PUD Modification) The apartment building has a maximum of 430 dwelling units and eight percent of the residential floor area is reserved for units for households with incomes that do not exceed 80% of the AMI The density for the PUD as modified is 7 08 FAR
- 5 On March 7 2011 the Commission took proposed action to approve the PUD Modification
- 6 By letter dated and received by the Commission on March 11 2011 the Applicant filed a request to extend the validity of the PUD approval for a period of two years such that an application for a building permit must be filed no later than June 29 2013 and construction must commence no later than June 29 2014
- 7 The letter indicates that the project has experienced delay beyond the Applicant's control In this case the Property has been cleared and is ready for development However, due to the real estate market conditions over the past couple of years the Applicant has been unable to obtain sufficient financing for the construction of the approved PUD The depressed market conditions also resulted in a significant depreciation of the Property The Applicant purchased Lots 23 and 811 of the in 2007 for \$52 411 386 but in 2009 according to an appraisal by Millennium Real Estate Advisors Inc dated July 1 2009, the land value for the lots was \$30 650 000 At that time the Applicant had a loan on the Property equal to \$35 million Therefore, in order to fund the costs necessary to prepare the Property for construction financing for vertical development the Applicant was forced to bring in a new capital partner into the project which further delayed the project. The new venture CK MRP Washington Gateway LLC purchased Lots 23 and 811 in November of 2010 for \$25 416 240 less than half of what the lots were purchased for in 2007 To further complicate matters in the Fall of 2010 in response to the fragile hotel market in the NoMA submarket the hotel franchise that the PUD was originally designed to accommodate was denied
- 8 In light of the foregoing the Applicant was forced to consider the option of converting the hotel portion of the project to a residential use The time it will take to make the necessary design revisions obtain the approval of the PUD Modification and prepare the permit drawings will extend beyond the term of the PUD approval Due to the interconnected nature and scale of the PUD a delay in the residential/hotel portion of the project necessitates a delay in the overall project because the residential/hotel building must be constructed prior to or concurrently with the office building

55

- 9 The Applicant's request for a time extension included an affidavit attesting to the foregoing. The affidavit is attached as Exhibit C of the Applicant's letter (Exhibit 1.)
- 10 On April 14, 2011, the District of Columbia Office of Planning ("OP") submitted a report stating that the time extension application met all applicable standards for approval (Exhibit 4.)
- 11 On April 25, 2011, the Commission took final action to approve Z.C. Case No. 06-14B for the modification of the PUD.
- 12 The only other party to this application for an extension of the PUD approval was the Advisory Neighborhood Commission ("ANC") 5C. The Applicant served a copy of its request on ANC 5C, which submitted a letter dated March 15, 2011, in support of the request for a two-year PUD extension (Exhibit 5.) ANC 5C's letter did not indicate whether the matter was considered at a meeting that was properly noticed by the ANC, the number of members of the ANC that constitute a quorum, the vote on the motion to adopt the report, or whether the meeting was open to the public.

CONCLUSIONS OF LAW

- 1 Pursuant to § 2408.10 of the Zoning Regulations, the Commission may extend the validity of a PUD approval for good cause shown upon a request made before the expiration of the approval. Section 2408.11 provides that an extension of the validity of a PUD may be granted by the Commission for good cause shown if an applicant has demonstrated with substantial evidence one or more of the following criteria: (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 changes 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 or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.
- 2 The Commission concludes that the application complied with the notice requirements of 11 DCMR § 208.10(a) by serving all parties with a copy of the application and allowing them 30 days to respond.
- 3 The Commission concludes there has been no substantial change in any material facts that would undermine the Commission's justification for approving the original PUD.
- 4 The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(a). Specifically, the Applicant has been unable to obtain sufficient project financing for

the PUD following the applicant's diligent good faith efforts because of changes in economic and market conditions beyond the Applicant's reasonable control

- 5 Section 2408.12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11. The hearing shall be limited to the specific and relevant evidentiary issues in dispute.
- 6 The Commission concludes a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.
- 7 The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.
- 8 The Commission is required by § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21, D.C. Official Code § 1-309.10(d)), to give great weight to the issues and concerns expressed in the affected ANC's written recommendation. However, ANC 5C's letter did not meet several threshold criteria established by the ANC Act. The letter did not indicate whether the matter was considered at a meeting that was properly noticed by the ANC, required by D.C. Official Code § 1-309.11(c), or whether the meeting was open to the public, required by D.C. Official Code § 1-309.11(g). The letter was therefore not qualified to receive great weight. D.C. Official Code § 1-309.10(d)(1).
- 9 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 recommendations. In its report, OP concluded that the Applicant had satisfied all the relevant criteria for approval. The Commission has carefully considered its analysis and has given the recommendation great weight.

DECISION

- 1 In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a two-year time extension of the PUD approved in Z.C. Order No. 06-14 and modified in Z.C. Order No. 06-14B (collectively, the PUD).
- 2 The PUD shall be valid until June 29, 2013, within which time an application must be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than June 29, 2014. Failure to take these actions shall result in the expiration of the PUD approval as of the applicable date.

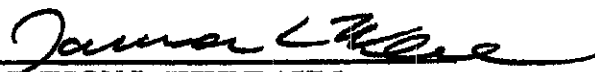
22

- 3 In accordance with the D C Human Rights Act of 1977 as amended, D C Official Code §§ 2-1401 01 et seq. (Act) the District of Columbia does not discriminate on the basis of actual or perceived race, color religion, national origin sex, age marital status personal appearance, sexual orientation gender identity or expression familial status family responsibilities matriculation political affiliation genetic information disability source of income, or place of residence or business Sexual harassment is a form of sex discrimination which is prohibited by the Act In addition harassment based on any of the above protected categories is prohibited by the Act Discrimination in violation of the Act will not be tolerated Violators will be subject to disciplinary action

On April 25 2011 upon the motion of Chairman Hood as seconded by Commissioner May this Order was **ADOPTED** by the Zoning Commission at its public meeting by a vote of 5-0-0 (Anthony J Hood Konrad W Schlater Peter G May Michael G Turnbull and Greg M Selfridge to adopt)

In accordance with the provisions of 11 DCMR §3028.9 this Order shall become final and effective upon publication in the *D C Register* that is on July 22 2011


ANTHONY J HOOD
CHAIRMAN
ZONING COMMISSION


TAMISON L WEINBAUM
DIRECTOR
OFFICE OF ZONING

55

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z C CASE NO 06 14C

JUL 20 2011

As Secretary to the Commission I hereby certify that on _____ copies of this ZC Order No 06-14C were mailed first class, postage prepaid or sent by inter office government mail to the following

- | | | | |
|---|--|---|---|
| 1 | D C Register | 5 | Gottlieb Simon
ANC
1350 Pennsylvania Avenue N W
Washington D C 20004 |
| 2 | Leila Batties Esq
Holland & Knight
2099 Pennsylvania Avenue N W #100
Washington D C 20006 | 6 | Councilmember Harry Thomas Jr |
| 3 | ANC 5C
P O Box 26183
Washington DC 20001 | 7 | DDOT (Martin Parker) |
| 4 | Commissioner Tim Clark
<u>5C05@anc dc gov</u> | 8 | Melinda Bolling Acting General Counsel
DCRA
1100 4 th Street S W
Washington, DC 20024 |
| | | 9 | Office of the Attorney General (Alan
Bergstein) |

ATTESTED BY

A handwritten signature in cursive script, appearing to read "S S Schellin", is written over a horizontal line.

Sharon S Schellin
Secretary to the Zoning Commission
Office of Zoning

Doc# 2011101722 Fees \$250 50
10/06/2011 10 46AM Pages 34
Filed & Recorded in Official Records of
WASH DC RECORDER OF DEEDS LARRY TODD

RECORDING	\$	244 00
SURCHARGE	\$	6 50

52