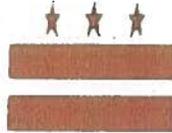


GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR



April 26, 2012

By US Mail and Email PDF

Jeffrey C. Utz
Goulston & Storrs
1999 K Street, NW, 5th Floor
Washington, DC 20006

Re: Square 701, Lots 33-41, 48-61, 131-136, 155-160, 816-817, 822, 823, 828-830, 832-834, and 854-856 (the "Property")

Dear Mr. Utz:

The purpose of this letter is to confirm the matters discussed in our meeting on February 21, 2012 concerning the above-referenced Property. Specifically, among other items, the issue discussed was the confirmation of the number of combined lot development rights ("CLDs") for the proposed project alternatives on the Property. Based on the information you have provided, I have determined that the number of CLDs as described below is sufficient for the proposed project you have described for the Property.

The Property is located in the Mixed-Use Commercial Residential ("CR") Zone District, and the Capital Gateway ("CG") Overlay District. Based on its combined CG/CR zoning, the Property is permitted an FAR of 6.0, of which 3.0 can be commercial. The Property is permitted a maximum building height of 130 feet, subject to the limitations of 11 DCMR 1602.1(a). The Property is also permitted a maximum lot occupancy of 75% for residential uses, under 11 DCMR 634.1; there is no maximum lot occupancy limit for commercial uses.

Residential developments of greater than ten (10) residential units in the CR Zone District must set aside the greater of 8% of the gross floor area devoted to residential uses or 50% of bonus density achieved from the inclusionary zoning ("IZ") program for inclusionary units. In return, the development can obtain a 20% density bonus for an FAR of 7.2 (6.0 FAR matter-of-right plus 20% bonus square footage), under 11 DCMR 1601.1. Lot occupancy for inclusionary developments can be increased to 80%.

The proposed project will require design-related Zoning Commission review and approval as a result of their location in the CG Overlay, under 11 DCMR 1610. In addition the property can also utilize an additional 1.0 in CLDs with Zoning Commission approval under 11 DCMR 1602.1(e). It should be noted that the Property can gain an additional 1.0 FAR based on

the residential incentive of the CG Overlay, and utilize an additional 0.3 FAR in CLDs, without Zoning Commission review.

As a result of the above noted provisions, the Property can be developed to an 8.5 FAR through the use of the IZ bonus density and CLDs without review by the Zoning Commission [except for the design-related Zoning Commission review and approval], and to a 9.5 FAR through the use of the IZ bonus and CLDs and with the separate Zoning Commission approval under . Any commercial square footage on the Property beyond 3.0 FAR would require the use of commercial CLDs.

Property

Based on the information you provided to me, the Property is comprised of approximately 77,187 square feet of land area and is currently vacant. However, the Property contains two (2) portions that are not contiguous:

- The “**South Parcels**”, Lots 155 and 156 of Square 701 which contain 3,619 square feet of lot area; and the
- The “**North Parcels**”, Lots 33-41, 48-61, 131-136, 157-160, 816-817, 822, 823, 828-830, 832-834, and 854-856 of Square 701 which contain 73,568 square feet of lot area.

The North Parcels will contain one building for zoning purposes and the South Parcels will contain a separate building for zoning purposes.

Desired use mix

It is my understanding that the contract purchaser of the Property is proposing a project of approximately 664,285 square feet in total on the North Parcels. Such amount is comprised of approximately 407,585 square feet of commercial use and approximately 256,700 square feet of residential use. The commercial component is comprised of approximately 32,942 square feet of retail use, approximately 234,690 square feet of office use, approximately 132,480 square feet of hotel use, and approximately 7,473 square feet of above-grade parking dedicated to the hotel use.

The South Parcels would be developed with a commercial building of 7,238 square feet (the “**South Building**”). Such area is not included in the square footage calculations above.

Matter-of-Right commercial GFA

Since the South Parcels are not contiguous to the North Parcels, the allowable GFA for each of the two portions of the Property must be calculated individually. The North Parcels have a site area of 73,568 square feet. CG/CR-zoned properties are permitted a matter-of-right commercial density of 3.0 FAR. Therefore, the North Parcels are permitted a matter-of-right commercial GFA of 220,704 square feet. Similarly, the South Parcels, comprised of 3,619 square feet, are permitted a matter-of-right commercial GFA of 10,857 square feet. Note that in the CG/CR District, hotel uses are considered commercial uses under Section 631.2.

CLDs on site

Square 701 had previously obtained 147,133 CLDs (of which 63,057 SF can be commercial use and 84,076 SF can be residential use) from the following:

- CLD Covenant between First & M Street, L.L.C. (as owner of Lots 33-41 and 132-136 in Square 701) and N Street, L.L.C. and 1316 South Capitol Street, L.L.C. (owners of Lots 104, 105, 851, 857, 858, and 867 in Square 702 at 1316 South Capitol Street) dated May 16, 2006, and recorded in the D.C. Land Records on May 17, 2006, as Instrument Number 2006065787 (attached as Exhibit A) (“**CLD Covenant One**”). This covenant transferred 51,800 square feet of CLDs to Lots 33-41 and 132-136 in Square 701, of which 22,200 square feet can be commercial use.
- CLD Covenant between Cofeld, LLC, David Cohen, Greg Cohen, Jeffrey Cohen, Charlene Feldman, Stephen Cohen, Richard Cohen, Ronald Cohen, Michael Meisel, Mark Meisel, and Margo Sadow (as owners of Lots 48-61, 131, 157-160, 816, 817, 822, 823, and 828-830 in Square 703 (as the density receiving property)), Cofeld LLC (as owner of the South Parcels) and Cofeld, LLC (as owner of Lot 841 in Square 702) dated May 16, 2006, and recorded in the D.C. Land Records on May 17, 2006, as Instrument Number 2006065785 (attached as Exhibit B) (“**CLD Covenant Two**”). This covenant transferred (i) 70,007 square feet (of which 30,003 SF can be commercial use) from the Square 702 property to the lots listed above, and (ii) 25,326 square feet (of which 10,854 SF can be commercial use) from the South Parcels.

Therefore, currently, 283,761 square feet of commercial development is permitted on the North Parcels and 0 square feet of commercial development is permitted on the South Parcels. In addition, 466,629.6 square feet of residential development is permitted on the North Parcels and 723.8 square feet of residential development is permitted on the South Parcels, assuming an IZ bonus of 1.2 FAR.

Additional CLDs still required

Given the above matter-of-right allowance for commercial square footage on the Property and the number of CLDs already transferred to the Property, to develop the desired scheme, the North Parcels still require 131,062 square feet of commercial CLDs. 7,238 square feet of commercial CLDs would be required to be transferred back to the South Parcels. Of course, if the amount of commercial square footage on the Property is increased or decreased, the number of commercial CLDs required would also change accordingly on a one-to-one basis.

A chart summarizing the status of the development rights at the Property and the required number of CLDs to be obtained is attached as Exhibit C.

Once the lots comprising the North Parcels have been combined into one record lot by subdivision, the CLDs transferred to any portion of the North Parcels can be used on any portion of such record lot.

In summary, the proposed project will require design-related Zoning Commission review and approval as a result of their location in the CG Overlay, under 11 DCMR 1610. The CLD transfer resulting in a total FAR of the North Parcels portion of 9.5 would require separate Zoning Commission approval, under Section 1602.1(e). It should be noted that the Property can utilize a total FAR of 8.5 without Zoning Commission approval for that FAR amount. The project will be subject to all other Zoning Code regulations as well as the District's Building Code requirements.

If you have any questions about this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Matt Le Grant". The signature is written in a cursive style with a horizontal line underneath it.

Matt Le Grant
Zoning Administrator

Attachments

Exhibit A

COMBINED LOT DEVELOPMENT COVENANT
(CAPITOL GATEWAY OVERLAY)

THIS COMBINED LOT DEVELOPMENT COVENANT (hereinafter, "Covenant") is made as of the 16th day of May, 2006, by and between FIRST & M STREET, L.L.C. (hereinafter referred to as "Parcel I Owner"), N STREET, L.L.C. and 1316 SOUTH CAPITOL L.L.C. (hereinafter collectively referred to as "Parcel II Owners") and the DISTRICT OF COLUMBIA, a municipal corporation, (hereafter referred to as the "District"). Parcel I Owner, Parcel II Owners, and the District shall be collectively referred to in this Agreement as the "Parties". The Parties hereby ratify, affirm and agree to the following terms, conditions, covenants, warranties and obligations (including, but not limited to, all Recitals). This Covenant will become effective ("Effective Date") upon its recordation among the land records of the Recorder of Deeds of the District of Columbia (hereinafter, the "Land Records").

RECITALS:

A. Parcel I Owner is the record owner of certain property in the District of Columbia known as Lots 33-41, 132-136, in Square 701 consisting of approximately 15,164 square feet of land area, said property being more specifically described at Exhibit A (hereinafter "Parcel I").

B. Parcel II Owners, collectively, are the record owners of certain property in the District of Columbia known as Lots 104, 105, 851, 857, 858, 867 in Square 702 consisting of 7,400 square feet of land area, said property being more specifically described at Exhibit B (hereinafter "Parcel II"). (Parcel I and Parcel II referred to collectively herein as the "Properties").

D. On November 18, 2002, the Zoning Commission for the District of Columbia ("Zoning Commission"), pursuant to its authority under D.C. Official Code Section 6-641.01 et seq. (2001), enacted amendments to the Zoning Regulations of the District of Columbia, February 2003, as amended, 11 DCMR ("Zoning Regulations") in Zoning Commission Order 971, Case Nos. 96-3/89-1, establishing and mapping a "Capitol Gateway Overlay District" ("CG District"). Such amendments have been codified at §§1600 to 1699 of the Zoning Regulations, and are hereinafter referred to as the "CG Regulations." On October 17, 2005, the Zoning Commission enacted additional amendments to the CG Regulations in Zoning Commission Order No. 05-08. Any reference in this Covenant to the Zoning Regulations or the CG Regulations shall be deemed to be a reference to the Zoning Regulations or the CG Regulations, as applicable, in effect as of the date of this Covenant.

E. The Zoning Regulations provide in §1602 that two or more lots within the CG District may be combined for the purpose of allocating residential and nonresidential uses regardless of the normal limitation on floor area by uses on each lot; provided that the aggregate residential and nonresidential floor area shall not exceed the matter of right maximum height or density of the underlying zone district(s), except when bonus density is constructed.

Doc# 2006065787

5/14

F. The CR District allows for a total of 6.0 FAR of development of which no more than 3.0 may be used for nonresidential purposes. The CG Overlay allows buildings or combined lots a 7.0 FAR, subject to the same limitations on nonresidential GFA, and provided that the additional 1.0 FAR in excess of the matter-of-right maximum of 6.0 FAR must be devoted solely to residential uses other than hotels. For the purposes of this Covenant, both parcels shall be deemed to individually have a development potential of 7.0 FAR as set forth in Paragraph I herein. The permitted FAR may be allocated through the combined lot development process as set forth in Paragraph 1 herein.

G. Pursuant to §1602.2 of the Zoning Regulations, no allocation of gross floor area shall be effective unless an instrument, legally sufficient to effect such a transfer, is filed with the Zoning Administrator and recorded by the Recorder of Deeds in the Land Records against all lots included in the combined lot development. Pursuant to §1602.3(d) of the Zoning Regulations, said instrument shall bind the present and future owners of a lot sending nonresidential gross floor area to another lot to forego nonresidential development and occupation of on-site area equal to the amount of gross floor area of nonresidential uses transferred.

H. The Properties are located within a CG/CR District as identified in §1600.1 of the Zoning Regulations and the Official Zoning Map.

I. Parcel I Owner and Parcel II Owners desire to enter into this Covenant with the District of Columbia to establish an allocation of residential and nonresidential gross floor area pursuant to §1602 of the Zoning Regulations.

J. The gross floor area of the foregoing described properties is presently as follows:

<u>Parcel</u>	<u>Lot Area</u>	<u>Maximum Permitted GFA for All Uses (7.0 FAR)</u>	<u>Maximum Allowed Non-Residential GFA (3.0 FAR)</u>
I	15,164 sf	106,148 sf	45,492 sf
II	7,400 sf	51,800 sf	22,200 sf
TOTAL:	22,564 sf	157,948 sf	67,692 sf

NOW, THEREFORE, for and in consideration of the mutual promises and undertakings herein contained, receipt of which is hereby acknowledged, the Parties hereto agree for themselves, their successors and assigns, as follows:

1. That Parcel I Owner and Parcel II Owners hereby establish the following allocation of maximum permitted residential gross floor area and maximum allowable nonresidential gross floor area among the Properties and hereby covenant that they will not exceed the maximum permitted residential and the maximum allowable nonresidential gross floor area as apportioned, and that the aggregate residential and nonresidential floor area will not

exceed the limits of the CG/CR District as provided in §1601.1 of the Zoning Regulations. The allocation of gross floor area is as follows:

<u>Parcel</u>	<u>Lot Area</u>	<u>Maximum Permitted GFA for All Uses (7.0 FAR)</u>	<u>Maximum Allowed Non-Residential GFA (3.0 FAR)</u>	<u>GFA of Non-Residential Uses Allocated</u>	<u>GFA of all Uses Allocated</u>	<u>Respective FAR following Combined Lot Development</u>
I	15,164 sf	106,148 sf	45,492 sf	67,692 sf (45,492+22,200)	157,948 sf (106,148+51,800)	10.42 FAR
II	7,400 sf	51,800 sf	22,200 sf	0 sf (22,200-22,200)	0 sf (51,800-51,800)	0.0 FAR
TOTAL:	22,564 sf	157,948 sf	67,692 sf	67,692 sf	157,948 sf	7.0 FAR

2. Subject to the terms hereof, the Properties will be used so as to conform to the apportionment of residential and nonresidential gross floor area established in paragraph 1.

3. Except as provided in paragraphs 4 and 5, the Parcel II Owners forego all development on Parcel II.

4. In the event the Properties are subdivided into one or more larger lots, the lot area and maximum permitted GFA for the Properties, as set forth in Paragraph 1, shall be included in the calculation of lot area and permitted GFA for the larger lots, as applicable. In any subdivision involving Parcel II into one or more larger lots, improvements may be constructed on Parcel II subject to the FAR limitations as calculated in Paragraph 1.

5. Parcel II may be included into one or more subsequent combined lot developments with an allocation to said parcel of FAR so that improvements may be constructed on Parcel II without the necessity of the consent of the Parcel I Owner, and as permitted pursuant to Paragraph 9 herein.

6. Any improvement(s) constructed on the Properties shall comply with the allocations set forth in paragraph 1 of this Covenant so long as the Zoning Regulations may require, except as provided elsewhere herein.

7. The Parcel I Owner and Parcel II Owners hereby consent to the enforcement solely by the District administratively, at law or at equity, of the restrictions, covenants, obligations, easements and agreements contained in this covenant, and nothing contained in this Covenant shall be deemed to vest any rights in any third party. The Parcel I Owner and Parcel II Owners each also represents and warrants to the other that the remedies set forth in this Covenant are not exclusive, and that (i) the District and any agency, department or instrumentality thereof and (ii) the Parcel I Owner and Parcel II Owners may each pursue other remedies not specifically set forth herein.

8. The obligations of the Parcel I Owner and Parcel II Owners under this Covenant

shall be considered covenants running with the Properties and shall be binding in perpetuity upon the successors, heirs, executors, administrators or assigns of the Parcel I Owner's and Parcel II Owners' interest in the Properties and/or the existing or any future improvements thereon (including, but not limited to, the purchaser at any foreclosure sale and any mortgagees at such time as such mortgagee becomes an owner of all or some of the Properties, and their respective successors and assigns). References in this Covenant to the "Parcel I Owner", "Parcel II Owner", or to any "successor" or "assign" thereof shall be deemed to refer, respectively, to the party then holding title to any or all of Parcel I or Parcel II or any improvements thereon. If a party no longer holds title to the Properties, such party shall have no further obligations under this Covenant, including with regard to any representations and warranties made previously by such party, provided however that should any such party no longer hold fee title to the Properties and such party shall have an unsatisfied monetary obligation to the District under this Covenant, then such party shall remain liable to the District for satisfaction of such obligation from and after the date that such party conveyed title until such time as that obligation is satisfied or relived pursuant to District law. References in this Covenant to agencies, departments or instrumentalities of the District shall be deemed to include agencies, departments or instrumentalities proceeding to the jurisdiction thereof pursuant to the laws of the District.

9. The Parcel I Owner and Parcel II Owners acknowledge that either may engage in subsequent combined lot developments without the consent of the other party. Each Owner agrees that the combined size of the land area and structures included in the instant combined lot development, and the amount of residential and commercial uses contained therein, will increase as a result of subsequent combined lot developments. Should any property included in a future combined lot development engage in a subsequent combined lot development, the size of the previous combined lot will also increase in the same manner, and any subsequent combined lot development covenants involving either of the lots in this Covenant shall include in its calculation of residential and non-residential uses all of the structures and land area involved in this Covenant plus the area of the land and structures that have been added to this combined lot by virtue of all subsequent combined lot developments that can be traced back to this combined lot development.

10. Any conveyance of Parcel I or Parcel II, or any part(s) thereof, shall be undertaken subject to the aforementioned allocations and shall contain a covenant by the grantee or grantees therein that said grantee or grantees shall be bound by and will observe and carry out each and every covenant made herein.

11. Each purchaser or other transferee of all or part of Parcel I or Parcel II shall be deemed to take subject to the respective obligations of the Parcel I Owner or Parcel II Owners as under this Covenant, and the interest of any mortgagee shall be subject and subordinate to the covenants set forth in this Covenant. This provision shall apply to each and every sale, mortgage, transfer, conveyance or encumbrance, recorded or unrecorded, regardless of whether or not the District has waived its rights to notice, whether by action or non-action, in connection with any previous sale, mortgage, transfer, conveyance or encumbrance, whether one or more.

12. This Covenant may be substantively amended or terminated only with the approval of the Zoning Commission, after public hearing, and only upon a finding that the

proposed amendment or termination is fully justified and consistent with the purposes of the CG Regulations.

13. The Parcel I Owner and Parcel II Owners hereby represent and warrant to the District as of Effective Date each of which representation and warranty shall also be true as to their respective properties as of the Effective Date as follows:

(a) The Parcel I Owner and Parcel II Owners have the full, unencumbered legal capacity and authority under the laws of the District of Columbia to enter into this Covenant.

(b) There are no restrictions or adverse claims of record on the use of, or otherwise relating to, Parcel I or Parcel II, nor are there any obligations or encumbrances of any kind, the requirements of which have not been waived and subordinated that would impair, delay, prevent or preclude in any manner whatsoever, now or in the future, the imposition of the restrictions, covenants, obligations, warranties, limitations and agreements contained in this Covenant on the Parcel I Owner, the Parcel II Owners or the Properties.

14. The Parcel I Owner and Parcel II Owners hereby agree to indemnify the District and each of its agencies, departments and instrumentalities from and against any and all loss, cost, harm or damage (including, without limitation, attorneys' fees) arising from or related in any way to the assertion of any adverse claim to the combined lot development rights established pursuant to this Covenant or the Zoning Regulations (except for any gross negligence or willful misconduct on the part of the District). The District recognizes that the Parcel I Owners and Parcel II Owners are proceeding with this Covenant in reliance upon the Zoning Regulations as the same exist on the Execution Date being in effect on the Effective Date. The requirements of this Paragraph 14 shall not apply to the District of Columbia in the event it acquires title to Parcel I.

15. Attached hereto as Exhibit C is a true and accurate copy of the written statement required of the Office of Planning pursuant to the second sentence of §1602.5 of the Zoning Regulations.

16. The respective obligations of the Parcel I Owner and Parcel II Owners under this Covenant shall be several (and not joint). Notwithstanding the foregoing, neither the Parcel I Owner nor their successors and assigns shall have any personal liability for the performance of the obligations of the Parcel II Owners under this Covenant, it being understood that the District's recourse in the event of a breach by the Parcel II Owners shall be enforcement against the Parcel II Owners in accordance with this Covenant. Notwithstanding the foregoing, neither the Parcel II Owners nor their respective successors or assigns shall have any personal liability for the performance of the obligations of the Parcel I Owner under this Covenant, it being understood that the District's recourse shall be enforcement of a breach by the Parcel I Owner shall be enforcement against the Parcel I Owner in accordance with this Covenant.

17. Nothing herein shall restrict or impair the Zoning Commission for the District of Columbia from exercising its legal power to amend or repeal the Zoning Regulations of the

District of Columbia. Nothing contained herein shall prevent the Parcel I Owner or the Parcel II Owners from challenging, contesting or supporting such repeal or amendment.

18. All exhibits and appendices referred to in this Covenant hereby are incorporated herein and made an integral part of this Covenant.

19. If any provision of this Covenant or its application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Covenant or the application of such provision or such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

20. All notices, demands, requests, consents, approvals, and other communications which may be or are required to be given hereunder shall be in writing and shall be sent by mail or deliver as follows:

If to Parcel I Owner:

First & M Street, L.L.C.
1629 K Street, NW
Suite 900
Washington, DC 20006

If to Parcel II Owners:

N Street, L.L.C.
c/o Wilkes Artis, Chartered
1150 18th Street, NW
Suite 400
Washington DC 20036
Attn: David A. Fuss, Esq.

1316 South Capitol LLC
c/o Wilkes Artis, Chartered
1150 18th Street, NW
Suite 400
Washington DC 20036
Attn: David A. Fuss, Esq.

With a Copy to:

Holland & Knight LLP
2099 Pennsylvania Ave, NW
Suite 100
Washington, DC
Attn: Norman M. Glasgow, Jr., Esq.

If to the District:

Zoning Administrator
Office of the Zoning Administrator
Second Floor
941 North Capitol Street, NE
Washington, DC 20002

With a copy to: Director, Office of Planning
801 North Capitol Street, NE
4th Floor
Washington, DC 20002

And: Chief, Land Use and Public Works Section
Commercial Division
Office of Attorney General for the District of Columbia
441 Fourth Street, NW
6th Floor North
Washington, DC 20001.

Any party may change any address for the purposes of this Covenant by giving notice in accordance with this Paragraph 20.

21. Each notice, demand, request, consent, approval, or other communication shall be either (i) sent by registered or certified mail, postage prepaid, return receipt requested, or (ii) delivered by hand, or recognized overnight courier, receipt requested, and shall be deemed sufficiently given if mailed, the date of acceptance or refusal of delivery as indicated by the appropriate receipt/deliver document.

22. This Covenant shall be construed and enforced in accordance with and be governed by the laws of the District (without regard to conflicts of laws principles).

23. This Covenant may be executed in counterparts, each of which shall be deemed an original and all counterparts together shall constitute one and the same covenant.

[Signatures on following pages]

IN WITNESS WHEREOF, on the day and year first above written, First & M Street, L.L.C., a District of Columbia limited liability company, owner of Lots 33-41, 132-136 in Square 701 in the District of Columbia, has caused these presents to be executed by Anne D. Camalier and Floyd E. Davis, III, its Managing Members.

FIRST & M STREET, L.L.C.,
a District of Columbia limited liability company

Cheryl Lamb

By: Anne D. Camalier
Anne D. Camalier
Managing Member

By: _____
Floyd E. Davis, III
Managing Member

State of Maryland
County of Montgomery

DISTRICT OF COLUMBIA, ss:

I, Diane Dantagnan, a Notary Public in and for the ^{State of Maryland} District of Columbia, do hereby certify that ANNE D. CAMALIER, as Managing Member of First & M Street, L.L.C., who is personally well known to me (or satisfactorily proven to me) to be the person who executed the foregoing and annexed Covenant bearing date of the 14th day of April, 2006, on behalf of First & M Street, L.L.C., personally appeared before me in said District and acknowledged the same to be her free act and deed.

GIVEN under my hand and seal this 14th day of April, 2006.

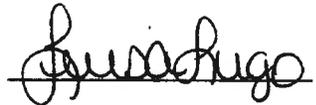
Diane Dantagnan
Notary Public, D.C.

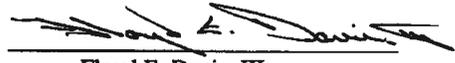
My commission expires: 5/1/08

IN WITNESS WHEREOF, on the day and year first above written, First & M Street, L.L.C., a District of Columbia limited liability company, owner of Lots 33-41, 132-136 in Square 701 in the District of Columbia, has caused these presents to be executed by Anne D. Camalier and Floyd E. Davis, III, its Managing Members.

FIRST & M STREET, L.L.C.,
a District of Columbia limited liability company

By: _____
Anne D. Camalier
Managing Member



By: 
Floyd E. Davis, III
Managing Member

DISTRICT OF COLUMBIA, ss:

I, _____, a Notary Public in and for the District of Columbia, do hereby certify that ANNE D. CAMALIER, as Managing Member of First & M Street, L.L.C., who is personally well known to me (or satisfactorily proven to me) to be the person who executed the foregoing and annexed Covenant bearing date of the ____ day of _____, 2006, on behalf of First & M Street, L.L.C., personally appeared before me in said District and acknowledged the same to be her free act and deed.

GIVEN under my hand and seal this ____ day of _____, 2006.

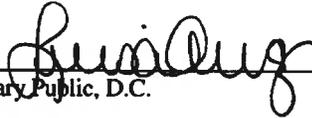
Notary Public, D.C.

My commission expires: _____

DISTRICT OF COLUMBIA, ss:

I, Luisa Alvarez, a Notary Public in and for the District of Columbia, do hereby certify that FLOYD E. DAVIS, III, as Managing Member of First & M Street, L.L.C., who is personally well known to me (or satisfactorily proven to me) to be the person who executed the foregoing and annexed Covenant bearing date of the 16th day of May, 2006, on behalf of First & M Street, L.L.C., personally appeared before me in said District and acknowledged the same to be his free act and deed.

GIVEN under my hand and seal this 14th day of April, 2006.



Notary Public, D.C.

My commission expires: _____

Luisa E. Alvarez
Notary Public, District of Columbia
My Commission Expires September 30, 2008

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 of the District of Columbia who has hereunto set her hand and affixed the seal of the DISTRICT OF COLUMBIA hereunto under authority of the Act of Congress entitled "An Relieve the Commissioners of the District of Columbia of Certain Ministerial Duties" approved February 11, 1932.

ATTEST:

DISTRICT OF COLUMBIA
(a municipal corporation)

Tabitha Braxton

By: Patricia Elwood
Secretary of the District of Columbia

[CORPORATE SEAL]

DISTRICT OF COLUMBIA, SS:

I, Tabitha Braxton, a Notary Public in and for the District of Columbia, do hereby certify that Patricia Elwood who is personally known to me as the person named as Secretary of the District of Columbia in the foregoing Combined Lot Development Covenant bearing date as of April 21 2005, and hereunto annexed, personally appeared before me in said District and, as Secretary as 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 and that she delivered the same as such.

GIVEN under my hand and seal this 21 day of April, 2005.

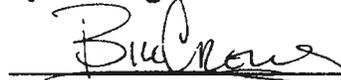
Tabitha Braxton

Notary Public, D.C.

My commission expires: TABATHA BRAXTON
Notary Public District of Columbia
My Commission Expires April 14, 2007

APPROVED:


Office of Planning

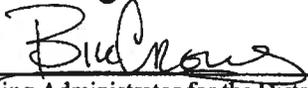
 03.30.06
Zoning Administrator for the District of Columbia

APPROVED AS TO LEGAL SUFFICIENCY:

Office of the Attorney General for the District of Columbia

APPROVED:


Office of Planning

 03.30.06
Zoning Administrator for the District of Columbia

APPROVED AS TO LEGAL SUFFICIENCY:

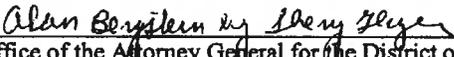

Office of the Attorney General for the District of Columbia

EXHIBIT A

Legal Descriptions of Properties Comprising Parcel I

Parcel I

All of that certain lot or parcel of land situated, lying and being in the District of Columbia, and being more particularly described as follows:

Lots numbered 33, 34, 135 and 136 in Square numbered 701 in the subdivision made by Felix Nemegmyer and others as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 14 at Folio 130.

Parcel II

All of that certain lot or parcel of land situated, lying and being in the District of Columbia, and being more particularly described as follows:

Lots Thirty-five (35) through Forty-one (41), both inclusive. One Hundred Thirty-two (132), One Hundred Thirty-three (133) and One Hundred Thirty-four (134) in Felix Negmeyer and others. Executors' subdivision of lots in Square numbered Seven Hundred One (701), as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 14 at folio 130.

EXHIBIT B

Legal Descriptions of Properties Comprising Parcel II

Lot numbered Twenty-seven (27) in Alfred and Thomas Richards' subdivision of lots in Square numbered Seven Hundred Two (702), as per plat recorded in Liber W.F. at folio 2 among the Records of the Office of the Surveyor for the District of Columbia, together with the part of the closed alley appurtenant to said lot shown on the plat of closing of public alleys in Square 702 recorded in Liber 161 at folio 199 among the aforesaid Records of the Surveyor for the District of Columbia.

Note: The above described property is now known for assessment and taxation purposes as Lot 851 in Square 702.

ALSO,

Lot numbered Ninety-nine (99) in Alfred and William Richards' subdivision of lots in Square numbered Seven Hundred Two (702), as per plat recorded in Liber 20 at folio 153 among the Records of the Office of the Surveyor for the District of Columbia, together with the part of the closed alley appurtenant to said lot shown on the plat of closing of public alleys in Square 702 recorded in Liber 161 at folio 199 among the aforesaid Records of the Surveyor for the District of Columbia.

Note: The above described property is now known for assessment and taxation purposes as Lot 857 in Square 702.

ALSO,

Lot numbered One Hundred (100) in Alfred and William Richards' subdivision of lots in Square numbered Seven Hundred Two (702), as per plat recorded in Liber 20 at folio 153 among the Records of the Office of the Surveyor for the District of Columbia, together with the part of the closed alley appurtenant to said lot shown on the plat of closing of public alleys in Square 702 recorded in Liber 161 at folio 199 among the aforesaid Records of the Surveyor for the District of Columbia.

Note: The above described property is now known for assessment and taxation purposes as Lot 858 in Square 702.

ALSO,

Lot numbered One Hundred Four (104) and One Hundred Five (105) in Square numbered Seven Hundred Two (702) in a subdivision made by Richards and others as per plat recorded in Liber 20 at folio 155 in the Office of the Surveyor for the District of Columbia.

ALSO,

Part of Lot Thirty-one (31) of Richards' subdivision in Square numbered Seven Hundred Two (702), as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber W.F. at folio 2, described as follows:

Beginning at the northeast corner of Lot 102, in Richards' and others' subdivision of lots in Square numbered Seven Hundred Two (702), as per plat recorded in said Surveyor's Office in Liber 20 at folio 153 and running thence West along the North line of said Lot 102, 62.10 feet; thence North and parallel with the East line of South Capitol Street, 6.58 feet to the southwest corner of Lot 104, in Richards' and others' subdivision of lots in Square numbered Seven Hundred Two (702), as per plat recorded in said Surveyor's Office in Liber 20 at folio 155; thence East along the South line of said Lot 104 and Lots 105 through 107, both inclusive, of said subdivision 62.10 feet to the West line of a public alley, 8.17 feet wide and thence South along said line of said alley 6.58 feet to the place of beginning. Also, part of alley closed as shown on plat of "Closing of Alleys Square 702" recorded in the Office of the Surveyor for the District of Columbia in Liber 161 at folio 199.

Note: The above described property is now known for assessment and taxation purposes as Lot 867 in Square 702.

EXHIBIT C
(Section 1602.5 OP Statement)

This certification is identified as Exhibit C to the Combined Lot Development Covenant ("Covenant") between (i) First & M Street L.L.C. ("Parcel I Owner"), (ii) N Street, L.L.C. and 1316 South Capitol L.L.C. (collectively, "Parcel II Owners"), and (iii) the District of Columbia, a municipal corporation acting in its own name.

The purpose of this statement is to confirm the amounts of residential and nonresidential gross floor area that are allocated between the Parcels (each as defined in the Covenant) pursuant to the provisions of the Capitol Gateway Overlay District ("CG District") set forth in 11 D.C.M.R. Chapter 16, as amended ("CG Regulations"). Section 1602 of the CG Regulations sets forth provisions for flexibility in allocating residential and nonresidential uses and development between lots in the overlay.

The properties are all located in the CG/CR zoning district and are therefore eligible to allocate residential and nonresidential uses pursuant to Chapter 16 of the Zoning Regulations. The CG/CR zoning district allows a maximum density of 7.0 FAR for mixed-use projects with a maximum nonresidential FAR of 3.0. Parcel I contains a land area of 15,164 square feet allowing development of 106,148 square feet, of which 45,492 square feet may comprise nonresidential uses. Parcel II contains a land area of 7,400 square feet allowing development of 51,800 square feet, of which 22,200 square feet may comprise nonresidential uses. Parcel II Owners propose to transfer, pursuant to the Covenant, all 51,800 square feet of development rights to Parcel I. The transfer would allow a total development of 157,948 square feet on Parcel I, of which 67,692 square feet may comprise nonresidential uses. Parcel II would have no development rights remaining.

The Office of Planning has reviewed the Covenant and states that the computations are accurate with respect to the amount of residential and nonresidential uses allowed and allocated between the properties. After the allocations are complete, the combined lots will conform with the maximum gross floor area limitations on nonresidential uses for the lots before any such allocations.

The Office of Planning hereby certifies that the Parcels comply in all respects with the applicable CG Regulations pertaining to combined lot developments involving the quantities of residential and nonresidential development as indicated in this memorandum and as set forth in the Covenant to which this Exhibit C is attached.

Certified:


Office of Planning

Date: March 22, 2006

17

Doc# 200605707
Filed & Recorded
05/17/2006 2:02PM
LARRY TODD
RECORDER OF DEEDS
WASH DC RECORDER OF DEEDS
RECORDING
\$
SURCHARGE \$
Total: \$ 131.50
125.00
6.50

Exhibit B

Return to:

CII Title, LLC
1050 17th Street, NW
Suite 700
Washington, DC 20036

COMBINED LOT DEVELOPMENT COVENANT
(CAPITOL GATEWAY OVERLAY)

THIS COMBINED LOT DEVELOPMENT COVENANT (hereinafter, "Covenant") is made as of the 16th day of May, 2006, by and between COFELD, LLC, DAVID H. COHEN, GREG S. COHEN, JEFFREY C. COHEN, CHARLENE FELDMAN, STEPHEN J. COHEN, RICHARD S. COHEN, RONALD J. COHEN, MICHAEL MEISEL, MARC MEISEL AND MARGO SADOW, (hereinafter collectively referred to as "**Parcel I Owner**"), COFELD, LLC (hereinafter collectively referred to as "**Parcel II Owner**"), COFELD, LLC (hereinafter "**Parcel III Owner**") and the DISTRICT OF COLUMBIA, a municipal corporation, (hereafter referred to as the "**District**"). Parcel I Owner, Parcel II Owner, Parcel III Owner and the District shall be collectively referred to in this Agreement as the "**Parties**". The Parties hereby ratify, affirm and agree to the following terms, conditions, covenants, warranties and obligations (including, but not limited to, all Recitals). This Covenant will become effective ("**Effective Date**") upon its recordation among the land records of the Recorder of Deeds of the District of Columbia (hereinafter, the "**Land Records**").

RECITALS:

- A. Parcel I Owner is the record owner of certain property in the District of Columbia known as Lots 48-61, 131, 157-160, 816, 817, 822, 823, 828-830 in Square 701 consisting of 51,822 square feet of land area, said property being more specifically described at Exhibit A (hereinafter "**Parcel I**").
- B. Parcel II Owner is the record owner of certain property in the District of Columbia known as Lot 841 in Square 702 consisting of 10,001 square feet of land area, said property being more specifically described at Exhibit B (hereinafter "**Parcel II**").
- C. Parcel III Owner is the record owner of certain property in the District of Columbia known as Lots 155 and 156 in Square 701 consisting of 3,618 square feet of land area, said property being more specifically described at Exhibit C (hereinafter "**Parcel III**") (Parcel I, Parcel II, and Parcel III referred to collectively herein as the "**Properties**").
- D. On November 18, 2002, the Zoning Commission for the District of Columbia ("**Zoning Commission**"), pursuant to its authority under D.C. Official Code Section 6-641.01 et seq. (2001), enacted amendments to the Zoning Regulations of the District of Columbia, February 2003, as amended, 11 DCMR ("**Zoning Regulations**") in Zoning Commission Order 971, Case Nos. 96-3/89-1, establishing and mapping a "Capitol Gateway Overlay District" ("**CG District**"). Such amendments have been codified at §§1600 to 1699 of the Zoning Regulations, and are hereinafter referred to as the "**CG Regulations**." On October 17, 2005, the Zoning Commission enacted additional amendments to the CG Regulations in Zoning Commission Order No. 05-08. Any reference in this Covenant to the Zoning Regulations or the CG Regulations shall be deemed to be a reference to the Zoning Regulations or the CG Regulations, as applicable, in effect as of the date of this Covenant.
- E. The Zoning Regulations provide in §1602 that two or more lots within the CG District

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32A

may be combined for the purpose of allocating residential and nonresidential uses regardless of the normal limitation on floor area by uses on each lot; provided that the aggregate residential and nonresidential floor area shall not exceed the matter of right maximum height or density of the underlying zone district(s), except when bonus density is constructed.

F. The CR District allows for a total of 6.0 FAR of development of which no more than 3.0 may be used for nonresidential purposes. The CG Overlay allows buildings or combined lots a 7.0 FAR, subject to the same limitations on nonresidential GFA, and provided that the additional 1.0 FAR in excess of the matter-of-right maximum of 6.0 FAR must be devoted solely to residential uses other than hotels. For the purposes of this Covenant, both parcels shall be deemed to individually have a development potential of 7.0 FAR as set forth in Paragraph J herein. The permitted FAR may be allocated through the combined lot development process as set forth in Paragraph I herein.

G. Pursuant to §1602.2 of the Zoning Regulations, no allocation of gross floor area shall be effective unless an instrument, legally sufficient to effect such a transfer, is filed with the Zoning Administrator and recorded by the Recorder of Deeds in the Land Records against all lots included in the combined lot development. Pursuant to §1602.3(d) of the Zoning Regulations, said instrument shall bind the present and future owners of a lot sending nonresidential gross floor area to another lot to forego nonresidential development and occupation of on-site area equal to the amount of gross floor area of nonresidential uses transferred.

H. The Properties are located within a CG/CR District as identified in §1600.1 of the Zoning Regulations and the Official Zoning Map.

I. Parcel I Owner, Parcel II Owner and Parcel III Owner desire to enter into this Covenant with the District of Columbia to establish an allocation of residential and nonresidential gross floor area pursuant to §1602 of the Zoning Regulations.

J. The gross floor area of the foregoing described properties is presently as follows:

<u>Parcel</u>	<u>Lot Area</u>	<u>Maximum Permitted GFA for All Uses (7.0 FAR)</u>	<u>Maximum Allowed Non-Residential GFA (3.0 FAR)</u>
I	51,822 sf	362,754 sf	155,466 sf
II	10,001 sf	70,007 sf	30,003 sf
III	3,618 sf	25,326 sf	10,854 sf
TOTAL:	65,441 sf	458,087 sf	196,323 sf

NOW, THEREFORE, for and in consideration of the mutual promises and undertakings herein contained, receipt of which is hereby acknowledged, the Parties hereto agree for

themselves, their successors and assigns, as follows:

1. That Parcel I Owner, Parcel II Owner and Parcel III Owner hereby establish the following allocation of maximum permitted residential gross floor area and maximum allowable nonresidential gross floor area among the Properties and hereby covenant that they will not exceed the maximum permitted residential and the maximum allowable nonresidential gross floor area as apportioned, and that the aggregate residential and nonresidential floor area will not exceed the limits of the CG/CR District as provided in §1601.1 of the Zoning Regulations. The allocation of gross floor area is as follows:

<u>Parcel</u>	<u>Lot Area</u>	<u>Maximum Permitted GFA for All Uses (7.0 FAR)</u>	<u>Maximum Allowed Non-Residential GFA (3.0 FAR)</u>	<u>GFA of Non-Residential Uses Allocated</u>	<u>GFA of all Uses Allocated</u>	<u>Respective FAR following Combined Lot Development</u>
I	51,822 sf	362,754 sf	155,466 sf	196,323 sf (155,466 + 30,003 + 10,854)	458,087 sf (362,754 + 70,007 + 25,326)	8.84 FAR
II	10,001 sf	70,007 sf	30,003 sf	0 sf (30,003 - 30,003)	0 sf (70,007 - 70,007)	0.0 FAR
III	3,618 sf	25,326 sf	10,854 sf	0 sf (10,854 - 10,854)	0 sf (25,326 - 25,326)	0.0 FAR
TOTAL:	65,441 sf	458,087 sf	196,323 sf	196,323 sf	458,087 sf	7.0 FAR

2. Subject to the terms hereof, the Properties will be used so as to conform to the apportionment of residential and nonresidential gross floor area established in Paragraph 1.

3. Except as provided in paragraphs 4 and 5, the Parcel II Owner and Parcel III Owner forego all development on Parcel II and Parcel III, respectively.

4. In the event the Properties are subdivided into one or more larger lots, the lot area and maximum permitted GFA for the Properties, as set forth in Paragraph 1, shall be included in the calculation of lot area and permitted GFA for the larger lots, as applicable. In any subdivision involving Parcel II into one or more larger lots, improvements may be constructed on Parcel II subject to the FAR limitations as calculated in Paragraph 1. Likewise, in any subdivision involving Parcel III into one or more larger lots, improvements may be constructed on Parcel III subject to the FAR limitations as calculated in Paragraph 1.

5. Parcel II and Parcel III may be included into one or more subsequent combined lot developments with an allocation to said parcel of FAR so that improvements may be constructed on Parcel II and Parcel III without the necessity of the consent of the Parcel I Owner, and as permitted pursuant to Paragraph 9 herein.

6. Any improvement(s) constructed on the Properties shall comply with the

allocations set forth in Paragraph 1 of this Covenant so long as the Zoning Regulations may require, except as provided elsewhere herein.

7. The Parcel I Owner, the Parcel II Owner and the Parcel III Owner hereby consent to the enforcement solely by the District administratively, at law or at equity, of the restrictions, covenants, obligations, easements and agreements contained in this Covenant, and nothing contained in this Covenant shall be deemed to vest any rights in any third party. The Parcel I Owner, Parcel II Owner and Parcel III Owner each also represents and warrants to the other that the remedies set forth in this Covenant are not exclusive, and that (i) the District and any agency, department or instrumentality thereof and (ii) the Parcel I Owner, the Parcel II Owner and the Parcel III Owner may each pursue other remedies not specifically set forth herein.

8. The obligations of the Parcel I Owner, the Parcel II Owner and the Parcel III Owner under this Covenant shall be considered covenants running with the Properties and shall be binding in perpetuity upon the successors, heirs, executors, administrators or assigns of the Parcel I Owner, Parcel II Owner's and Parcel III Owner's interest in the Properties and/or the existing or any future improvements thereon (including, but not limited to, the purchaser at any foreclosure sale and any mortgagees at such time as such mortgagee becomes an owner of all or some of the Properties, and their respective successors and assigns). References in this Covenant to the "Parcel I Owner", "Parcel II Owner", "Parcel III Owner", or to any "successor" or "assign" thereof shall be deemed to refer, respectively, to the party then holding title to any or all of Parcel I or Parcel II or Parcel III or any improvements thereon. If a party no longer holds title to the Properties, such party shall have no further obligations under this Covenant, including with regard to any representations and warranties made previously by such party, provided however that should any such party no longer hold fee title to the Properties and such party shall have an unsatisfied monetary obligation to the District under this Covenant, then such party shall remain liable to the District for satisfaction of such obligation from and after the date that such party conveyed title until such time as that obligation is satisfied or relived pursuant to District law. References in this Covenant to agencies, departments or instrumentalities of the District shall be deemed to include agencies, departments or instrumentalities proceeding to the jurisdiction thereof pursuant to the laws of the District.

9. The Parcel I Owner, the Parcel II Owner and the Parcel III Owner acknowledge that either may engage in subsequent combined lot developments without the consent of the other party. Each Owner agrees that the combined size of the land area and structures included in the instant combined lot development, and the amount of residential and commercial uses contained therein, will increase as a result of subsequent combined lot developments. Should any property included in a future combined lot development engage in a subsequent combined lot development, the size of the previous combined lot will also increase in the same manner, and any subsequent combined lot development covenants involving either of the lots in this Covenant shall include in its calculation of residential and non-residential uses all of the structures and land area involved in this Covenant plus the area of the land and structures that have been added to this combined lot by virtue of all subsequent combined lot developments that can be traced back to this combined lot development.

10. Any conveyance of Parcel I, Parcel II or Parcel III, or any part(s) thereof, shall be

undertaken subject to the aforementioned allocations and shall contain a covenant by the grantee or grantees therein that said grantee or grantees shall be bound by and will observe and carry out each and every covenant made herein.

11. Each purchaser or other transferee of all or part of Parcel I, Parcel II or Parcel III shall be deemed to take subject to the respective obligations of the Parcel I Owner, the Parcel II Owner or the Parcel III Owner as under this Covenant, and the interest of any mortgagee shall be subject and subordinate to the covenants set forth in this Covenant. This provision shall apply to each and every sale, mortgage, transfer, conveyance or encumbrance, recorded or unrecorded, regardless of whether or not the District has waived its rights to notice, whether by action or non-action, in connection with any previous sale, mortgage, transfer, conveyance or encumbrance, whether one or more.

12. This Covenant may be substantively amended or terminated only with the approval of the Zoning Commission, after public hearing, and only upon a finding that the proposed amendment or termination is fully justified and consistent with the purposes of the CG Regulations.

13. The Parcel I Owner, the Parcel II Owner and the Parcel III Owner hereby represent and warrant to the District as of Effective Date each of which representation and warranty shall also be true as to their respective properties as of the Effective Date as follows:

(a) The Parcel I Owner, the Parcel II Owner and the Parcel III Owner have the full, unencumbered legal capacity and authority under the laws of the District of Columbia to enter into this Covenant.

(b) There are no restrictions or adverse claims of record on the use of, or otherwise relating to, the Parcel I, Parcel II or Parcel III, nor are there any obligations or encumbrances of any kind, the requirements of which have not been waived and subordinated that would impair, delay, prevent or preclude in any manner whatsoever, now or in the future, the imposition of the restrictions, covenants, obligations, warranties, limitations and agreements contained in this Covenant on the Parcel I Owner, the Parcel II Owner, the Parcel III Owner or the Properties.

14. The Parcel I Owner, the Parcel II Owner and the Parcel III Owner hereby agree to indemnify the District and each of its agencies, departments and instrumentalities from and against any and all loss, cost, harm or damage (including, without limitation, attorneys' fees) arising from or related in any way to the assertion of any adverse claim to the combined lot development rights established pursuant to this Covenant or the Zoning Regulations (except for any gross negligence or willful misconduct on the part of the District). The District recognizes that the Parcel I Owner, the Parcel II Owner and the Parcel III Owner are proceeding with this Covenant in reliance upon the Zoning Regulations as the same exist on the Execution Date being in effect on the Effective Date. The requirements of this Paragraph 14 shall not apply to the District of Columbia in the event it acquires title to Parcel I.

15. Attached hereto as Exhibit D is a true and accurate copy of the written statement

required of the Office of Planning pursuant to the second sentence of §1602.5 of the Zoning Regulations.

16. The respective obligations of the Parcel I Owner, the Parcel II Owner and the Parcel III Owner under this Covenant shall be several (and not joint). Notwithstanding the foregoing, neither the Parcel I Owner nor their successors and assigns shall have any personal liability for the performance of the obligations of the Parcel II Owner or the Parcel III Owner under this Covenant, it being understood that the District's recourse in the event of a breach by the Parcel II Owner and the Parcel III Owner shall be enforcement against the Parcel II Owners and/or the Parcel III Owner in accordance with this Covenant. Notwithstanding the foregoing, neither the Parcel II Owner, the Parcel III Owner, nor their respective successors or assigns shall have any personal liability for the performance of the obligations of the Parcel I Owner under this Covenant, it being understood that the District's recourse shall be enforcement of a breach by the Parcel I Owner shall be enforcement against the Parcel I Owner in accordance with this Covenant.

17. Nothing herein shall restrict or impair the Zoning Commission for the District of Columbia from exercising its legal power to amend or repeal the Zoning Regulations of the District of Columbia. Nothing contained herein shall prevent the Parcel I Owner, the Parcel II Owner, or the Parcel III Owner from challenging, contesting or supporting such repeal or amendment.

18. All exhibits and appendices referred to in this Covenant hereby are incorporated herein and made an integral part of this Covenant.

19. If any provision of this Covenant or its application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Covenant or the application of such provision or such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

20. All notices, demands, requests, consents, approvals, and other communications which may be or are required to be given hereunder shall be in writing and shall be sent by mail or deliver as follows:

If to Parcel I Owner:

Cofeld, LLC
6000 Executive Blvd.
Suite 700
Rockville, MD 20852

c/o David Cohen
Willco Companies
7811 Montrose Road
Suite 500
Potomac, MD 20854

If to Parcel II Owner:

Cofeld, LLC
6000 Executive Blvd.
Suite 700
Rockville, MD 20852

If to the Parcel III Owner:

Cofeld, LLC
6000 Executive Blvd.
Suite 700
Rockville, MD 20852

With a Copy to:

Holland & Knight LLP
2099 Pennsylvania Ave, NW
Suite 100
Washington, DC
Attn: Norman M. Glasgow, Jr., Esq.

If to the District:

Zoning Administrator
Office of the Zoning Administrator
Second Floor
941 North Capitol Street, NE
Washington, DC 20002

With a copy to:

Director, Office of Planning
801 North Capitol Street, NE
4th Floor
Washington, DC 20002

And:

Chief, Land Use and Public Works Section
Commercial Division
Office of Attorney General for the District of Columbia
441 Fourth Street, NW
6th Floor North
Washington, DC 20001.

Any party may change any address for the purposes of this Covenant by giving notice in accordance with this Paragraph 20.

21. Each notice, demand, request, consent, approval, or other communication shall be either (i) sent by registered or certified mail, postage prepaid, return receipt requested, or (ii) delivered by hand, or recognized overnight courier, receipt requested, and shall be deemed sufficiently given if mailed, the date of acceptance or refusal of delivery as indicated by the appropriate receipt/deliver document.

22. This Covenant shall be construed and enforced in accordance with and be governed by the laws of the District (without regard to conflicts of laws principles).

23. This Covenant may be executed in counterparts, each of which shall be deemed an original and all counterparts together shall constitute one and the same covenant.

[Signatures on following pages]

IN WITNESS WHEREOF, on the day and year first above written, Cofeld, LLC, a D.C. limited liability company, owner of Lots 50-61, 155, 156, 816, 817, 822, 823, 828-830 in Square 701 and Lot 841 in Square 702 in the District of Columbia, has caused these presents to be executed by Barry S. Cohn, and said Barry S. Cohn hereby is appointed as its true and lawful attorney-in-fact to acknowledge and deliver these presents as its act and deed.

COFELD, LLC
By, Cofeld Manager LLC, its Manager
[Signature]
By, Barry S. Cohn Managing Member

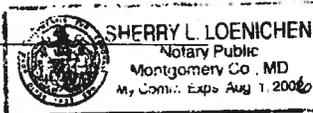
)
) ss:
)

I, Sherry Loenichen a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Barry S. Cohn, party to the foregoing Covenant bearing date of the 16th day of May, 2006, personally appeared before me in said jurisdiction, the said Barry S. Cohn being personally well known to me as the person who executed the said Covenant and acknowledged the same to be his act and deed.

GIVEN under my hand and seal this 19 day of April, 2006.

Sherry Loenichen
Notary Public, D.C.

My commission expires: _____



IN WITNESS WHEREOF, on the day and year first hereinabove written, said David H. Cohen, owner of Lots 48, 49, 131, 157-160 in Square 701 in the District of Columbia, has caused these presents to be signed with his name.

David H. Cohen
DAVID H. COHEN

)
) ss:
)

I, Shelly Loatch a Notary Public in and for the jurisdiction aforesaid, do hereby certify that David H. Cohen, party to the foregoing Covenant bearing date of the 16th day of May, 2006, personally appeared before me in said jurisdiction, the said David H. Cohen being personally well known to me as the person who executed the said Covenant and acknowledged the same to be his act and deed.

GIVEN under my hand and seal this 19 day of April, 2006.

Shelly Loatch
Notary Public, D.C.

My commission expires: _____

IN WITNESS WHEREOF, on the day and year first hereinabove written, said Greg S. Cohen, owner of Lots 48, 49, 131, 157-160 in Square 701 in the District of Columbia, has caused these presents to be signed with his name.



GREG S. COHEN

)
) ss:
)

I, Sherry Leachin a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Greg S. Cohen, party to the foregoing Covenant bearing date of the 16th day of May, 2006, personally appeared before me in said jurisdiction, the said Greg S. Cohen being personally well known to me as the person who executed the said Covenant and acknowledged the same to be his act and deed.

GIVEN under my hand and seal this 19 day of April, 2006.



Notary Public, D.C.

My commission expires: _____

IN WITNESS WHEREOF, on the day and year first hereinabove written, said Jeffrey C. Cohen, owner of Lots 48, 49, 131, 157-160 in Square 701 in the District of Columbia, has caused these presents to be signed with his name.

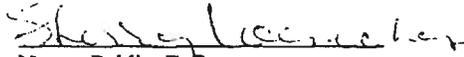


JEFFREY C. COHEN

)
) ss:
)

I, Shirley Leachin a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Jeffrey C. Cohen, party to the foregoing Covenant bearing date of the 19 day of April, 2006, personally appeared before me in said jurisdiction, the said Jeffrey C. Cohen being personally well known to me as the person who executed the said Covenant and acknowledged the same to be his act and deed.

GIVEN under my hand and seal this 19 day of April, 2006.



Notary Public, D.C.

My commission expires: _____

IN WITNESS WHEREOF, on the day and year first hereinabove written, said Charlene Feldman, owner of Lots 48, 49, 131, 157-160 in Square 701 in the District of Columbia, has caused these presents to be signed with his name.

Charlene Feldman
CHARLENE FELDMAN

)
) ss:
)

I, Sherry Lavinich a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Charlene Feldman, party to the foregoing Covenant bearing date of the 16th day of May, 2006, personally appeared before me in said jurisdiction, the said Charlene Feldman being personally well known to me as the person who executed the said Covenant and acknowledged the same to be his act and deed.

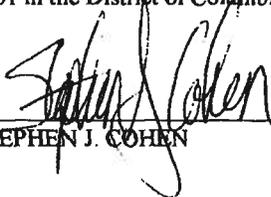
GIVEN under my hand and seal this 19 day of April, 2006.

Sherry Lavinich
Notary Public, D.C.

My commission expires: _____

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IN WITNESS WHEREOF, on the day and year first hereinabove written, said Stephen J. Cohen, owner of Lots 48, 49, 131, 157-160 in Square 701 in the District of Columbia, has caused these presents to be signed with his name.


STEPHEN J. COHEN

)
) ss:
)

I, Sherry Loraichin a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Stephen J. Cohen, party to the foregoing Covenant bearing date of the 19 day of April, 2006, personally appeared before me in said jurisdiction, the said Stephen J. Cohen being personally well known to me as the person who executed the said Covenant and acknowledged the same to be his act and deed.

GIVEN under my hand and seal this 19 day of April, 2006.


Notary Public, D.C.

My commission expires: _____

IN WITNESS WHEREOF, on the day and year first hereinabove written, said Richard S. Cohen, owner of Lots 48, 49, 131, 157-160 in Square 701 in the District of Columbia, has caused these presents to be signed with his name.


RICHARD S. COHEN

State of Maryland
Montgomery County) ss:

I, June Hubley a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Richard S. Cohen, party to the foregoing Covenant bearing date of the 26th day of April, 2006, personally appeared before me in said jurisdiction, the said Richard S. Cohen being personally well known to me as the person who executed the said Covenant and acknowledged the same to be his act and deed.

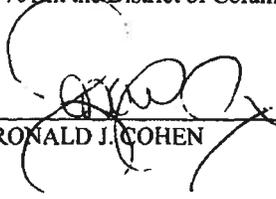
GIVEN under my hand and seal this 26th day of April, 2006.

June Hubley
Notary Public, ~~DC~~ Maryland

My commission expires: _____



IN WITNESS WHEREOF, on the day and year first hereinabove written, said Ronald J. Cohen, owner of Lots 48, 49, 131, 157-160 in Square 701 in the District of Columbia, has caused these presents to be signed with his name.

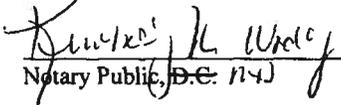


RONALD J. COHEN

)
) ss:
)

I, KIMBERLY WARD a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Ronald J. Cohen, party to the foregoing Covenant bearing date of the 27th day of APRIL, 2006, personally appeared before me in said jurisdiction, the said Ronald J. Cohen being personally well known to me as the person who executed the said Covenant and acknowledged the same to be his act and deed.

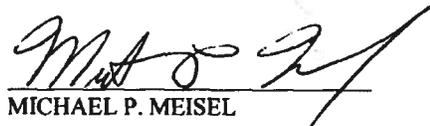
GIVEN under my hand and seal this 27th day of APRIL, 2006.



Notary Public, D.C. 114

My commission expires: 10/01/09

IN WITNESS WHEREOF, on the day and year first hereinabove written, said Michael Meisel, owner of Lots 48, 49, 131, 157-160 in Square 701 in the District of Columbia, has caused these presents to be signed with his name.


MICHAEL P. MEISEL

State of Maryland
County of Carroll

I, Jamie L. Rice a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Michael P. Meisel party to the foregoing Covenant bearing date of the 19th day of April, 2006, personally appeared before me in said jurisdiction, the said Michael P. Meisel being personally well known to me as the person who executed the said Covenant and acknowledged the same to be his act and deed.

GIVEN under my hand and seal this 19th day of April, 2006.


Notary Public, Carroll County, MD

My commission expires: May 1, 2009

IN WITNESS WHEREOF, on the day and year first hereinabove written, said Marc Meisel, owner of Lots 48, 49, 131, 157-160 in Square 701 in the District of Columbia, has caused these presents to be signed with his name.

~~_____
MARC MEISEL~~

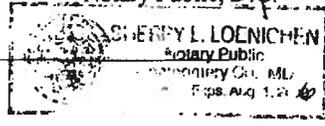
)
) ss:
)

I, Sherry Loenichen a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Marc Meisel party to the foregoing Covenant bearing date of the 16th day of May, 2006, personally appeared before me in said jurisdiction, the said Marc Meisel being personally well known to me as the person who executed the said Covenant and acknowledged the same to be his act and deed.

GIVEN under my hand and seal this 19 day of April, 2006.

Sherry Loenichen
Notary Public, D.C.

My commission expires: _____



IN WITNESS WHEREOF, on the day and year first hereinabove written, said Margo Sadow, owner of Lots 48, 49, 131, 157-160 in Square 701 in the District of Columbia, has caused these presents to be signed with his name.

Margo Sadow
MARGO SADOW

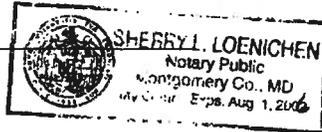
)
) ss:
)

I, Sherry Loenichen a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Margo Sadow party to the foregoing Covenant bearing date of the 16th day of May, 2006, personally appeared before me in said jurisdiction, the said Margo Sadow being personally well known to me as the person who executed the said Covenant and acknowledged the same to be her act and deed.

GIVEN under my hand and seal this 19 day of April, 2006.

Sherry Loenichen
Notary Public, D.C.

My commission expires: _____



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 of the District of Columbia who has hereunto set her hand and affixed the seal of the DISTRICT OF COLUMBIA hereunto under authority of the Act of Congress entitled "An Relieve the Commissioners of the District of Columbia of Certain Ministerial Duties" approved February 11, 1932.

ATTEST:

DISTRICT OF COLUMBIA
(a municipal corporation)

Tabatha Braxton

By: Patricia Elwood
Secretary of the District of Columbia

[CORPORATE SEAL]

DISTRICT OF COLUMBIA, SS:

I, Tabatha Braxton, a Notary Public in and for the District of Columbia, do hereby certify that Patricia Elwood who is personally known to me as the person named as Secretary of the District of Columbia in the foregoing Combined Lot Development Covenant bearing date as of April 21, 2005, and hereunto annexed, personally appeared before me in said District and, as Secretary as 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 and that she delivered the same as such.

GIVEN under my hand and seal this 21 day of April, 2005.

Tabatha Braxton

Notary Public, D.C.

TABATHA BRAXTON
Notary Public District of Columbia
My Commission Expires April 14, 2007

My commission expires:

APPROVED:


Office of Planning

Zoning Administrator for the District of Columbia

APPROVED AS TO LEGAL SUFFICIENCY:

Office of the Attorney General for the District of Columbia

APPROVED:


Office of Planning

 04.10.00
Zoning Administrator for the District of Columbia

APPROVED AS TO LEGAL SUFFICIENCY:

Office of the Attorney General for the District of Columbia

APPROVED:


Office of Planning

Zoning Administrator for the District of Columbia

APPROVED AS TO LEGAL SUFFICIENCY:

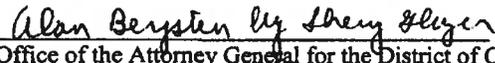

Office of the Attorney General for the District of Columbia

EXHIBIT A

Legal Descriptions of Properties Comprising Parcel I

Also, Lots numbered Forty-eight (48) and Forty-nine (49) in Felix Nemegyei and others' subdivision of Lots in Square numbered Seven Hundred one (701) as per plat recorded in Liber 14 at folio 130 in the Surveyor's Office of the District of Columbia. Said property being now known for purposes of assessment and taxation as Lots numbered 48 and 49 in Square numbered 701.

All of lots numbered Fifty (50) to Sixty-one (61), both inclusive, in Felix Nemegyei and others', Executors' subdivision of Lots in Square numbered Seven Hundred one (701), as per plat recorded in Liber 14 at folio 130 in the Office of the Surveyor for the District of Columbia.

Also, Lot numbered One Hundred Thirty-one (131) in Felix Nemegyei and others' Executors subdivision of Lots in Square numbered Seven Hundred one (701), as per plat recorded in Liber 14 at folio 130 in the surveyor's Office of the District of Columbia. Said property being now known for purposes of assessment and taxation as Lot numbered 131 in Square numbered 701.

Also, Lots numbered One Hundred Fifty-seven (157) to One Hundred Sixty (160), inclusive in Rigel O. Belt and others' subdivision of lots in Square numbered Seven Hundred one (701), as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 114 at folio 190.

Also, part of "Alley Closed", in said Square numbered Seven Hundred one (701), as per plat recorded in Liber 126 at Folio 86 (said part of Alley Closed being known for purposes of assessment and taxation as Lot numbered Eight Hundred Sixteen (816) in Square numbered Seven Hundred one (701).

All of Lot lettered C and part of Lot lettered B in John E. Norris, Trustee's subdivision of Lots in Square numbered Seven Hundred One (701), as per plat recorded in Liber R.W. at Folio 50 in the Office of the Surveyor for the District of Columbia. At the date hereof Said Lot C and part of Lot B being now known for purposes of assessment and taxation as Lot numbered Eight Hundred Seventeen (817) in Square 701.

Lots 62 to 75 both inclusive in Square 701 in the subdivision made by Felix Nemegyei and others, Executors, as per plat recorded in Liber No. 14 at folio 130 among the Records of the Office of the Surveyor for the District of Columbia.

NOTE: At the date hereof the above-described property (land and improvements thereon) is designated on the Records of the Assessor for the District of Columbia for assessment and taxation purposes as Lot 822 in Square 701.

Lots numbered One Hundred Twenty-Nine (129) and One Hundred Thirty (130) in Felix Nemegeyi and others' Executors subdivision of Lots in Square numbered Seven Hundred One (701), as per plat recorded in Liber 14 at folio 130 of the records of the Office of the Surveyor for the District of Columbia; Also Lot numbered One Hundred Thirty-eight (138) in George E. Emmons and Charles B. Pearson, Trustees' subdivision of Lots in Square numbered Seven Hundred One (701), as per plat recorded in Liber 17 at folio 107 of the aforesaid Surveyor's Office. At the date hereof the above described land is now known for assessment and taxation purposes as Lot numbered Eight Hundred Twenty-three (823) in Square numbered Seven Hundred One (701).

Also, all of lots lettered C, D, E, F and part of lot lettered B in John E. Norris, Trustee's subdivision of Lots in Square numbered Seven Hundred one (701), as per plat recorded in Liber R.W. at folio 50 in the Office of the Surveyor for the District of Columbia (said Lot C and that part of Lot B being now known for purposes of assessment and taxation as Lot numbered Eight Hundred Seventeen (817) in Square numbered Seven Hundred one (701), all being described in one parcel; as shown on a plat of survey recorded in Survey Book 150, page 269, in the Office of the Surveyor for the District of Columbia; said Lot D now known for purposes of assessment and taxation as Lot 828 in Square numbered 701; said Lot E now known for purposes of assessment and taxation as Lot 829 in Square numbered 701; and said Lot F now known for purposes of assessment and taxation as Lot 830 in Square numbered 701.

EXHIBIT B

Legal Descriptions of Properties Comprising Parcel II

Also, lots numbered Twelve (12), Sixty-three (63), Sixty-four (64) and part of lot numbered Sixty-five (65) in Alfred and T.A. Richards' subdivision of Square numbered Seven hundred two (702), as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber W.F. at folio 2; also all of Lot numbered One Hundred Twenty-four (124) in William A. Richards and others, Trustees' subdivision of lots in said Square numbered Seven hundred two (702), as per plat recorded in said Surveyor's Office in Liber 30 at folio 157, except the East Fifteen (15) feet of said lot dedicated for alley purposes and shown on plat recorded in said Surveyor's Office in Liber 99 at folio 155; also parts of alleys closed in said Square numbered Seven hundred two (702), as shown on plats recorded in said Surveyor's Office in Liber 99 at folio 155 and in Liber 119 at folio 54; all of said property being described in one parcel as follows:

Beginning for the same at a point on the Westerly boundary of lots numbered Sixty-five (65) to Seventy-one (71) both inclusive, in said square, at a point distance 139.48 feet South from the Northwest corner of said lot Seventy-one (71) and running thence Southerly 114.30 feet, more or less, to the Southwest corner of said lot Twelve (12) being also the North line of "O" Street; thence Easterly along the North line of "O" Street 87.50 feet; thence Northerly 114.30 feet, more or less, to a point perpendicular to and 87.50 feet Easterly from the point of beginning, and thence Westerly 87.50 feet to the place of beginning, said described land being now known for purposes of assessment and taxation as Lot numbered Eight hundred forty-one(841) in Square numbered Seven hundred two (702).

EXHIBIT C

Legal Descriptions of Property Comprising Parcel III

Also, Lots numbered One Hundred Fifty-five (155) and One Hundred Fifty-six (156) in the subdivision of Original Lot numbered One (1) in Square numbered Seven Hundred one (701), made by Washington Realty and Construction Co., Inc., as per plat recorded in the Surveyor's Office of the District of Columbia in Liber 91 at folio 102.

EXHIBIT D
(Section 1602.5 OP Statement)

This certification is identified as Exhibit D to the Combined Lot Development Covenant ("Covenant") between (i) Cofeld L.L.C. et al ("Parcel I Owner"), (ii) Cofeld L.L.C. (collectively, "Parcel II Owners"), (iii) Cofeld L.L.C. ("Parcel III Owner"), and (iv) the District of Columbia, a municipal corporation acting in its own name.

The purpose of this statement is to confirm the amounts of residential and nonresidential gross floor area that are allocated between the Parcels (each as defined in the Covenant) pursuant to the provisions of the Capitol Gateway Overlay District ("CG District") set forth in 11 D.C.M.R. Chapter 16, as amended ("CG Regulations"). Section 1602 of the CG Regulations sets forth provisions for flexibility in allocating residential and nonresidential uses and development between lots in the overlay.

The properties are all located in the CG/CR zoning district and are therefore eligible to allocate residential and nonresidential uses pursuant to Chapter 16 of the Zoning Regulations. The CG/CR zoning district allows a maximum density of 7.0 FAR for mixed-use projects with a maximum nonresidential FAR of 3.0. Parcel I contains a land area of 51,822 square feet allowing development of 362,754 square feet, of which 155,466 square feet may comprise nonresidential uses. Parcel II contains a land area of 10,001 square feet allowing development of 70,007 square feet, of which 30,003 square feet may comprise nonresidential uses. Parcel III contains a land area of 3,618 square feet allowing development of 25,326 square feet, of which 10,854 square feet may comprise nonresidential uses. Parcel II and Parcel III Owners propose to transfer, pursuant to the Covenant, all development rights to Parcel I. The transfer would allow a total development of 458,087 square feet on Parcel I, of which 196,323 square feet may comprise nonresidential uses. Parcels II and III would have no development rights remaining.

The Office of Planning has reviewed the Covenant and states that the computations are accurate with respect to the amount of residential and nonresidential uses allowed and allocated between the properties. After the allocations are complete, the combined lots will conform with the maximum gross floor area limitations on nonresidential uses for the lots before any such allocations.

The Office of Planning hereby certifies that the Parcels comply in all respects with the applicable CG Regulations pertaining to combined lot developments involving the quantities of residential and nonresidential development as indicated in this memorandum and as set forth in the Covenant to which this Exhibit D is attached.

Certified:


Office of Planning

Date: 3-31-06

Doc# 2006065705
Filed & Recorded
05/17/2006 2:00PM
LARRY TODD
RECORDER OF DEEDS
WASH DC RECORDER OF DEEDS
RECORDING \$ 202.00
SURCHARGE \$ 6.50
COPIES \$ 63.00
CERTIFICATION \$ 2.25
Total: \$ 273.75

Exhibit C

	<u>FAR</u>	<u>North Parcels</u>	<u>South Parcels</u>
Lot area		73,568 SF	3,619 SF
Matter of right (total)	6.0	441,408 SF	21,714 SF
<u>Commercial</u>			
Allowable commercial square footage as a matter of right	3.0	220,704 SF	10,857 SF
Commercial CLDs obtained by CLD Covenant One	N/A	22,200	0
Commercial CLDs obtained by CLD Covenant Two	N/A	40,857	-10,854
Developable commercial square footage with CLDs currently vested	3.86	283,761 SF	3 SF
Commercial CLDs to be retransferred back to South Parcels	N/A	-7,238	7,238
Commercial GFA proposed	5.54 and 2.0	407,585 SF	7,238
Further commercial CLDs required	N/A	<u>131,062</u>	0
<u>Residential</u>			
Allowable residential square footage as a matter of right ¹	3.0	220,704 SF	N/A
Inclusionary Zoning bonus	1.2	88,281.6	N/A
1.0 GC Overlay bonus for residential uses	1.0	73,568	N/A
Residential CLDs obtained by CLD Covenant One	N/A	29,600	0
Residential CLDs obtained by CLD Covenant Two	N/A	54,476	-14,472
Developable residential square footage with CLDs currently vested	6.34	466,629.6 SF	723.8
Residential GFA proposed	3.49	256,700	0 SF
<u>Totals GFA proposed</u>	9.03 and 2.0	664,285	7,238

¹ If all 3.0 FAR of matter-of-right commercial development are used.