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ZONING COMMISSION
 District of Columbia
 CASE NO. 03-12R/03-13R
 EXHIBIT NO. 9
 ZONING COMMISSION
 District of Columbia
 CASE NO. 03-12R/03-13R
 EXHIBIT NO. 9

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 03-12R/03-13R
Z.C. CASE NO. 03-12R/03-13R
Capper Carrollsburg Venture, LLC and D.C. Housing Authority
(Time Extension to First-Stage PUD @ Squares 739, 767, and 768)
March 30, 2015

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on March 30, 2015. At the meeting, the Commission approved a request on behalf of Capper Carrollsburg Venture, LLC and the District of Columbia Housing Authority ("DCHA") (collectively the "Applicant") for a five-year extension of the first-stage planned unit development ("PUD") approval for Squares 739, 767, and 768, which was preliminarily approved in Z.C. Order No 03-12/03-13, and extended in ZC Order No 03-12I/03-13I, pursuant to Chapters 1 and 24 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 extension request

FINDINGS OF FACT

1. On March 21, 2003, the Applicant filed applications seeking preliminary and consolidated approval of a PUD for property located in the southeast quadrant of Washington, D.C. and generally bounded by 2nd Street on the west, 7th on the east, Virginia Avenue on the north, and M Street on the south. The property consists of approximately 927,000 square feet of land area. The approved overall project includes a maximum of 1,747 residential units, 708,302 square feet of office space, 51,000 square feet of retail space, 1,780 off-street parking spaces, and a community center building.
2. Pursuant to Z.C. Order No. 03-12/03-13, the Commission granted preliminary and consolidated approval for the overall development, including Squares 739, 767, 768, and those portions of Square 737 that include Lot 814 and Reservation 17A. In its initial application to the Commission, the Applicant proposed to develop (i) Square 739 with a six to 13 story residential apartment building, having a height of 65 to 130 feet and providing 322 residential units and 6,000 square feet of office and/or retail uses; (ii) Square 767 with a six story residential apartment building, having a height of 65 feet and providing 147 residential units and 6,000 square feet of office and/or retail uses; and (iii) Square 768 with an 11-story residential apartment building, having a height of 110 feet and providing 295 residential units and 6,000 square feet of office/retail uses. Pursuant to Z.C. Order No. 03-12A/03-13A, the Commission granted modifications to the preliminary and consolidated PUD subject to Condition 7, which required that applications for final approval of the high-rise apartments in Squares 739, 767, and 768 must be filed by October 31, 2008. The programs for Squares 739, 767, and 768 did not change at that time.
3. The Commission approved the last order affecting Squares 739, 767, and 768 in Z.C. Order No. 03-12I/03-13I, which became effective upon publication in the *D.C. Register*

on June 26, 2009. This Order required the Applicant to file an application for second-stage approval for the remaining portions of the project in Squares 739, 767, and 768 by December 31, 2013

4. By letter dated December 31, 2013, the Applicant filed a request for a five year extension for the first-stage approval for Squares 739, 767, and 768, such that second-stage approvals for Squares 739, 767, and 768 must be filed no later than December 31, 2018
5. Other than the Applicant, the only parties to the case were Advisory Neighborhood Commissions ("ANC") 6B and 6D. On December 31, 2013, the Applicant submitted a Proof of Service, indicating that the extension request was served on ANCs 6B and 6D.
6. Subsection 2407.10 of the Zoning Regulations authorizes the Commission to extend the time period of a first-stage PUD. Subsection 2407.11 requires that any request to extend that time period must be "accordance with the standard and process for second-stage PUD extensions set forth in §§ 2408.10 through 2408.12 "
7. Section 2408.11(a) authorizes the Commission to grant an extension of PUD validity for projects confronting difficulties with financing based upon changes in economic and market conditions beyond an applicant's control. The Applicant submitted evidence that the project has experienced delay beyond its control. The Applicant has taken many steps to move forward with the overall project, including:
 - Built 623 residential units, of which 386 are replacement public housing units. The completed units are comprised of a 162-unit elderly-only building, a 138-unit apartment building and 323 units of mixed-income townhomes. The townhomes include 86 public housing units;
 - Obtained a building permit for a 195-unit apartment building (which includes 39 replacement public housing units), for which financing is being finalized for the northern portion of Square 882,
 - Secured approval for the design of the new Community Center on Square 881W;
 - Subdivided a number of the prior existing lots into new, consolidated single lots of record;
 - Created assessment and taxation lots for a number of the properties included in the overall development;
 - Applied for and obtained raze permits to demolish a number of structures within the overall project boundaries,

- Gone through the Commission's process and received second-stage approvals and modifications for large portions of the development, as outlined above;
 - Invested approximately \$12,827,146¹⁴ in infrastructure improvements to enable the overall development to move forward. Over half of the public infrastructure improvements that are associated with the development have been completed; and
 - Invested a significant amount in preparing construction drawings and filing a building permit application for the residential building in Square 882.
8. Since the PUD received final approval, the Applicant has diligently pursued financing, marketing, and development of the approved project components. For example, the Applicant has invested over \$250 million to date in securing entitlements, infrastructure, improvements, permitting, construction, and other efforts to implement the overall approved Capper/Carrollsborg PUD. Market conditions, limitations of HUD regulations, and difficulties of financing mixed income properties have slowed down the pace at which public housing units have been able to be constructed at the site.
9. The Applicant has pursued numerous financing methods for the residential buildings in Squares 739, 767, and 768, but has yet to come up with a viable solution given market conditions for construction financing. The Applicant submitted a letter from EagleBank (Exhibit 2D) indicating that it is interested in financing construction for the residential buildings in Squares 739, 767, and 768, but requires more leasing data in the area before it can be comfortable underwriting a mixed income transaction. Based on this and similar responses from other banks, the Applicant has been unable to identify a lending partner that can successfully underwrite the residential projects on Squares 739, 767, and 768.
10. The Applicant also indicated, and the Commission finds, that the real estate market has been subject to, and continues to suffer from, severe financing, construction, sales and other impediments. This major change in the real estate market has rendered it practically impossible for the Applicant to obtain project financing, despite the Applicant's good faith efforts. The Applicant submitted a letter from Jones Lang LaSalle ("JLL") (Exhibit ["Ex."] 8), indicating that the multi-family development sector has been sluggish and uncertain due to a number of factors, including more-stringent lending requirements, but that the residential real estate recovery is expected to continue. The letter indicated JLL's opinion that it is necessary to extend the validity of the PUD order for five years to provide additional time for the market to absorb the existing and proposed new residential stock, and to enable the Applicant to continue searching for a conventional or creative financing solution for the remaining residential portions of the project.

11. Based upon the record, the Commission finds that the Applicant has been unable to obtain project financing for the approved PUD from the numerous lending institutions it contacted. Thus, the project cannot move forward at this time, despite the Applicant's diligent, good faith efforts, because of changes in the economic and market conditions beyond the Applicant's control. Therefore, the Commission finds that this extension request satisfies the sole criterion for good cause shown as set forth in § 2408.11(a) of the Zoning Regulations.
12. In connection with this time extension request, the Applicant submitted an application to the Commission seeking a modification of Z.C. Order No. 03-12H/03-13H, to reduce the total number of public housing units on Squares 739, 767, and 768 from 236 to 206, to permit the 30 public housing units eliminated from the three squares to be located outside of the approved PUD Site on adjacent Square 737, Lot 77. As to the remaining 206 public housing units, the Commission granted the Applicant the flexibility to allocate the units among the three squares, subject to certain minimum and maximum percentages per square, with the actual allocations to be specified in each second-stage application. On March 30, 2015, the Commission approved this request pursuant to Z.C. Order No. 03-12Q/03-13Q.
13. The Office of Planning ("OP") submitted a report dated January 31, 2014, indicating that the Applicant meets the standards of §§ 2408.10 and 2408.11(a) of the Zoning Regulations (Ex. 5). In this report, OP recommended that the Commission approve a two-year extension rather than the requested five-year extension because of the significant need for lower income rental housing in the District and because former residents of the now demolished Capper-Carrollsbury public housing project have been waiting for a decade to return to their former neighborhoods (Ex. 5, p. 3).
14. By letter dated August 15, 2014, ANC 6D noted its support for a two-year extension request. (Ex. 7)

CONCLUSIONS OF LAW

1. The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided: (a) the request is served on all parties to the application by the applicant, and all parties are allowed 30 days to respond; (b) there is no substantial change in any material fact upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) the applicant demonstrates with substantial evidence that there is good cause for such extension as provided in Section 2408.11. 11 DCMR § 2408.10. Section 2408.11 provides the following criteria for good cause shown: (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 Applicant complied with the notice requirements of 11 DCMR § 2408.10(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 fact that would undermine the Commission's justification for approving the original PUD. The Commission notes that pursuant to Z.C. Order No. 03-12Q/03-13Q, the Commission approved a reallocation of the required public housing units to provide (i) 206 public housing units within the approved PUD in Squares 739, 767, and 768, and (ii) 30 public housing units outside of the approved PUD in adjacent Square 737, Lot 77
4. The Commission is required under D C Official Code § 1-309.10(d)(3)(A) to give great weight to the affected ANC's recommendations. The Commission is also 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. To satisfy the great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC and the Office of Planning do or do not offer persuasive advice under the circumstances. Both ANC 6D and the Office of Planning recommended approval of the request, but only for a two year term
5. Although the Zoning Commission agrees with the ANC's and OP's recommendation of approval, it does not find their recommendation of a two-year term to be persuasive. 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 approved residential buildings, following the Applicant's diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control. Furthermore, the last order affecting Squares 739, 767, and 768 (Z.C. Order No. 03-12I/03-13I) expired on December 31, 2013. Granting a two year extension of Z.C. Order No. 03-12I/03-13I would expire on December 31, 2015, thus providing insufficient time for the Applicant to obtain project financing. The Commission therefore concludes that granting a five year extension (i.e., until December 18, 2018) is appropriate in this case and necessary to allow the Applicant to move forward with the development.
6. 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.

7. The Commission concludes that 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.
- 9 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

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of Z.C Case No. 03-12R/03-13R, such that the first-stage PUD in Squares 739, 767, and 768 shall be valid until December 18, 2018, within which time applications for second-stage approval for Squares 739, 767, and 768 must be filed.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. 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 identify or expression, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, genetic information, or place of residence or business Sexual harassment is a form of sex discrimination that is also prohibited by the Act In addition, harassment based on any of the above protected categories is also prohibited by the Act Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order

On March 30, 2015, upon the motion made by Chairman Hood as seconded by Commissioner Turnbull, the Zoning Commission approved this application by a vote of **5-0-0** (Anthony J Hood, Marcie I Cohen, Robert E Miller, Peter G. May, and Michael G Turnbull to adopt)

In accordance with the provisions of 11 DCMR §3028.8, this Order shall become final and effective upon publication in the *D.C. Register*, that is, on April 24, 2015.