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February 1, 2006

Chairperson Carol J. Mitten and Members
D.C. Zoning Commission
One Judiciary Square, Suite 210 South
441 4th Street N.W.
Washington, D.C. 20001

RE: Applicant's Draft Order, Case No. 05-36
(First Stage and Consolidated PUD & Related Map Amendment-200 K Street N.E.)

Dear Chairperson Mitten and Members:

Enclosed please find the Applicant's Draft Order in the above-listed case. If you have questions or need any additional information, please contact me at (202) 585-6565 at any time.

Sincerely,

John Ray
MANATT PHELPS & PHILLIPS LLP
Counsel to the Applicant

Enclosure

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ZONING COMMISSION
District of Columbia
Case 05-36
Exhibit 28
ZONING COMMISSION
District of Columbia
CASE NO.05-36
EXHIBIT NO.28

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served upon the following in the manner shown below on February 1, 2006:

BY E-MAIL to:

Ellen McCarthy, Director
ATTN: Steve Cochran
steve.cochran@dc.gov
D.C. Office of Planning
801 North Capitol Street NE
Washington, D.C. 20002

-and-

BY FIRST-CLASS MAIL, postage prepaid, to:

ANC 6C02 Commissioner Mark Dixon, Chairman
Advisory Neighborhood Commission 6C
80 New York Avenue N.W., # 402
Washington, D.C. 20001

ANC 6C01 Commissioner Lawrence L. Thomas
Golden Rule Apartments
901 New Jersey Avenue NW
Washington, D.C. 20001

ANC 6C03 Commissioner Lena A. Brown
8 Temple Court NW
Washington, D.C. 20001

ANC 6C04 Commissioner Daniel Pernell
1116 3rd Street NE
Washington, D.C. 20002

ANC 6C05 Commissioner Anthony Rivera
817 4th Street NE
Washington, D.C. 20002

ANC 6C06 Commissioner Mike Sherman
618 F Street NW # 2
Washington, D.C. 20002

ANC 6C07 Commissioner William Sisolak
638 A Street NE
Washington, D.C. 20002

ANC 6C08 Commissioner Karen J. Wirt
234 E Street NE
Washington, D.C. 20002

ANC 6C09 Commissioner Charles A. Docter
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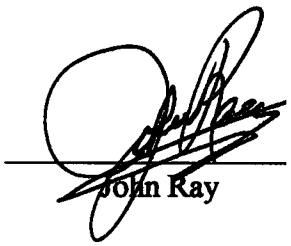

John Ray

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION ORDER NO. _____
Z.C. Case No. 05-36
First State & Consolidated PUD & Related Map Amendment-200 K Street, N.E.
(DATE)

Pursuant to notice, the Zoning Commission for the District of Columbia ("Zoning Commission" or "Commission") held a public hearing on January 5, 2006, to consider applications from 200 K Street, L.P., (the "Applicant") for preliminary and consolidated review and approval of a planned unit development for Lots 2-8, 18, 23-26, 32-43, 57, 63, 66, 806-809, 812-815, 818, 819, 820, and 822 in Square 749 (the "PUD site"), and a related map amendment to rezone the PUD site to C-3-C. The Commission considered the applications pursuant to Chapters 24 and 30 and Section 102 of the D.C. 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 applications with conditions.

FINDINGS OF FACT

The Applications, Parties, and Hearing

1. The Applicant on October 25, 2001, filed an application for a modification and time extension of Z.C. Order No. 783, adopted September 11, 1995, which approved a Consolidated PUD and related map amendment for the PUD site, subsequently extended by Z.C. Order No. 783-A, adopted April 13, 1998, and Z.C. Order No. 783-B, adopted December 13, 1999. The application was designated as Zoning Commission Case No. 01-28TE, and was subsequently revised by the Applicant's submission dated January 18, 2005.

2. The Zoning Commission voted March 14, 2005, to set the case down for a hearing, which was originally scheduled for July 14, 2005, and subsequently postponed at the Applicant's request to October 3, 2005.

3. The Applicant filed an initial pre-hearing statement in Case No. 01-28TE on April 25, 2005. The pre-hearing statement and accompanying project plans were revised in the Applicant's filing of documents titled *Final Pre-Hearing Supplemental Submission* on September 13, 2005, and *Pre-Hearing Submissions Requested by the Office of Planning*, on September 29, 2005 (the "Applicant's September 13th and September 29th Submissions").

4. The Commission convened the hearing on Case No. 01-28TE on October 3, 2005, and agreed to a continuance requested by Advisory Neighborhood Commission ("ANC") 6C which represents the area including the PUD site. The Commission announced at that time that the hearing would continue on November 17, 2005, and would be conducted in two phases. In the first phase, the Commission would review the evidence and vote on whether to approve the Applicant's application for a time extension. If the vote was to grant the time extension, the Commission would then receive testimony on the Applicant's proposed modification of Z.C. Order No. 783. If the vote was to deny the time extension, the modification application would become moot.

5. The Zoning Commission convened the hearing on Case No. 01-28TE on November 17, 2005. After reviewing evidence and written submissions from the Applicant and the Office of Planning on the time-extension issue, the Commission voted to deny the time-extension application. Denial of the time extension had the effect of terminating the PUD approved by Z.C. Order 783.

6. After voting to deny the time extension, the Commission invited the Applicant to submit the PUD modification as new applications for a Consolidated and Preliminary PUD and related map amendment, as set forth in the Applicant's September 13th and September 29th submissions. The Applicant agreed to do so.

7. The Commission, during the November 17, 2005, hearing, designated the new applications as Z.C. Case No. 05-36, and set down the new case for a hearing on December 15, 2005, conditioned upon the Applicant's expedited payment of the filing and hearing fees and filing of the new application documents. Upon the advice of the Office of the Attorney General, the Commission subsequently rescheduled the hearing on Case No. 05-36 to January 5, 2006, in order to comply with Section 492(b)(2) of the Home Rule Act, codified at D.C. Official Code, § 6-641.05(a), which requires a 30-day notice period for Commission hearings on proposed map amendments.

8. The Applicant paid the filing and hearing fees for a Consolidated and Preliminary PUD and related map amendment on November 21, 2005.

9. The Commission published notice of the January 5, 2006, hearing on Case No. 05-36 in the *D.C. Register* on December 2, 2005. The Office of Zoning gave proper notice to the affected Advisory Neighborhood Commission and the owners of properties within 200 feet of the PUD site, pursuant to 11 DCMR § 3015.3. The Applicant submitted affidavits dated December 6, 2005, and January 5, 2006, verifying posting and maintenance of hearing notice placards at the PUD site, pursuant to 11 DCMR 3015.4.

10. The Zoning Commission hearing notice for Case No. 05-36 provided notice that the Commission "agreed to treat the Office of Planning report submitted March 4, 2005, as its preliminary report and OP's September 23, 2005 report as its final report for the new case, and the pre-hearing statements submitted by the Applicant on April 25, 2005 and September 29, 2005 as the pre-hearing statement for the new case."

11. The Applicant, on November 29, 2005, filed documents titled *Application and Pre-Hearing Submission, ZC Case No. 05-36* (the "Applicant's Case 05-36 November 29th Submission"). The Applicant's Case 05-36 November 29th submission included, *inter alia,* Exhibits D and E which were identical copies of the architectural and landscape plans and drawings previously provided in the Applicant's September 13th and September 29th submissions in Case No. 01-28TE. The Applicant's Case 05-36 November 29th submission also requested inclusion in the Case No. 05-36 file of certain Case No. 01-28TE documents not specified in the Case No. 05-36 hearing notice, to wit:

a. The Applicant's September 13th submission with its attachments, and

b. The Applicant's *Economic and Fiscal Impact Evaluation*, dated October 1, 2005, prepared by Basile Baumann Prost Associates, and filed with the Commission on October 3, 2005.

The above-listed documents are incorporated in the files of Case No. 05-36.

12. The Applicant, 200 K Street LP, is a limited partnership organized and in good standing in the District of Columbia. It is one of several real estate investment entities operating under the umbrella of the Cohen Companies, under the control of Ronald J. Cohen. The term "Applicant" is used in this Order to refer to 200 K Street LP, to the other Cohen-controlled entities that are the recorded owners of various properties within the PUD site, and to any successors in interest or title to 200 K Street LP and its related entities. The recorded owners of the properties within the PUD site are K Street Developers LLC; Casco, Inc.; Three Cee Investors LLC; and Union North Corporation. *(Applicant's Pre-Hearing Submission, Attachment A-Ownership List, Case No. 01-28TE, April 25, 2005.)*

13. After proper notice as described above, the Zoning Commission conducted a public hearing on the applications on January 5, 2006. The parties to the case were the Applicant and Advisory Neighborhood Commission 6C, which represents the area including the PUD site.

14. At the close of the hearing, the Commission held the record open to receive the following additional materials no later than January 20, 2006:

a. From the Office of Planning, data regarding the median income for residents of the census tract that includes the PUD site, and an analysis of whether the additional 5% FAR allowed by § 2405.3 of the Zoning Regulations can be used to pay for public benefits and amenities, specifically affordable housing.

b. From the Applicant, an executed Memorandum of Understanding ("MOU") with the Department of Small and Local Business, a draft Affordable Housing Covenant, additional information regarding public use of the project's central plaza, revised drawings to show that the Preliminary PUD building will have 14

stories, rather than 15, within the 130-foot height, and clarification regarding retail space use.

15. The Applicant and OP submitted the requested materials on January 20, 2006. On January 23, 2006, the Applicant submitted a clarification letter regarding the revised drawings included in the January 20th submission, and served copies on the Office of Planning and the other party in the case, Advisory Neighborhood Commission 6C. The Commission accepted the clarification letter into the record.

16. At its meeting held February 13, 2006, the Zoning Commission took proposed action by a vote of _____ to approve, with conditions, the applications and plans that were submitted into the record.

17. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by action dated _____, found the proposed PUD and related map amendment would not affect the identified federal interests in the National Capital nor be inconsistent with the Comprehensive Plan for the National Capital.

18. The Zoning Commission took final action to approve the PUD and related map amendment on _____.

The PUD Site and Surrounding Area

19. The 2.3-acre PUD site (101,082 sf) consists of all of Square 749 except Lots 804, 805, and 31 ("the outparcels"), in the Northeast quadrant of the District of Columbia, bounded by L Street on the north, Third Street on the east, K Street on the south, and Second Street on the west. The outparcels are located in the northeast corner, at Third and L Streets N.E. The Applicant has made a commitment to develop the outparcels for residential use consistent with the Consolidated PUD. The area is known as Near Northeast in Ward 6, and the site is in ANC Single-Member-District 6C04.

20. The PUD site was most recently occupied by vacant and boarded-up rowhouses along the 3rd Street side, small structures once used as a church and for some commercial purpose on the K Street side, and a small warehouse on the L Street side. The Applicant applied for and has received permits from the Department of Consumer and Regulatory Affairs to raze all of the existing structures, except the warehouse which will be used for construction staging and storage.

21. To facilitate development, the Applicant has submitted an application to the Office of the D.C. Surveyor to close the public alleys within the PUD site, except for the portion of the north-south alley that lies to the rear of the outparcels.

22. The PUD site is within a neighborhood where the traditional land uses have been residential rowhouses to the east and south, and small industrial facilities to the north. To the west, Second Street is adjacent to the railroad tracks on top of a rock-walled embankment.

23. Within the past five years, the neighborhood has become a center of substantial office development and has emerged as a locus of mid- to high-rise residential developments – some under construction, some awaiting zoning approval, and some in preliminary planning stages. It is within a half-mile radius of two federal agency headquarters buildings: to the north, the Bureau of Alcohol, Tobacco, Firearms & Explosives will locate in a 350,000-square-foot structure under construction at New York and Florida Avenues N.E.; to the south, the Securities & Exchange Commission and other office tenants will locate in the 1.3 million-square-foot Station Place complex under construction on 2nd Street from F to H Streets N.E. Residential developments are under construction at the Capital Children's Museum site at 3rd and H Streets N.E., and in various planning stages at 318 I Street N.E., 300 L Street N.E., and on the east side of 3rd Street between K and L Streets N.E.

24. The PUD site is less than two blocks south of the New York Avenue Metrorail Station and approximately five blocks north of Union Station. It lies within the NoMa (North of Massachusetts Avenue) area designated as a Redevelopment Area for city planning and economic development purposes. It is three blocks north of the H Street Corridor, subject

of REVIVAL: The H Street NE Strategic Development Plan, proposed by the Executive Branch and adopted by the City Council as a Small Area Plan in February 2004.

Existing and Proposed Zoning

25. The PUD site is mapped as PUD 033 on Map 11 of the Zoning Maps of the District of Columbia, as approved by ZC Order No. 783 which rezoned the PUD site to C-3-C for PUD purposes. The Commission's November 17th vote to deny a PUD 033 time extension terminated PUD 033 and caused the site to revert to its underlying zoning.

26. The underlying zone districts are C-2-B for the easternmost portion of the site – 26,805 square feet – between Third Street and the north-south public alley bisecting the property, and C-M-3 for the westernmost portion of the site – 74,277 square feet – between Second Street and the public alley.

27. The C-2-B zone district "is designed to serve commercial and residential functions …with high-density residential and mixed uses." (11 DCMR §720.6). Developments as a matter of right may be 90 feet high with a maximum FAR of 3.5 and a maximum lot occupancy of 70%. (11 DCMR §§770.1, 771.2, 772.1)

28. The C-M zone is designated as a Commercial-Light Manufacturing District, in which new residential uses are not permitted. (11 DCMR §800.4) In C-M-3 districts, developments as a matter of right may be 90 feet high, with a maximum FAR of 6.0. (11 DCMR §§840.1, 841.1) There is no lot occupancy limit.

29. The Applicant requested a map amendment to again rezone the PUD site to C-3-C to allow residential use and to permit greater height and density than permitted in C-M-3 and C-2-B zone districts. In a C-3-C district, the matter of right maximum height is 90 feet, the maximum FAR is 6.5, and the maximum lot occupancy is 100 percent. The PUD Standards of the Zoning Regulations, at 11 DCMR § 2405.1, allow a maximum height of 130 feet and maximum FAR of 8.0 in a C-3-C district.

The PUD Project

Overview

30. The PUD is proposed as a residential development, with ground-level retail, named Union Place. The Applicant proposes construction in two phases, with the Consolidated PUD as Phase 1 and the Preliminary PUD as Phase 2.

31. Overall, the PUD will have a gross floor area of 849,338 gross square feet ("gsf"), apportioned as 831,841 residential and 17,497 gsf retail, including a daycare center of 3,449 gsf.

32. The PUD lot occupancy is approximately 68%.

33. The PUD will provide underground parking for Union Place residents at a space-per-unit ratio of 1-to-1.

34. The PUD will include a landscaped central plaza of approximately 27,984 square feet as an aesthetic feature and an amenity for passive recreational and social use by Union Place residents. The plaza will be open for public use between the hours of 11:00 a.m. and 7:00 p.m. daily.

35. Loading docks and berths and access points are situated so as to route delivery truck traffic along L Street or Second Street, rather than through the residential K and Third Streets. Loading facilities comply with the requirements of 11 DCMR 2201.1.

The Consolidated PUD

36. The Consolidated PUD will consist of 236,905 gsf gross floor area, with 233,206 gsf for residential use and 3,699 gsf for retail use. The structure will be located on the easternmost portion of the PUD site, with a land area of 42,995 square feet. The location is between K, Third, and L Streets N.E. The lot occupancy is 64%.

37. The Consolidated PUD will have a maximum height of 90 feet and ten (10) stories, stepping down to 61 feet/6 inches and seven (7) stories at the northern end.

38. The Consolidated PUD will have 202 residential units, 28 of which are set aside as affordable housing. The affordable units are located on floors one (1) through five (5) as identified on floor plans submitted by the Applicant on January 20, 2006.

39. The Consolidated PUD will have 177 underground parking spaces for residents.

40. The Consolidated PUD design features a façade primarily using three shades of brick and pre-cast concrete trim caps and cornices. The first through third floors will be red brick, capped with a cornice. The fourth through eighth floors will be set back four feet and will use tan brick capped with a cornice. The ninth and tenth floors will use a light beige brick, topped with a cornice. The building will have a two- to three-story base, emulating traditional Washington rowhouse design, with unit entrances fronting on K Street and Third Street and also accessible from the project interior. There will be balconies on the fourth through tenth floors.

The Preliminary PUD

41. The Preliminary PUD is proposed to consist of approximately 612,433 gsf of gross floor area, with approximately 598,635 gsf for residential use and approximately 13,798 gsf for retail use, including a daycare center of approximately 3,449 gsf. The structure will be located on the westernmost portion of the PUD site, with a land area of 58,087 square feet. The location is between K, Second, and L Streets N.E., with K Street frontage.

42. The Preliminary PUD will have approximately 500 residential units. At least 10% of the residential gsf will be set aside as affordable housing, providing approximately 50 affordable units. The affordable units will be further defined by the Applicant in the second-stage PUD application.

43. The Preliminary PUD will have at least 525 underground parking spaces for residents, if 500 units are built. In any case, the number of spaces will be sufficient to assure a 1:1 parking ratio for residents of the Consolidated and Preliminary PUD.

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Development Incentives and Flexibility

44. In addition to the map amendment, the Applicant requests the following areas of flexibility from the C-3-C requirements and PUD standards:

    a. An increase of five percent (5%) in the floor area, to an FAR of 8.4, pursuant to 11 DCMR § 2405.3;

    b. A variance from the residential recreation space requirements of 11 DCMR § 773.3; and

    c. A special exception from the prohibition of multiple roof structures set forth at 11 DCMR § 411.3.

45. The 5% bonus FAR provides the necessary density to allow development of approximately 702 residential units, 78 of which would be set aside as affordable housing, and a spacious interior plaza available for public recreation use.

46. The proposed PUD provides approximately four percent (4%) of residential gross floor area as residential recreation space in the form of the central plaza and the rooftop terrace on the Consolidated PUD, less than the 10% required by § 773.3. The Applicant stated that some additional residential recreation space may be made available in the second-stage PUD, but meantime requested a variance from the 10% requirement.

47. The special exception to permit multiple roof structures is necessary to allow elevator penthouses and stair towers on both the seven-story and the ten-story portions of the Consolidated PUD.

Economic Impact

48. The Applicant's economic analyst, Basile Baumann Prost & Associates ("BBPA"), submitted a report and presented testimony by Senior Associate David Starnes, AICP, at the January 5th hearing regarding the economic impact of the project.

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49. BBPA estimated that the PUD project, upon completion, will generate $16.6 million in annual tax revenues for the District and will create 71 direct jobs with a payroll of $1.7 million and 1,574 spin-off jobs with a payroll of $31.4 million. During the construction period, BBPA estimated that the project will generate $3.1 million in tax revenues and fees for the District, and will create 653 construction jobs with a payroll of $28.6 million.

Public Benefits and Amenities

50. The following benefits and amenities will be created as a result of the PUD project:

a. *Affordable Housing* – The single largest benefit to the area, and the city as a whole, is the creation of approximately 78 new residential units set as affordable for households at no more than 80% of the Area Median Income ("AMI"). The affordable units comprise 92,045 residential gross square feet ("gsf"), which is 11.07% of total residential gsf. OP has stated that the affordable-housing set-aside "is the largest percentage of a project total that a private developer has ever offered for a PUD that does not include government land." *(OP Final Report, December 27, 2005)* In the Consolidated PUD, 28 of the 202 units are designated as affordable units; this is 32,182 gsf (11.07%) of the total Consolidated PUD residential gsf of 233,206. In the Preliminary PUD, 50 of approximately 500 units will be designated as affordable units; this is 59,863 gsf (10.0%) of the approximate total Preliminary PUD residential gsf of 598,635. The Applicant will reserve for-sale units as affordable for a period of ten (10) years, and rental units as affordable for a period of twenty (20) years. *(Draft Covenant, Applicant's Post-Hearing Submissions, January 20, 2006, Attachment 2)* The Consolidated PUD affordable units are identified on the Applicant's floor plans for floors one (1) through five (5). *(Applicant's Post-Hearing Submissions, January 20, 2006, Attachment 6)* The Preliminary PUD affordable units will be identified during second-stage PUD review.

b. *Day Care Center* – The Preliminary PUD will include a licensed and professionally-operated child daycare center of approximately 3,449 sf in size with convenient access to an outdoor play area. Based on per-child space requirements in the District Government's daycare center regulations, the facility will accommodate from 75-80 children. Union Place residents will have first priority in applications for admission of their children. Other available daycare slots will be open to applicants from the community at large. The city, and particularly Ward 6, has a substantial need for more daycare facilities. The Office of Early Childhood Development of the D.C. Department of Human Services has reported that, as of December 2004, there were 882 children on waiting lists for the 3,175 slots available in licensed child care facilities in Ward 6.

c. *Green Roof* – The Consolidated PUD features an extensive green roof system, with 11,928 sf of roof space designed for plantings, comprised of a variety of different sedums and other succulents hardy for the D.C. metropolitan region. On the seventh-floor step-down roof at the corner of Third and L Streets N.E., the green roof is designed as a recreation amenity for residents. *(Applicant's Case No. 05-36 November 29th Submission, Exhibit D, Sheets L.9, L.9.1, L.9.2 and L.9.3)* For the Preliminary PUD, the Applicant has committed to address the use of a green roof system, and to explore the feasibility of a green and/or low-impact surface or storm water management system for the surface of the courtyard, that also serves as the roof for the parking garage. The reduction of negative environmental impacts is perhaps the foremost public benefit the proposed roofing system provides. Stormwater runoff will be dramatically reduced by temporarily storing some of the rainwater within the growing medium and then slowly discharging the excess water into the offsite stormwater collection system, thereby reducing the peak flows of a major storm. It is estimated that this roof will store approximately 1,074 cubic feet of water, of which probably 70-80% will never discharge directly into the public collection system. In addition, the plantings will extract a significant amount of airborne pollutants falling on the

site, including acid rain and unhealthy particulates such as solid metals, dust, pollen, etc. The plants also help improve the air quality by reducing the amount of ozone and carbon dioxide often associated with smog. Also, because of the extra thickness of the soil medium, studies have shown that there is a significant energy savings over time for all seasons because of the insulation value of the green roof. *(Applicant's Case No. 05-36 November 29th Submission)*

d. *Double-Height Ground Floor Retail* – The Consolidated PUD features ground-floor retail space at a height of 18 feet, well above the requirements of the Zoning Regulations. This provides flexibility for retail tenants to design unique and aesthetically-appealing showcases for consumer goods. The glass-walled double-height storefronts enhance interior natural light and present an inviting exterior face to passers-by.

e. *Landscaped Central Plaza for Use by Residents and the Community* – The Union Place Plaza (the "Plaza") of approximately 27,984 sf is designed for both public and private use for passive recreation and social interaction. The Plaza will be open to the public from 11:00 a.m. to 7:00 p.m. daily, accessible through a gated public entrance that will be open during public hours and closed during non-public hours except to Union Place residents. The Applicant will provide and maintain Plaza signage to announce the public hours and general rules of use. The Plaza will be protected by security personnel.

f. *Streetscape Beautification* – PUD landscaping constitutes a public benefit through substantial enhancement of the aesthetic appeal of the neighborhood streetscape.

g. *Interim Surface Parking for Phase 1 Residents* – During the interim between occupancy of the Consolidated PUD structure and completion of construction of the Preliminary PUD structure, off-street surface parking will be provided on the PUD site to assure a 1:1 residential parking ratio at all times. The interim arrangement is necessary because the Consolidated PUD, with 202 residential units, is designed to provide 177 underground parking spaces. The Applicant stated that geotechnical factors make it difficult or impossible to provide the full

complement of spaces for Consolidated PUD residents in the Consolidated PUD garage. The underground garage in the Preliminary PUD will provide a sufficient number of spaces to accommodate its residents at a 1:1 ratio, plus the 25 additional spaces necessary for Consolidated PUD residents, to assure a 1:1 space-per-unit ratio overall. The Applicant agreed to the interim parking arrangement in response to an ANC 6C request. Pervious materials will be used for the interim surface parking area. *(Applicant's CITE TO DRAWINGS)*

h. *First-Source Employment Agreement* – The Applicant entered into a First-Source Employment Agreement with the Department of Employment Services, effective September 13, 2005. *(Applicant's September 29th Submission, Exhibit E, Sheet L11)*

i. *LSDBE Contracting Commitment* – The Applicant entered into a Local, Small, and Disadvantaged Business Enterprise (LSDBE) Memorandum of Understanding with the D.C. Department of Small and Local Business Development, effective January 18, 2006. *(Applicant's Post-Hearing Submissions, January 20, 2006, Attachment 1)*

51. The Commission finds that the project is acceptable in all proffered categories of public benefits and amenities, and is superior in public benefits and project amenities relating to housing and affordable housing, the daycare facility, use of green roof technology, and the double-height retail design.

Office of Planning Report

52. By report dated December 27, 2005 ("OP report") and through testimony at the January 5th hearing, the Office of Planning recommended conditional approval of the PUD. OP supported the applications and found that the proposed PUD is not inconsistent with the Comprehensive Plan and the PUD Evaluation Standards. OP testified that the PUD is consistent with neighborhood trends toward denser residential uses, replacing derelict industrial and commercial uses, influenced in part by the completion of the New York

Avenue Metrorail station and the H Street Corridor Revitalization Plan of 2004 and subsequent H Street zoning overlay. *(Transcript of the Zoning Commission hearing, January 5, 2005, pp. 88-90 [hereinafter referenced as "Transcript"])*

53. The OP report concluded that the combination of public benefits, particularly the provision of eleven percent (11%) of the project's residential gsf as affordable housing, "will result in a project superior to what could be developed as a matter of right. The benefits and amenities are appropriate in relation to the degree of flexibility requested." *(OP report, p. 11)* OP characterized the affordable housing proffer as "the largest percentage of a project total that a private developer has ever offered for a PUD that does not include government land." *(OP report, p. 7)*

54. OP found that the Applicant adequately demonstrated that the PUD "will have a beneficial impact on the neighborhood stability, parking and traffic, environmental quality and public safety" *(OP report, p. 11)* and that the impact of the PUD on the water and sewer system and the public schools would be acceptable. *(Transcript, p. 92)*

55. OP recommended approval of the requested variance from 11 DCMR § 773.3 for residential recreation space and the special exception request for relief from the prohibition on multiple roof structures set forth at 11 DCMR § 411.3 *(Transcript, p. 96)*

56. The OP report and testimony supported the Applicant's request for approval of 5% bonus density pursuant to 11 DCMR § 2405.3. OP provided a supplemental report dated January 20, 2006, responding to the Commission's request for OP's position on whether the bonus density is "essential to the successful functioning of the project" as required by § 2405.3, whether the bonus would be used to gain project value to pay for an amenity and if so, the precedent-setting implications of such action and whether the Commission should take such action only to permit the provision of affordable housing at a level higher than the typical affordable-housing proffer.

57. In the supplemental report, OP stated that the Applicant has not demonstrated that the bonus "is essential to the successful functioning of the project *per se*. Rather, the Applicant has implicitly tied the bonus to the provision of a certain exceptional amount of

affordable housing public amenity." OP determined that the Applicant's analysis of the balancing of the bonus density against the cost of providing affordable housing is consistent with the approach OP has followed in its balancing-test analysis of density trade-off for affordable housing benefits in the proposed Inclusionary Zoning text amendments, pending before the Commission as Case No. 04-33. OP stated that the proposed PUD, without the full measure of proffered affordable housing, "would likely be a viable PUD, but it would not have the distinguishing characteristics of the additional 40,433 gsf of affordable housing in the PUD now before the Commission." The supplemental report stated: "OP believes it would be appropriate for the Commission to approve the additional 0.4 FAR and clearly tie it to the provision of approximately 40,433 of the proposed 86,971 gsf of affordable housing."

58. With regard to precedent, the OP supplemental report said it is important for the Commission to find that "the level of proffered benefits is exceptional..., and that one of the PUD's distinguishing characteristics would be eliminated if it provided only 5.6% of its total residential gsf as affordable housing...." OP recommended further that the Commission find that "the successful functioning of the project as a PUD offering the proffered exceptionally high level of public benefits and amenities would not be possible without the additional 5% FAR" and that any requested reduction in the proffered benefits and amenities "would require the Commission to consider a reduction in the level of bonus FAR granted to the project under Section 2405.3."

59. OP recommended approval of the applications, subject to the Applicant's submission of additional requested information and the following conditions:

a. The Consolidated PUD shall be constructed according to the plans submitted on November 29, 2005 (i.e., September 13, 2005 plans as amended September 29, 2005).

b. The Preliminary PUD shall be restudied to address the height issue and the Applicant shall submit an alternative that maintains a 90-foot building height along K Street, with at least a 40-foot horizontal setback from the building line, as part of the second-stage PUD application.

c. The applicant shall file for a building permit no later than 18 months from the effective date of the final order and commence construction no later than 30 months from the effective date of this order.

d. At least 13.8% of the Consolidated PUD's residential gsf shall be made available as for-sale units to households earning no more than 80% of the AMI. The units shall remain affordable for at least 10 years after their initial sale. The sale of a unit within this 10-year period shall initiate a new 10-year affordability period for the unit. The units shall be evenly distributed throughout the first five floors of the building. The location and square footages of the affordable units shall be agreed upon by the Applicant and the Zoning Commission prior to the signing of the PUD covenant.

e. At least 10% of the Preliminary PUD's residential gsf shall be made available as rental or for-sale units to households earning no more than 80% of the AMI. If the units are for-sale, the 10-year affordability period shall apply. If the units are rental, they shall remain affordable for no less than 25 years.

f. The Applicant shall construct an infill all-residential building in Square 749, Lot 805. The building shall be no higher than 50 feet. The occupancy permit for the Preliminary PUD shall not be issued until the occupancy permit has been issued for the residential structure at Square 749, Lot 805.

g. The Applicant shall provide for a rental car option similar to Flex Car or Zip Car when the Preliminary PUD's garage is completed.

h. The Applicant shall include a letter of intent, with general details on rental terms and similar matters for the operation of the daycare center when filing the second-stage PUD application.

i. The ground floor retail space in the second-stage PUD shall have an interior clear height of no less than 14 feet.

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60. In response to OP's recommendations, the Commission finds as follows:

a. The Commission concurs with OP's recommendations regarding approval of the bonus FAR and finds that the Applicant has met the burden of proof required by § 2405.3. The Commission finds that the exceptionally high level of proffered affordable housing is an essential element of the proposed PUD and that the Applicant has demonstrated that the bonus FAR is "essential to the successful functioning of the project" as proposed and "consistent with the purposes and evaluation standards of" Chapter 24. The Commission further finds that any requested reduction in the level of proffered benefits and amenities will cause the Commission to consider a commensurate reduction in the bonus FAR.

b. The Commission finds that the Applicant has submitted the additional information requested in the OP report.

c. The Commission generally concurs with the conditions recommended by OP as set forth in subparagraph a., subparagraphs c. through e., and subparagraphs g. through i. in paragraph 57 above, and has incorporated these conditions with minor modifications in the Decision portion of this Order.

d. The Commission does not concur with the OP recommendation (subparagraph b. in paragraph 57) that the Applicant should be required to submit, in the second-stage PUD application, a 90-foot-height plan as an alternative to the requested maximum height of 130 feet for the Preliminary PUD structure. The Commission finds that a maximum height of 230 feet is allowed under the PUD Standards for structures in C-3-C zone districts. The Commission further finds that the Applicant has demonstrated that the PUD project is planned and designed as a single, cohesive development, which requires a height of 130 feet for the Preliminary PUD structure in order to develop the Consolidated PUD structure at heights of 90 feet and 61 feet/6 inches, blending better into the lower heights of existing and proposed developments to the east of the PUD site, and to provide the large open interior space for the central plaza. By contrast, the 130-foot height of the Preliminary PUD would face the Second Street railroad track embankment

and the rowhouses at the highest slope of K Street near its intersection with Second Street. The Applicant has reduced the height of the northern end of the Consolidated PUD to a level 3 ½ feet below matter of right under existing C-2-B zoning, and 27 ½ feet below the 90-foot matter of right height allowed under C-3-C zoning, and has held the remainder of the Consolidated PUD to the C-3-C matter of right height, rather than seeking the greater height allowed under the PUD Standards. The necessary trade-off is to permit the Preliminary PUD structure to be built up to 130 feet, in order to achieve the proposed density and number of units, including the affordable units, and provide the ample interior plaza and attractive streetscape design, accomplished with a lot occupancy of 68%. The Commission finds the trade-off acceptable and reasonable. The Commission further finds that ANC 6C expressed no concerns about the proposed 130-foot height in its written resolution and testimony.

e. The Commission concurs, in part, with the OP recommendation (subparagraph f. in paragraph 57) that the Applicant shall construct an in-fill building. The Commission does not concur with OP's proposed requirements to limit the in-fill building to Lot 805 and to a height of 50 feet and to link the occupancy permit for the Preliminary PUD to the occupancy permit for the in-fill building. The Commission finds that the purpose of the requirement can be accomplished by allowing the Applicant greater flexibility in terms of design, uses, and lot coverage. The Commission further finds that, because the outparcels are not part of the PUD, it is inappropriate to link the Preliminary PUD occupancy permit to an occupancy permit for the outparcels structure. Instead, the Commission finds that it is more appropriate to require the Applicant to construct an in-fill building on one or more of the outparcels under the Applicant's control, and to submit the appropriate applications within 18 months of the effective date of this Order.

Other Government Agency Reports

61. By report dated September 30, 2005 in the predecessor Case No. 01-28TE, the District Department of Transportation ("DDOT") stated that it has no objection to the proposed PUD. DDOT projected only a slight increase in trip generation as a result of the PUD development, with no adverse impact on the surrounding transportation system. DDOT found the PUD loading facilities and access and circulation system to be acceptable. Consistent with DDOT policy to promote car-sharing programs, DDOT encouraged the Applicant to consider setting aside approximately five percent (5%) of the proposed garage parking spaces for car-sharing vehicles.

62. Stanley Jackson, Deputy Mayor for Planning and Economic Development, submitted a letter dated September 29, 2005 in support of the identical project in the predecessor Case No. 01-28TE. Mr. Jackson stated that that Applicant's affordable housing proffer will contribute to the District's priority goal of developing an additional 6,000 affordable housing units.

63. Jalal Greene, Director of the D.C. Department of Housing and Community Development, submitted a letter dated September 29, 2005, in support of the identical project in the predecessor Case No. 01-28TE. Mr. Greene also stated that the Applicant's affordable housing proffer supports the city's goal of developing 6,000 more affordable units.

64. D.C. City Council Chairman Linda Cropp and Councilmember Vincent B. Orange Sr. submitted letters dated November 21, 2005, and November 17, 2005, in support of the identical project in the predecessor Case No. 01-28TE.

The ANC Position

65. Advisory Neighborhood Commission 6C adopted a resolution in support of the applications, with conditions, by a vote of 7-1, with one member absent, at a regularly scheduled and publicly noticed meeting on December 14, 2005. The ANC resolution included the following conditions:

a. The Applicant shall file a Phase 1 (Consolidated PUD) building permit application within one (1) year following the effective date of a Zoning Commission approval order, and shall also begin Phase 1 construction within one (1) year subject to timely D.C. Government action on legislation to close alleys within the PUD site. The Applicant will file quarterly reports to ANC 6C regarding the status of the building permit application and the construction start date.

b. The Applicant will file a second-stage PUD application at the earliest opportunity in order to prevent delays in Phase 2 (Preliminary PUD) construction, and will timely provide copies of the second-stage PUD plans and documents to members of ANC 6C and its Planning and Zoning Committee for their review and comment.

c. The Applicant will provide the interim surface parking spaces as agreed upon with ANC 6C.

d. The Applicant will set aside approximately 78 units – more than 11% of the total – as affordable housing and will deliver all of the other public benefits and amenities as set forth in the applications.

66. ANC 6C Commissioner Daniel M. Pernell, who represents Single-Member-District 6C04 which includes the PUD site, presented the ANC report at the January 5th hearing. He was accompanied by ANC 6C Chair Mark Dixon.

67. Commissioner Pernell testified that the ANC has worked with the Applicant throughout the effort, beginning in 1994, to develop the PUD site. He stated that the ANC is very supportive of the affordable housing to be provided in the project, and is pleased that the project will include a publicly-accessible courtyard plaza. *(Transcript, pp. 102-111)*

The Positions of Other Parties, Organizations, and Persons

68. There are no parties to the case other than the Applicant and ANC 6C.

69. In support of the PUD, the Commission received testimony at the January 5th hearing from the following:

    a. Loree Murray, who resides at 1134 Seventh Street N.E., and was among the original organizers of the Near Northeast Citizens Against Crime and Drugs, testified that Union Place will be a "beneficial addition to the neighborhood," particularly because it will include affordable housing, a daycare center, and public plaza. *(Transcript, p. 111-113)*

    b. Reverend William Bynum, president of the Public Citizen Civic Association, testified that Union Place is one of the few significant developments in the past 40 years that will bring tangible public benefits to the vicinity of the H Street N.E. Corridor. *(Transcript, pp. 113-117)*

    c. William Howard, who represented PSI Services, a provider of daycare and other social services in the District, commended the inclusion of a daycare center in the PUD project to meet community needs and said his firm will submit a proposal to the Applicant to operate the Union Place daycare center. *(Transcript, p. 117)*

    d. Anwar Saleem, chairman of H Street Main Street and the H Street Merchants and Professionals Association, testified that the Union Place development will be an asset to the community in continuing efforts to attract retailers to the H Street N.E. Corridor. He said the Applicant's package of public benefits and amenities respond to community needs. *(Transcript, pp. 118-122)*

70. In opposition to the PUD, the Commission received testimony at the January 5th hearing from Mozella Boyd Johnson who stated that she owns the property located at 229 K Street N.E. She spoke in opposition to the proposed 130-foot height of the Preliminary PUD structure and expressed the view that the project's height and mass would have an adverse effect on the neighborhood.

Compliance with PUD Evaluation Standards

71. Under the PUD regulations, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects." 11 DCMR § 2403.8. Given the level of project amenities and public benefits, particularly the significant amount of affordable housing, the Commission finds that the value of the project amenities and public benefits justifies the development incentives allowed by the PUD Standards.

72. Pursuant to 11 DCMR § 2403.3 of the PUD Evaluation Standards, the Commission finds that the impact of the project on the surrounding area and the operation of city services and facilities is acceptable.

73. The Commission finds that the project will have no detrimental impact on traffic and parking in the neighborhood.

Compliance with the Comprehensive Plan

74. The Commission finds that the proposed PUD is not inconsistent with the Comprehensive Plan.

75. The proposed PUD fosters the objectives of the Land Use Element to encourage substantial new housing primarily near Metrorail stations, to conserve and enhance the stability of residential neighborhoods and protect them from disruptive uses, and to promote retention and expansion of residential uses in mixed-use neighborhoods.

76. The proposed PUD fosters the objectives of the Housing Element, which calls for multi-unit housing development near Metrorail stations and on vacant, underutilized or unused properties, with particular emphasis on meeting the housing needs of low- and moderate-income residents by means of zoning incentives such as permitting additional densities.

77. The proposed PUD fosters the objectives of the Transportation Element, which supports higher-density residential and non-residential development near Metrorail stations.

78. The proposed PUD fosters the Ward 6 Objectives for Housing, which are "to maintain and strengthen the quality and construction of housing in the various neighborhoods

throughout Ward 6; stimulate production in Ward 6 of new and rehabilitated housing; discourage encroachment of the non-residential uses in residential areas; and stimulate private investment in housing in Ward 6 and expand home ownership opportunities...."

79. The proposed PUD fosters the Ward 6 Objectives for Economic Development, which include "protect(ing) adjacent residential neighborhoods in Northeast against pressures for conversion to retail and office uses generated by Union Station development." By creating a new residential community in the buffer zone, the proposed PUD will shield the residential neighborhood from commercial redevelopment.

CONCLUSIONS OF LAW

1. Pursuant to Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, welfare, and convenience." 11 DCMR § 2400.2.

2. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider these applications as a Consolidated and a Preliminary (first-stage) PUD, respectively. The Commission may impose development guidelines, conditions, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, and loading, and for yards and courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. The Zoning Commission's consideration of the Consolidated PUD requires a review of "all of the material required for both the first and second stages" of PUD consideration. 11 DCMR § 2402.4.

4. The Zoning Commission's consideration of the Preliminary PUD requires "a general review of the site's suitability for use as a PUD; the appropriateness, character, scale, mixture of uses, and design of the uses proposed; and the compatibility of the proposed

development with city-wide, ward, and area plans of the District of Columbia, and the other goals of the PUD process." 11 DCMR § 2402.2(a).

5. The Applicant's Consolidated PUD complies with the requirements of the Zoning Regulations for Consolidated PUD review.

6. The Applicant's Preliminary PUD complies with the requirements of the Zoning Regulations for Preliminary PUD review.

7. The development of the PUD project will carry out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

8. The proposed PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

9. The PUD is within the applicable height, bulk, and density standards of the Zoning Regulations, and the height and density will not cause a significant adverse effect on any nearby properties. High-density residential and retail uses are appropriate for the site which is located within the NoMa Redevelopment Area, and in close proximity to mass transit. The impact of the project on the surrounding area is unacceptable. The proposed project has been appropriately designed to complement and respect existing structures in the nearby neighborhood with respect to height and mass.

10. The PUD applications meet the contiguity requirements of § 2401.3 of the Zoning Regulations.

11. The PUD applications can be approved with conditions to ensure that any potential adverse effects on the area surrounding the development will be mitigated.

12. The project benefits and amenities, particularly the provision of housing, affordable housing, neighborhood-serving retail, the daycare center, the green roof system, and streetscape beautification, are reasonable for the development proposed on the site and responsive to the needs of the community and the city.

13. The Commission concluded that the Applicant has met the burden of proof required by 11 DCMR § 2405.3 for approval of 5% bonus density because "the increase is essential to the successful functioning of the project and consistent with the purpose and evaluation standards" of Chapter 24.

14. Approval of the PUD is appropriate because the proposed development is not inconsistent with the Comprehensive Plan.

15. Approval of the PUD is appropriate because the proposed development is consistent with other city policies, particularly the policies to generate development of more affordable housing.

16. In accordance with D.C. Official Code § 1-309.10(d)(3)(A) (*2001 Edition*), the Commission is required to give "great weight" to the position of the affected ANC. As is reflected in the Findings of Fact, the Commission has carefully considered the testimony and evidence submitted by ANC 6C, and has incorporated conditions in this Order which reflect the recommendations of ANC 6C.

17. The applications for a PUD and related map amendment will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.

18. The applications for a PUD and related map amendment are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia orders **APPROVAL**, consistent with this Order, of the Applications for (1) consolidated review of a Planned Unit Development; (2) preliminary review of a Planned Unit Development; and (3) a Zoning Map amendment from C-M-1 and C-2-B to C-3-C for the PUD site. The approval is subject to the following guidelines, conditions, and standards:

1. The consolidated approval of the PUD shall apply to the following properties in Square 749: Lots 32-42; part of Lot 43; Lots 64, 65, 2, and 3; Lots 808-809, part of Lot 814, part of Lot 815, and part of Lot 822, as shown to the right of the "Phase Line" on the Applicant's *Preliminary Subdivision Plan*, dated September 7, 2005, and submitted as Exhibit C of the Applicant's *Application and Pre-Hearing Submission, ZC Case No. 05-36*, filed November 29, 2005.
2. The preliminary approval of the PUD shall apply to the following properties in Square 749: Part of Lot 4; Lots 5-8, Lots 23-26, part of Lot 27; Lots 812-813, part of Lot 814, Lots 818-819, and Lot 66, as shown to the left of the "Phase Line" on the Applicant's *Preliminary Subdivision Plan*, dated September 7, 2005, and submitted as Exhibit C of the Applicant's *Application and Pre-Hearing Submission, ZC Case No. 05-36*, filed November 29, 2005.
3. A PUD-related map amendment shall rezone the PUD properties, in their entirety, from C-M-1 and C-2-B to C-3-C. With respect to the properties within the Consolidated PUD, the map amendment shall take effect at the time the Applicant records the covenant required by paragraph 7 below. With respect to the properties within the Preliminary PUD, the map amendment shall take effect upon final approval of the second-stage PUD application and the Applicant's recordation of the covenant as specified by the Commission in an Order approving the second-stage PUD.
4. The PUD shall have a maximum FAR of 8.4.
5. The Applicant shall construct a residential building, compatible with the Consolidated PUD in size and design, on the outparcels under the Applicant's ownership and control. The Applicant shall file the appropriate applications within 18 months of the effective date of this Order.

The Consolidated PUD

6. The Consolidated PUD shall be developed in accordance with the plans prepared by GTM Architects, dated September 13, 2005, including the revisions submitted September 29, 2005, and January 4, 2006 (the "Consolidated Plans"). The Consolidated PUD shall

have a total of 236,905 gsf, with 233,206 gsf for residential use and 3,699 gsf for retail use.

7. The Consolidated PUD shall be a residential development with ground-floor retail space, constructed to a maximum height of 90 feet above the measuring point, stepping down to a height of 61 feet/6 inches on the northeast end.

8. The Consolidated PUD shall contain 202 residential units, 28 of which shall be designated as affordable units for an affordability period of ten (10) years if for-sale units and twenty (20) years if rental units, guaranteed by covenant between the Applicant and the District of Columbia, and recorded in the land records of the District of Columbia.

9. Except as otherwise provided below, the affordable housing units in the Consolidated PUD shall be the units designated by the Applicant in the floor plans for floors one (1) through five (5), submitted as Attachment 6 in the Applicant's Post-Hearing Submissions dated January 20, 2006 ("Affordable Unit Designation Plans").

10. The Applicant shall have flexibility with the design of the Consolidated PUD in the following areas:

    a. To increase or decrease the overall number of residential units by no more than five percent (5%), provided that the percentage of residential gsf designated for affordable units shall not be less than 13.8% of total residential gsf in the Consolidated PUD;

    b. To rearrange the unit types and mix, provided that the number, type, size, and distribution of the affordable units shall remain consistent with the Affordable Unit Designation Plans;

    c. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not change the exterior configuration of the buildings;

    d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction;

    e. To vary the green-roof plantings within the range proposed, based on availability at the time of construction; and

f. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings, and trim, or any other changes necessary to comply with the Construction Codes of the District of Columbia or that are otherwise necessary to obtain a building permit.

11. The landscaping, streetscape, and exterior lighting shall be as shown on the Consolidated Plans. Landscaping, streetscape, and lighting improvements to public space shall be in accordance with the Consolidated Plans and as approved by the Public Space Division of DDOT. The Applicant shall maintain all landscaping, streetscape, and lighting improvements in good condition.

12. No building permit shall be issued for the Consolidated PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia, satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA"). Such covenant shall bind the owners and all successors in title to construct on and use the property in accordance with this order or amendment thereof by the Zoning Commission.

13. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed copies of the covenant with the records of the Zoning Commission.

14. The Consolidated PUD approved by the Zoning Commission shall be valid for a period of one (1) year from the effective date of this Order. Within such time, the first application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction on the Consolidated PUD shall begin within two (2) years of the effective date of this Order.

The Preliminary PUD

15. The Preliminary PUD shall be developed in accordance with the Consolidated Plans and the character, scale, mixture of uses, and design of the uses proposed.

16. The Preliminary PUD shall have a maximum height of 130 feet from the measuring point, approximately 500 residential units, and a maximum of 14 stories, each of which

shall have a minimum floor-to-ceiling height of 8 feet/6 inches, within the 130-foot height of the structure as measured for zoning purposes.

17. The Preliminary PUD shall include an affordable-unit set-aside of no less than 10% of the total residential gsf of the Preliminary PUD. Affordability periods of ten (10) years for for-sale units, and twenty (20) years for rental units shall be guaranteed by covenants agreed upon by the Applicant and the Commission and recorded in the land records of the District of Columbia. The affordable unit types and sizes shall be in reasonable proportion to the types and sizes of market-rate units and shall be evenly dispersed among the central and lower residential floors.

18. The Preliminary PUD shall include a daycare center of approximately 3,449 sf in size. In the second-stage PUD application, the Applicant shall provide evidence of progress in identifying and securing an agreement with a suitable daycare services provider to operate the facility.

19. In the second-stage PUD application, the Applicant shall address the DDOT and OP recommendations for the inclusion of garage parking spaces for car-sharing services such as Flexcar or Zip Car.

20. The ground floor retail space in the second-stage PUD shall have an interior clear height of no less than 14 feet.

21. In the second-stage PUD application, the Applicant shall have flexibility with respect to:

    a. Increasing or decreasing the overall number of residential units by no more than five percent (5%), provided that the percentage of residential gsf designated for affordable units shall not be less than 10.0% of total residential gsf in the structure;

    b. The design, size, and nature of a green roof system;

    c. The exterior façade design and materials, so long as the exterior appearance is compatible with the exterior of the Consolidated PUD structure and consistent in quality and character with the façade design and materials and overall exterior appearance of the Consolidated PUD; and

    d. The design of the public access point of entry to the Plaza.

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22. In the second-stage PUD application, the Applicant shall include, as an element of the architectural materials, street-level renderings and a cross-section showing the Second Street public access point of entry to the Plaza, and Second Street elevations.

23. The second-stage PUD application shall be submitted within one year following the effective date of this Order.

General Provisions

24. The Applicant shall abide by the terms of the executed Memorandum of Understanding with the D.C. Department of Small and Local Business Development in order to achieve, at a minimum, the goal of thirty-five percent (35%) participation by local, small, and disadvantaged business enterprises in the contracted development costs associated with the design, development, construction, and security for the PUD project.

25. The Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services in order to achieve the goal of utilizing District of Columbia residents for at least fifty-one percent (51%) of the jobs created by the PUD project.

26. 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.* (the "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, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, 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 of or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

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The Zoning Commission at its public meeting held on February 13, 2006 approved the application, subject to conditions, by a vote of _____.

The Order was adopted by the Zoning Commission at its public meeting on _____ by a vote of _____.

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on _____.

CAROL J. MITTEN	**JERRILY R. KRESS, FAIA**
Chairman	**Director**
Zoning Commission	**Office of Zoning**