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September 22, 2008

Anthony Hood, Chairperson
D C Zoning Commission
441 4th Street, NW
Suite 210
Washington, DC 20036

**Re Zoning Commission Case No 05-38A (“Modification Application”),
Response to Tiber Island Request for Dismissal or Denial of the Modification
Application and Request for Party Status**

Dear Chairperson Hood and Members of the Commission

On September 12, 2008, Tiber Island Cooperative Homes, Inc and Paul Greenberg (collectively referred to as “Tiber Island”) filed a statement that claims the Modification Application should be denied or dismissed as a preliminary matter due to an appeal of the Zoning Commission’s decision in Case No 05-38 which is currently pending in the DC Court of Appeals Tiber Island also filed a request for party status in Zoning Commission Case No 05-38A

Marina View Trustee, LLC (Marina View’) now files its response in opposition to the assertion that the public hearing on the Modification Application must be dismissed or denied while an appeal is pending with the Court of Appeals In addition, this response also provides an analysis as to why Tiber Island’s request for Party Status does not satisfy the Zoning Regulations’ clearly enumerated standards for granting Party Status

ZONING COMMISSION
District of Columbia
CASE NO. 05-38A
EXHIBIT NO. 17
400943752 ZONING COMMISSION
District of Columbia
CASE NO.05-38A
EXHIBIT NO.17

I Statutory Law and Case Law Is Explicit that An Appeal Pending with the Court of Appeals Does Not Stay the Modification Application

Tiber Island states that the Zoning Commission's approval of the Marina View PUD project in Zoning Commission Case No 05-38 is not final because an appeal of that decision has been filed with the District of Columbia Court of Appeals. Tiber Island states that it objects to any attempted hearing on a modification of Order No 05-38 before that Order becomes final (see Tiber Island letter dated September 12, 2008, paragraph 2.) This statement is clearly incorrect as evidenced by the clear and unambiguous language of the Zoning Regulations and the District of Columbia's Administrative Procedures Act ("APA")

The Zoning Regulations clearly enumerate when a written order becomes effective and final in Section 3028.9, which states

[a] written order setting forth a final action shall become final and effective upon publication in the *DC Register*, unless the Commission specifies a later effective date. An amendment to the Zoning Map approved in connection with an application for a planned unit development shall, however, become effective only upon completion of the process required by Chapter 24 of this title, and upon filing with the District of Columbia a covenant ensuring compliance with the approved plans

Marina View has satisfied both of the prerequisites to establishing that Zoning Commission Order No 05-38 is final and effective. Attached as Exhibit A is a copy of the October 26, 2007, DC Register in which final action from Zoning Commission Case No 05-38 was published. The Zoning Commission did not specify a date later than publication in the DC Register for Order No 05-38 to become effective. Attached as Exhibit B is a copy of the PUD Covenant recorded in the District of Columbia Land Records on March 18, 2008.

Nevertheless, Tiber Island suggests that despite satisfying these prerequisites, the Modification Application cannot be heard because an appeal is pending before the District of Columbia Court of Appeals. Section 2-510 of the APA is clear that the "[f]iling of a petition for review shall not in itself stay enforcement of the order or decision of the Mayor or agency, as the case may be." The District of Columbia Court of Appeals confirms this in *French v D C Board of Zoning Adjustment* when it stated ' [t]he plain language of D C Code Section 1-1510(a)¹ could not be clearer. It states, **without any ambiguity**, that the filing of a petition for review in

¹ This section was later re codified as Section 2-501 of the District of Columbia Code also known as the Administrative Procedures Act

this court 'shall not' operate to stay the effect of an agency's order. The statute simply will not permit a court – or an administrative agency such as the BZA – to accept the contrary view. [t]his point has been settled since at least since 1985. ” *French v D C Board of Zoning Adjustment* 658 A 2d 1023, 1030-1031 (D C Ct App 1995) (emphasis added)

Tiber Island has not filed with the Court a motion to stay the effectiveness of Z C Order No 05-38 or the Modification Application. More importantly, the Court has not granted such a stay. Accordingly, Z C Order No 05-38 is final and effective and there is no impediment to the Zoning Commission holding a public hearing and making a decision on the Modification Application. Tiber Island's opposition to going forward with the hearing at this time is without merit and has no basis in law. Marina View is incredulous that Tiber Island makes an argument that is so clearly contrary to the statutory language of the Zoning Regulations and the APA, and provides no rationale or authority to buttress their argument.

II Tiber Island's Request for Party Status Does Not Satisfy the Requirements of 11 DCMR 3022.3

Tiber Island requested Party Status in the original Case No 05-38. During the review of their request for Party Status, Chairperson Mitten noted ' [t]here is no evidence that you [Mr McGovern] or Mr Greenberg have been authorized to represent Tiber Island Cooperative Homes and the party status request does not deal with the critical aspect of the test for party status which is how is Tiber Island Cooperative Homes and/or Mr Greenberg more uniquely affected than the general public. ’ (Zoning Commission Case No 05-38 Transcript (“Transcript”), p 11) The Commission subsequently denied Tiber Island's request, but did provide Tiber Island with additional time (a total of 15 minutes) to present its testimony in the case. (Transcript, p 20)

Section 3022.3 of the Zoning Regulations delineates the requirements for a request to participate as a Party. Specifically, a request must include ' an explanation of how the person's interests would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public. ’ Tiber Island's September 12, 2008 request for Party Status fails to do this. Amazingly, given Chairperson Mitten's comments on their previous request for Party Status, Tiber Island's request also fails to provide any evidence that Paul Greenberg is authorized to speak on behalf of Tiber Island Cooperative Homes, Inc.

At the set down meeting on July 14, 2008, the Commission was clear that the Modification Application was to be set down for a public hearing with a very limited scope and would be limited to evaluating only the proposed modifications. (July 14, 2008 Transcript, pp 141, 142) Tiber Island's request for Party Status fails to provide any factual basis for how it is uniquely affected by the proposed modifications, thus wholly ignoring sub-paragraph five of the Party Status standard. Its request simply states,

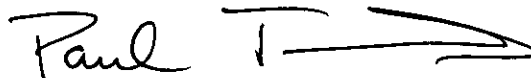
“Tiber Island Cooperative Homes, Inc , is a residential cooperative containing 389 residential apartment units in four (4) high rise apartment buildings and a number of smaller town-house-type dwellings across M Street, SW, within 200 feet of the Marina View Apartment project Mr Paul Greenberg is a cooperative owner at 429 M Street, SW, and is likewise adversely and prejudicially affected by an modification of a previous Order of this Commission before the pending appeal before the Court of Appeals has been decided ” (September 12, 2008, Tiber Island Letter, p 2)

Tiber Island does not argue that the proposed modifications, which are the only things at issue in this case, affect them at all, much less in a way that is unique from other neighboring property owners

III Conclusion

In light of the statutory law and case law noted above, there is no legal impediment to the Zoning Commission proceeding with the review and approval of Zoning Commission Case No 05-38A In regard to Tiber Island’s request for Party Status, Marina View notes that Tiber Island has failed to satisfy the applicable standard for such status We look forward to addressing these issues as a preliminary matter on September 29, 2008

Sincerely,

A handwritten signature in black ink that reads "Paul Tummonds". The signature is written in a cursive style with a long horizontal stroke at the end.

Paul Tummonds

A handwritten signature in black ink that reads "Christine Roddy". The signature is written in a cursive style with a large, looping initial 'C'.

Christine Roddy

Enclosures

Certificate of Service

I certify that a copy of the foregoing document was delivered to the following addresses by hand-delivery or first-class mail on September 22, 2008

Joel Lawson
Office of Planning
801 N Capitol Street, NE
Washington, DC 20001

ANC 6D
PO Box 71156
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Max Skolnik, ANC 6D01
700 7th Street, SW
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Christine Roddy

ZONING COMMISSION ORDER NO 05-38
Zoning Commission Case No 05-38
Consolidated Planned Unit Development and Related Amendment to the Zoning Map –
Marina View Trustee, LLC (Square 499, Lots 50 and 853)
May 14, 2007

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on February 28, 2007 to consider an application from Marina View Trustee, LLC ("Applicant") for the consolidated review and approval of a planned unit development ("PUD") and a related amendment to the zoning map of the District of Columbia from the R-5-D Zone District to the C-3-C Zone District for Lots 50 and 853 in Square 499 pursuant to Chapter 24 of the District of Columbia Municipal Regulations ("DCMR") Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

At its public meeting on April 9, 2007, the Commission took proposed action by a vote of 4-0-1 to approve the application and plans that were submitted into the record, subject to conditions.

The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. The NCPC Executive Director, through a Delegated Action dated May 10, 2007, found that the proposed PUD would not be inconsistent with the Comprehensive Plan nor would it have any adverse impact on any federal interest.

The Commission took final action to approve the application, subject to conditions, on May 14, 2007 by a vote of 4-0-1.

FINDINGS OF FACT

PUD SITE

- 1 The property that is the subject of this application is Lots 50 and 853 in Square 499. It is bounded by K Street S W to the north, M Street, S W to the south, 6th Street, S W to the west, and the site formerly known as Waterside Mall to the east (the "Subject Property" or "Property"). The Property consists of approximately 135,263 square feet of land and is currently occupied by two residential towers. (Exhibit 26, p. 2.)
- 2 The PUD site is located in the R-5-D Zone District and the Medium-Density Commercial land use category on the Generalized Land Use Map of the Comprehensive Plan. The

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Applicant requested a rezoning of the entire site to the C-3-C Zone District in the context of the PUD (Exhibit 26, p 1)

- 3 Two existing residential structures, known as the Marina View Towers, currently occupy the site ("Pei Towers") Surface parking lots occupy the northern and southern ends of the Property The Marina View Towers were designed by I M Pei and are an example of his modernist design as well as the design typical in Southwest D C during the 1960s (Exhibit 26, Exhibit B)
- 4 The Waterside Mall is directly east of the Property and consists of 13 4 acres that was rezoned to the C-3 C Zone District in a first-stage PUD approval pursuant to Zoning Commission Order No 02-38 (Exhibit 2, pp 4-5, Exhibit 26, p 2)
- 5 Arena Stage is located directly to the west of the Property across 6th Street and is located in the Medium-Density Residential category of the Generalized Land Use Map (Exhibit 2, p 5 Exhibit 26, p 2)
- 6 Directly to the north of the Property, across K Street, is the west end of Town Center Park which is designated as Parks, Recreation, and Open Space on the Generalized Land Use Map (Exhibit 2, p 5, Exhibit 26, pp 2-4)
- 7 Directly south of the Property is a mixture of medium- and moderate-density residential buildings in the Tiber Island residential complex (Exhibit 2, p 5, Exhibit 26, p 2)
- 8 The Property is located less than two blocks from the Waterfront-SEU Metrorail Station at 4th and M Streets, S W (Exhibit 26, p 3)

PROCEDURAL HISTORY

- 9 The Applicant filed an application for consolidated review and approval of a PUD and a related amendment to the Zoning Map of the District of Columbia on November 30 2005 (Exhibit 2)
- 10 The application initially proposed a building height of 120 feet for the two new buildings to be constructed on the existing surface parking lots At its March 13, 2006 public meeting, the Commission voiced concern about the height of the proposed buildings and asked the Applicant to reconsider its design (Exhibit 2, Exhibit F)
- 11 The Applicant filed a supplemental submission on June 16, 2006 with revised plans for the new buildings at a height of 112 feet, with the top floor set back at a one-to one ratio at 102 feet on the M, K, and 6th Streets sides of the new structures The Applicant also changed the footprint of the new buildings to feature a contraflective 'S' curve to

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complement the flat, highly ordered, regular grid of the facades of the Pei Towers (Exhibit 26, Exhibit A)

- 12 The Commission considered the revised application at its July 24, 2006 public meeting and voted 5-0-0 to set the case down for a public hearing
- 13 The Applicant filed its pre-hearing statement with the Office of Zoning on October 12, 2006 and a public hearing was scheduled before the Commission for February 15, 2007 Due to weather conditions on February 15, 2007, the public hearing was postponed until February 28, 2007 Notice of the new hearing date was posted in the Pei Towers
- 14 At the February 28, 2007 public hearing, Paul Tummonds of Pillsbury Winthrop Shaw Pittman, LLP presented the case on behalf of the Applicant The Commission accepted Phil Esocoff of Esocoff & Associates as an expert in architecture, Donald Richardson of Zion Breen & Richardson Associates as an expert in landscape architecture and Lou Slade of Gorove/Slade as an expert in traffic and parking
- 15 The Commission denied a request from Tiber Island Cooperative Homes, Inc ("Tiber Island") and Paul Greenberg for party status in opposition to the application Advisory Neighborhood Commission ("ANC") 6D, whose boundaries include the PUD site, was automatically a party in this proceeding
- 16 At the close of the hearing, the Commission requested additional information regarding the Applicant's commitment to a minimum number of points on the LEED scorecard, the condominium discount purchase program and alternative amenities the proposed rental program for existing tenants, a reduction in the amount of parking provided with the PUD, the phasing of the PUD, details about the lighting on the Property, and the feasibility of an increased setback along M Street The Applicant filed its post-hearing submission on March 12, 2007 (Exhibit 69)

PUD APPLICATION AND PROJECT

- 17 The PUD will preserve the two existing Pei Towers and will include two new residential structures at the north and south ends of the Property, replacing existing surface parking lots (Exhibit 26, p 4)
- 18 The two new buildings will contain 285 to 315 residential units and the Pei Towers will include approximately 255 units The Applicant anticipated a mixture of rental and for-sale units in this project (Exhibit 26, p 4)
- 19 The new south building will provide approximately 8,900 square feet of ground-floor retail space, with a 14-foot ceiling height, along M Street This retail space will provide an opportunity for a restaurant at the intersection of M and 6th Streets, facing the Arena Stage (Exhibit 26, p 4)

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- 20 The new buildings will rise to approximately 102 feet, with an additional top floor set back at a one-to one ratio on the M, K, and 6th Streets sides of the new structures, for a total building height of 112 feet The measuring point used for the calculation of building height was the midpoint of the Subject Property's frontage along M Street (Exhibit 26, p 4)
- 21 The Delegated Action of the NCPC Director, attached to her letter to the Commission dated May 10, 2007 (Exhibit 74), requested that these Findings of Fact ' reflect NCPC's position that height for each of the proposed buildings for purposes of the Height Act should be determined from a separate measuring point " The Delegated Action also indicated that doing so would not affect the lawfulness of the height achieved
- 22 Approval of the 112-foot tall buildings will allow for a ground-level clearance height of approximately 14 feet in the new south building to allow for marketable retail space On the northern building, the greater clearance height at the ground level will allow for taller residential units and the possibility of converting those units to commercial, arts-related, or community service use if the market exists for such uses along K Street (Exhibit 26 p 4)
- 23 The site formerly known as Waterside Mall to the east of the Property proposed a maximum building height of 130 feet The step-down in height from the 130-foot Waterside Mall office tower to the 112-foot proposed residential height (with setbacks at 102 feet) to the 90-foot height of the Pei Towers, is typical of the stepping skyline arrangements of mid-twentieth century Modernist urban design (Exhibit 26, p 5)
- 24 The footprint of the new buildings will enhance the scale relationship between the proposed and existing buildings The Pei Towers will read as "buildings in the round consistent with Pei's original design for the two towers The two new buildings will feature a contraflective "S" curve that will create a more dynamic relationship between the new and existing buildings The sinuous curve will also serve as a lively counterpoint to the flat, highly ordered, regular grid of the Pei facades Like the stepping heights of the buildings this contrast is also an element of Modernism (Exhibit 26, p 5)
- 25 The new structures will be primarily glass and masonry piers with perforated metal panels used as balcony rails and sun screens The alternating balcony design will reduce the scale of the new buildings and allow for two-story high clearance at many balconies The glazing system proposed and the perforated metal panels are contemporary additions to the architectural language of this neighborhood (Exhibit 26, p 5)
- 26 Each set of buildings will also contain an underground parking facility The point of entry on 6th Street will be a ramp leading down to an underground "auto court" rotary to allow traffic to circulate for both self-parking and valet parking The parking garages will hold approximately 573 parking spaces, one space for every residential unit and eight parking spaces dedicated to the retail uses (Exhibit 26, p 6)

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- 27 The building was also designed to be friendly to bicyclists. Air-conditioned bicycle rooms and maintenance areas will be located adjacent to the auto courts in order to make the use of bicycles convenient. The project will include approximately 565 bicycle storage spaces, approximately one bike space for every residential unit. Bicycle access will be safe as the driveways into the auto court will include designated bike/pedestrian lanes. (Exhibit 26, p 6)
- 28 As a part of its transportation demand management program the Applicant coordinated with a local car-sharing vehicle service to reserve five parking spaces for residents and visitors of this project. (Exhibit 56)
- 29 The roofs of the new buildings will serve as recreational open spaces. Each new building will feature an irregularly-shaped pool at its west end, oriented toward the Washington Channel and waterfront. Pool and sun deck areas will also be provided on the roofs of the buildings. (Exhibit 26, p 6)
- 30 A key component of the Modern development pattern that characterizes Southwest Washington is the 'tower in the park' rhythm of tall residential structures with generous and varied open space. The landscape architecture firm Zion Breen & Richardson, which was known as Zion Breen when it prepared the original landscape plan for the Subject Property, will renovate and update its original landscape plan. (Exhibit 26, p 7)
- 31 The PUD will include a large green space in the center of the Subject Property (the 'Great Lawn') and two new "vest pocket" parks located between the Pei Towers and the new residential buildings. The PUD will also include a new linear garden flanking 6th Street between the Pei Towers that will be open to the public during the day. Two small pavilions that will define the ends of this space will allow for vending of light refreshments. (Exhibit 26, p 7)
- 32 An eight-foot-wide east-west path parallel to the Great Lawn will allow pedestrians and bicyclists to traverse the site to access Metro and the future developments to the east. (Exhibit 26 p 8)
- 33 The Applicant will create a shared north/south service drive on the east side of the Subject Property with the adjacent property owner. This shared drive will be paved and will be safely accessible by pedestrians as well as bicyclists in the defined pedestrian crossings areas. Access to the north and south ends of the shared private drive will be provided on the site formerly known as Waterside Mall. The shared route will bend westward behind the central garden and amenity building on the Subject Property. The minimum width of two 11-foot-wide drive aisles will be maintained throughout the length of the shared drive. Sidewalks will be provided along both sides of the 'pedestrian crossing zone'. (Exhibit 32, p 2)

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- 34 On the east end of the Great Lawn, the Applicant will provide an amenities building that will include fitness facilities, recreation space, and a large swimming pool with lap lanes. This building will be available to all residents of the Property (Exhibit 26, p 8)
- 35 The PUD will provide several public benefits and project amenities, including the following
- a Housing and Affordable Housing The PUD will create approximately 540 to 570 new and upgraded residential units and at least 11,500 square feet of workforce affordable housing (Exhibit 26, p 22)
 - b Preservation of Private or Public Structures, Places, or Parks The Applicant will preserve the I M Pei buildings on the Subject Property and integrate those structures into an aesthetically-pleasing residential development designed for the needs of a 21st century urban community (Exhibit 26, p 23)
 - c Urban Design, Architecture, Landscaping, or Creation or Preservation of Open Spaces The massing of the new buildings along M, K, and 6th Streets will create an appropriate urban development pattern that will visually define the adjacent streets and public spaces while preserving significant open space within the center of the Subject Property. The southern building will be oriented along a significant east-west corridor and will create an attractive streetscape for pedestrians exiting the Metrorail station headed for the Arena Stage or the Southwest waterfront. Eliminating the existing surface parking and replacing it with multiple ground-level retail and residential entrances will reduce the sidewalk and street to a human scale and will help remake the public space into an active pedestrian thoroughfare (Exhibit 26, p 23)
 - d Site Planning and Efficient and Economical Land Uses The proposed project will take advantage of its site location along a significant link between a mass transit hub and cultural and recreational destinations by placing retail at the ground-floor street level. The project will create an ensemble of well-defined outdoor spaces for various purposes
 - i M Street, S W The M Street right of-way will be defined by a building of appropriate size and scale, accomplishing the important urban design goals of defining the public realm as envisioned in the L'Enfant plan and marking the western terminus of M Street at the nexus of Maine Avenue and the Waterfront. The 18-foot, 8-inch setback of the building will establish the M Street corridor, consistent with the L'Enfant plan
 - ii K Street, S W The project will define the K Street edge of the public park to the north with a building of appropriate scale to that important urban space

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- iii 6th Street, S W The project design will create a garden open to the public along 6th Street between the Pei Towers Pavilions flanking the space will house facilities for serving light refreshments These facilities will also mark the entry point to the interior of the site
 - iv Great Lawn At the project's core, a central green will be restored on the Property that will be gated but visually open to view as the public traverses the site
 - v Vest-Pocket Parks These spaces will serve as a communal space for passive recreation primarily for the residents of each pair of buildings and the public The central focus of these spaces will be a glass pyramid located directly above and providing natural light to the auto court below Wall fountains at the east end of these spaces and groves of trees will create two urbane spaces with dappled light and the sound of water
- e Effective and Safe Vehicular and Pedestrian Access The PUD will provide two points of entry and exit into two shared parking garages for the north and south ends of the Subject Property These garage access ramps will be located along 6th Street, S W and will allow for traffic circulation via an underground "auto court" rotary The shared service drive transversing the back of the development will be accessible from K Street and M Street The project will provide separate pedestrian entrances and exits for both residents and shoppers along M and K Streets These separate entrances/exits will mitigate any potential pedestrian and vehicular conflicts The Subject Property, two blocks from the Waterfront-SEU Metrorail Station, will be integrally connected to the District's mass transit system (Exhibit 26, p 26) The Applicant agreed to implement a transportation demand management program consisting of
- i Coordinating with a local car-sharing service to reserve five parking spaces for residents and visitors of the project
 - ii Providing a one time membership fee subsidy of \$35 per residential unit for residents to join a local car-sharing service,
 - iii Providing all new residents, upon move-in, a complimentary SmarTrip card with \$20 Metro fare to encourage the use of mass transit,
 - iv Providing an on-site business center to provide residents access to a copier, facsimile machine, and internet services,
 - v Designating a member of building management as a point of contact responsible for coordinating and implementing transportation demand management incentives and

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- vi Providing a secure bicycle storage space for each residential unit (Exhibit 56)
- f Uses of Special Value The Applicant has agreed to provide the following community benefits as a result of this project
- i Tenant Condominium Discounts The Applicant created a homeownership opportunity by offering existing tenants the chance to purchase a condominium at a discount of approximately \$100 per square foot The total value of this program exceeds \$3,240,000
- ii Tenant Rental Discount The Applicant created a program that will provide existing Marina View Towers tenants the opportunity to rent a newly renovated apartment in the project at no additional cost The monthly rental rate will remain the same, provided the tenant chooses to stay in a similarly sized unit The total value of this program is expected to exceed \$384,000 annually
- iii If fewer than 80 residents take part in either the condominium purchase program or the rental program by December 31, 2007, the Applicant will increase the amount of work-force affordable housing provided in the PUD to 16,000 square feet The workforce affordable housing will be reserved for those households making up to 80 percent of the Area Median Income ("AMI") for the Washington, D C Metropolitan Area These units will be restricted through a deed restriction, covenant, and/or other legal means in their resale for a period of 20 years
- iv Jefferson Junior High School The Applicant will make a financial contribution of \$17,000 to Jefferson Junior High School These funds will be used for enhancement of the school's computer and technological development capabilities
- v Amidon Elementary School The Applicant will make a financial contribution of \$17,000 to Amidon Elementary School These funds will be used to renovate the school's library
- vi Bowen Elementary School The Applicant will make a financial contribution of \$17,000 to Bowen Elementary School These funds will be put toward technological advancements, including computers and Smart Boards
- vii Friends of the Southwest Library The Applicant will make a financial contribution of \$15,000 to the Friends of the Southwest Library These funds will be used to expand the Library's resource collection

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- viii Study of the Potential Renovation of the Town Center West Park This park is located immediately north of the Property and its ownership was recently transferred from the U S Government to the District of Columbia The Applicant will engage the original designers of this park (Wallace Roberts Todd) to assess the current condition of the park and recommend steps to utilize the park as a true community amenity The cost of this study is \$15,000
- ix Proposed Retail Operators In response to resident and community requests for neighborhood-serving retail, the Applicant will seek a mix of retail uses that may include a full-service restaurant with alcohol service, dry cleaners, bakery, or coffee shop
- x Green Space The Applicant brought the original landscape architecture firm, now known as Zion Breen & Richardson, back to renovate and update its original landscape plan to accommodate the new project Zion Breen & Richardson will design a new linear garden flanking 6th Street between the Pei Towers that will be open to the public during the day (Exhibit 54)
- xi Revenue for the District The addition of 540-570 new and upgraded housing units and accompanying retail uses in the new buildings will generate significant additional tax revenues in the form of recordation, transfer, property, income, sales, use, and employment taxes for the District (Exhibit 26, p 27)
- xii First Source Employment Program The Applicant will enter into an agreement to participate in the Department of Employment Services (“DOES”) First Source Employment Program to promote and encourage the hiring of District of Columbia residents (Exhibit 26, p 27)
- xiii Local Business Opportunity Program The Applicant will enter into a Memorandum of Understanding (“MOU”) with the Office of Local Business Development (“OLBD”) to use the resources of the OLBD to utilize local business enterprises in the development of this project (Exhibit 26, p 28)
- xiv Comprehensive Plan As described in greater detail below, the PUD is consistent with and furthers many elements and goals of the Comprehensive Plan (Exhibit 26, p 28)
- xv Public Benefits of the Project Attributes of the PUD project will include superior architecture (no thru-wall vents, complete architectural treatment of all sides of the buildings, extensive soft and hardscape elements of the landscape plan), affordable housing, transit-oriented development, ground-floor retail establishments, preservation of existing building, significant open space and public space, extensive “green” design features, including green roofs on the Pei

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Towers and intensive plantings on the new buildings. The Applicant will employ a roof assembly with pavers on pedestals to collect rain water on the new buildings. The rain water will drain into cisterns at the garage level and then be pumped back to the roofs to water the intensive, somewhat less-drought resistant plants that will provide necessary shade. (Exhibit 26, p 28, Exhibit 32, Exhibit D)

- 36 The proposed project is consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan. The project is consistent with the following major themes of the Comprehensive Plan. (Exhibit 26, pp 30-32, Exhibit 38, pp 3-4)
- a Stabilizing the District's neighborhoods. The creation of 540 to 570 new and upgraded residential units will help stabilize and enhance the existing Southwest neighborhood. The retail component will strengthen the neighborhood by providing shopping and dining opportunities in an area that suffers from a general lack of retail activity.
 - b Respecting and improving the physical character of the District. The development will preserve the existing structures and open space, while replacing unattractive surface parking lots with retail, restaurant, and residential opportunities that befit the urban character of the immediate neighborhood.
 - c Preserving existing buildings. This PUD will preserve the Marina View Towers designed by I M Pei and landscaping designed by Zion Breen, which reflect the development patterns of mid-20th century Washington, and integrate them into a more modern and appropriate 21st century urban development.
 - d Preserving and promoting cultural and natural amenities. The improved streetscape along M Street will boost Metro and pedestrian access to the Arena Stage across from the Subject Property and to the Southwest waterfront.
 - e Preserving and ensuring community input. The Applicant met with the Marina View Towers Tenant Association on two occasions, the Southwest Neighborhood Assembly, Tiber Island Condominium Board, Tiber Island Cooperative Board, and ANC 6D on four occasions. The Applicant also held "office hours" for residents of the Marina View Towers on more than 30 occasions.
- 37 The PUD is consistent with many Major Elements of the Comprehensive Plan, including the Housing Element, the Urban Design Element, the Land Use Element, the Generalized Land Use Map, and portions of the Ward 6 Element. (Exhibit 26, pp 32-37, Exhibit 38, pp 4-5) The proposed PUD is also compatible with other plans of the District of Columbia, including the Southwest Waterfront Development Plan of the Anacostia Waterfront Initiative.

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- 38 The PUD will further the goals of the Housing Element through the creation of approximately 285 to 315 new residential units and by enhancing the existing 255 residential units in the two Pe1 Towers The project will provide at least 11,500 square feet of workforce affordable housing
- a The PUD will further the goals of the Housing Element through the creation of approximately 285 to 315 new residential units and by enhancing the existing 255 residential units in the two Pe1 Towers The project will provide at least 11,500 square feet of workforce affordable housing
 - b The PUD will further the goal of the Urban Design Element through the construction of two prominent residential buildings with approximately 8,900 square feet of ground floor retail and residential amenities that will complement the existing buildings and established residential neighborhood, which surrounds the Subject Property The ground-floor retail stores and the building will activate the streetscape along M Street between the Waterfront-SEU Metro Station at 4th and M Streets and Arena Stage and the waterfront to the west
 - c The PUD will further the goal of the Transportation Element by providing a mixed-use development with ground floors retail two blocks from the Waterfront-SEU Metrorail Station The location near the Metro ensures that mass transit will be a desirable and preferred option for its residents Moreover, the availability of ground-floor retail in the new south building along M Street, close to the Metro station, will establish the project as a center for the neighborhood
 - d The PUD will further the goals of the Land Use Element by preserving existing residential structures in the neighborhood and adding new residents and accompanying retail and residential opportunities that will benefit the entire neighborhood
 - e The PUD will further the goals of the Preservation and Historic Features Element by preserving the significant buildings and replacing surface parking lots with two new residential buildings that will integrate the old and new structures, stabilize the site, and ensure the preservation of this facet of District history

GOVERNMENT REPORTS

- 39 The Historic Preservation Office ("HPO") filed a report dated October 5, 2006 The report described the PUD as a compatible design in its context and a model for how to integrate substantial new construction within the Southwest environment (Exhibit 26, Exhibit B)

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- 40 The Applicant submitted the project to the Historic Preservation Review Board (“HPRB”) for concept design review of a potential historic property. While no Southwest Historic District formally exists, HPRB evaluated the project as if the historic district existed and the Per buildings were contributing buildings to the historic district (Exhibit 26, pp 10-11). The HPRB reviewed the project at its public hearing on October 5, 2006 and adopted a “consensus endorsement of the project” (Exhibit 26, p 11).
- 41 In its February 5, 2007 report, the Office of Planning (“OP”) recommended approval of the project. OP found that the project would complement redevelopment plans for both the Arena Stage and Waterside Mall sites, and was supportive of “green building” and smart growth principles. OP also stated that the PUD was consistent with the 2006 Comprehensive Plan Future Land Use Map, which designated the site as “high density residential” where “high-rise (8 stories or more) apartment buildings are the predominant uses.” (Exhibit 38, pp 3-12).
- 42 OP’s support for the project was subject to (1) the provision of additional detail and certainty regarding amenity items, particularly those related to housing discounts for existing tenants, green building elements, and contributions to neighborhood schools and parks, (2) registration of easements to ensure that the mid-block connections through the site would remain open and accessible to the public, and (3) concurrence from the District Department of Transportation (“DDOT”) regarding the proposed parking, loading and rear alley provisions (Exhibit 38, p 12).
- 43 DDOT submitted a report dated February 8, 2007, stating that it would not support the PUD application unless the Applicant amended its transportation study to modify the traffic generation assumptions and expanded the transportation demand management benefits to prospective residents (Exhibit 40, p 1).
- 44 DDOT submitted a supplemental report on February 14, 2007, indicating that the Applicant had provided additional information in response to DDOT’s concerns. The Applicant agreed to implement all transportation demand management measures recommended in DDOT’s initial report and the Applicant agreed to expand its scope of study. DDOT requested flexibility in filing additional comments once the Applicant filed its supplemental traffic analysis (Exhibit 43, p 1).
- 45 On February 26, 2007, DDOT submitted a final report indicating that the Applicant complied with the conditions outlined in DDOT’s initial report and that it did not object to the planned development (Exhibit 68, p 1).

ANC REPORT

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- 46 ANC 6D voted 6-0 at its regularly scheduled meeting held on February 12, 2007 to recommend approval of the PUD subject to the following conditions (1) the setbacks of the newly constructed building on M Street, S W should be consistent with and equivalent to the setbacks for the adjacent Waterside Mall development, but in no event less than 22 feet from the curb line, (2) the Applicant should demonstrate that it is duly licensed to do business in the District of Columbia by the Department of Consumer and Regulatory Affairs ("DCRA"), (3) the Applicant should pay in full any fines levied by DCRA, and (4) the Applicant should prepare a formal condominium conversion and renovation plan for distribution to the Marina View Towers residents not less than 30 days after the approval of this PUD so residents may vote on the plan in accordance with District law (Exhibit 60)

PERSONS IN SUPPORT

- 42 The Commission received letters or heard testimony from a number of persons in support of the application The statements in support of the proposed PUD generally cited the Applicant's consideration of concerns and issues raised by tenants of the Marina View Towers, benefits to the neighborhood from the redevelopment plans for the Waterfront area, specifically the Marina View Towers Complex, the architectural and landscape design of the PUD, and the provision of desired amenities for tenants as well as the greater community

PERSONS IN OPPOSITION

- 43 The Commission received letters or heard testimony from a number of persons in opposition to the application The statements in opposition to the proposed PUD generally cited the height, bulk, and design of the proposed towers, concerns about the Applicant's proffer of affordable housing, the proposed setback on M Street, and the impact on the amount of open space available in the neighborhood,

CONCLUSIONS OF LAW

- 1 Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide public benefits (11 DCMR §2400 1) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience " (11 DCMR § 2400 2) The application is subject to compliance with D C Law 2-38, the Human Rights Act of 1977
- 2 Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards In this

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application, the Commission finds that the requested flexibility to permit multiple buildings on a single record lot can be granted without detriment to the zone plan or map

- 3 The development of this 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 than that achievable under matter-of-right development
- 4 The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1
- 5 The PUD is a project of exemplary architectural quality, character, and design, considering the attention paid to architectural design details, the appropriate renovation of the Pei Towers, the landscaping treatment throughout the site, and the commitment to “green” design. The Commission finds that the proposed massing and building height will relate well to the Pei Towers and neighboring properties, including the Tiber Island complex. The project respects the existing character of the Southwest DC community while merging the neighborhood with the urban design proposed for the nearby Southwest waterfront.
- 6 The Commission agrees with the testimony of the project architect and the representatives of the Applicant in finding that this project provides superior features that will benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Subject Property would provide. The Commission finds that the condominium purchase discount and the rental discount programs offered to existing tenants are significant amenities of the project. The Commission also finds that the financial contributions to the local DC public schools, the Southwest Library, and for the study of the renovation of the adjacent Town Center West Park are appropriate and will provide significant benefits to the surrounding community.
- 7 Approval of the PUD and the PUD-related Zoning Map amendment is not inconsistent with the Comprehensive Plan. The PUD will create new residential units, including workforce affordable housing, retain existing residents, and provide retail opportunities in place of existing surface parking lots.
- 8 The Commission agrees with the conclusions of the Applicant’s traffic and parking expert, as well as the conclusions of DDOT, that the proposed project will not create any adverse traffic or parking impacts on the surrounding community. The Commission finds that the Applicant’s transportation demand management program will help mitigate any adverse impacts related to increased vehicular traffic or parking demand in the surrounding area that may arise as a result of this project.

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- 9 The Commission finds that the development and construction management plan submitted by the Applicant will effectively mitigate any adverse impacts that construction activity on the Property will have on the surrounding community
- 10 In accordance with D C Official Code §1-309 10(d)(2001), the Commission must give "great weight" to the issues and concerns of the affected ANC ANC 6D voted to support the project subject to several conditions The Commission carefully reviewed the conditions proposed by the ANC and has determined that conditions related to the Applicant's license to do business in the District of Columbia and the conversion of the rental building to a condominium are outside the scope of the Commission's purview
- 11 The Commission considered the written submissions and testimony of the representatives of ANC 6D and Tiber Island that the Applicant be required to further set back the new building from the property line along M Street The Commission finds that in light of the testimony of OP, the support of this project from the HPO and the HPRB, and the written submission and testimony of the Applicant at the public hearing, such a setback is not appropriate or necessary The Commission finds that such a setback would impair the urban fabric of the project and the area by pulling the building further away from the property line The Commission agrees with the Applicant's post-hearing submission that fundamental design principles argue against setting the building further back from its property line along M Street The proposed siting and height of the building along M Street are consistent with the 1910 Height Act and will create an appropriate spatial relationship at the western terminus of M Street The Commission also finds that an appropriate visual corridor along M Street will be created with the approval of this application
- 12 The Commission finds that no adverse impact to the amount of light, air, or open space available to neighboring properties (including the Tiber Island properties) will occur as a result of the proposed siting and height of the new south building along M Street The Commission notes that the M Street right of way is 120 feet wide at this point and that the additional setback requested by the ANC and Tiber Island would have no discernible impact on the surrounding properties, yet would create a suboptimal width of the proposed vest pocket park or width of the residential units in the new south building For these reasons, the Commission approves the height and location of the new south building along M Street
- 13 Approval of the application will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia
- 14 Notice of the public hearing was provided in accordance with the Zoning Regulations

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- 15 The Applicant is subject to compliance with D C Law 2-38, the Human Rights Act of 1977

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for consolidated review of a planned unit development and related zoning map amendment application from the R-5-D Zone District to the C-3-C Zone District for Lot 50 and 853 in Square 499 The approval of this PUD and related zoning map amendment is subject to the following guidelines, conditions, and standards

- 1 The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 2, 20, 21, 26, 32, 53, 54, 55, 56, and 69 of the record, as modified by the guidelines, conditions, and standards of this Order
- 2 The Applicant shall make the following financial contributions, prior to the issuance of a building permit for the new south building on the Subject Property
 - a Jefferson Junior High School The Applicant shall make a financial contribution of \$17,000 to Jefferson Junior High School to be used for enhancement of the school's computer and technological development capabilities
 - b Amidon Elementary School The Applicant shall make a financial contribution of \$17,000 to Amidon Elementary School to be used to renovate the school's library
 - c Bowen Elementary School The Applicant shall make a financial contribution of \$17,000 to Bowen Elementary School to be put toward technological advancements, including computers and Smart Boards
 - d Friends of the Southwest Library The Applicant shall make a financial contribution of \$15,000 to the Friends of the Southwest Library to be used to expand their resource collection
 - e Study of the Potential Renovation of the Town Center West Park The Applicant shall engage the original designers of this park (Wallace Roberts Todd) to assess the current condition of the park and recommend steps to utilize the park as a true community amenity at a cost of \$15,000
- 3 No later than six months after making the contributions described in subparts (a) through (d) of Condition 2, the Applicant shall provide evidence to the Office of Zoning's Compliance Review Manager demonstrating that named organizations have applied the funds to the designated use If the money has not been applied to the designated uses within six months, the Applicant shall provide a reasonable explanation to the Office of

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- Zoning's Compliance Review Manager as to why not and shall present evidence to the Office of Zoning's Compliance Review Manager within one year thereafter indicating that the contribution has been properly allocated
- 4 Prior to the sale of the first condominium unit, the Applicant shall establish a condominium discount purchase program whereby existing Marina View Towers tenants may purchase a condominium at a discount of no less than \$100 per square foot
 - 5 Prior to the sale of the first condominium unit, the Applicant shall establish a program providing existing Marina View Towers tenants the opportunity to rent a newly renovated apartment in the project at no additional cost. The monthly rental rate for the tenant will increase only in connection with the annual Consumer Price Index increases, provided the tenant chooses to stay in a similarly sized unit
 - 6 Prior to the sale of the first condominium unit, the Applicant shall establish a transportation demand management program includes the following
 - a Coordination with a local car-sharing service to reserve five parking spaces for residents and visitors of this project,
 - b A one-time membership fee subsidy of \$35 per residential unit for residents to join a local car-sharing service,
 - c A complimentary SmarTrip card with \$20 Metro fare for all new residents upon move-in, to encourage the use of mass transit,
 - d An on-site business center to provide residents access to a copier, facsimile machine, and internet services,
 - e A secure bicycle storage space for each residential unit, and
 - f A member of building management designated as a point of contact who is responsible for coordinating and implementing transportation demand management incentives
 - 7 The Applicant shall preserve the Pei Towers and shall renovate their exteriors, including the replacement of exterior glass walls and windows with insulated glass panels and windows in the same geometric configuration, repairing exposed concrete, and expanding the lobbies in each structure
 - 8 The Applicant shall use the landscape firm known as Zion Breen & Richardson to renovate and update its original landscape plan to accommodate the new project, to design two new "vest pocket" parks located between the existing Pei Towers and the

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Applicant's proposed residential buildings, and a new linear public garden flanking 6th Street between the Pei Towers

- 9 The Applicant shall coordinate its design for a shared driveway in the rear of the property with the adjacent property owners. The Applicant and the adjacent property owner shall create reciprocal easement agreements that will ensure that the mid-block pedestrian connections between the properties will remain open and accessible to the general public. The Applicant shall provide the Commission with evidence of a recorded easement prior to the issuance of a certificate of occupancy for any units in the new south building.
- 10 The Applicant shall provide public access through the site in designated areas to accommodate pedestrian/bicycle traffic between 6th Street and the Waterfront/SEU Metrorail Station.
- 11 The Applicant shall abide by the development and construction management plan submitted on January 26, 2007 (Exhibit 32). This development and construction management plan includes a pest control program to ensure that no increase in pest activity occurs during the period of construction activity on the Property.
- 12 The Applicant shall reserve 11,541 square feet of gross floor in the PUD as affordable units to households having an income not exceeding 80 percent of Area Median Income for the Washington, D C Metropolitan Statistical Area (adjusted for family size), and consistent with the eligibility requirements and enforcement mechanisms enumerated in Exhibit G of Exhibit 26. Should fewer than 80 residents participate in the condominium discount purchase program or the rental program described in Conditions 4 and 5 by December 31, 2007, the Applicant shall increase its commitment to affordable housing to a total of 16,000 square feet. To the extent that minor modifications are needed in the execution of this program to conform to District or Federal housing programs, the Applicant shall work with the Department of Housing and Community Development ("DHCD") to make such changes comply with the same.
- 13 The PUD shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit for the construction or renovation of one of the residential buildings as specified in 11 DCMR §§ 2404.8 and 2409.1, the filing of the building permit application will vest the Zoning Commission Order. An application for the final building permit completing the development of the approved PUD project must be filed within seven (7) years of the issuance of the final certificate of occupancy for the first building.
- 14 The Applicant shall enter into a memorandum of understanding ("MOU") with the Office of Local Business Development ("OLBD") in substantial conformance with the memorandum of understanding submitted as Exhibit I of Exhibit 26 of the record. A

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- fully signed MOU between the Applicant and OLBD must be filed with the Office of Zoning prior to the issuance of a building permit for the new south building
- 15 The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services ("DOES") in substantial conformance with the First Source Agreement submitted as Exhibit I of Exhibit 26 of the record. A fully signed First Source Employment Agreement between the Applicant and DOES must be filed with the Office of Zoning prior to the issuance of a building permit for the new south building
 - 16 The Applicant shall achieve a minimum of 20 points as defined by the U S Green Building Council in the LEED certification process and further described in Exhibit D of Exhibit 32 of the record
 - 17 The Applicant shall have flexibility with the design of the PUD in the following areas
 - To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures,
 - To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials, and
 - To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit
 - 18 The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA and no building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof by the Zoning Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning
 - 19 The change of zoning from the R-5-D Zone District to the C-3-C Zone District for the Property shall be effective upon the recordation of the covenant discussed in Condition No 18, pursuant to 11 DCMR § 3028.9
 - 20 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

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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, 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, which 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 denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order

On April 9, 2007 the Zoning Commission **APPROVED** the application by a vote of 4-0-1 (Carol J Mitten, Michael G Turnbull, Anthony J Hood, and John G Parsons to approve, Gregory N Jeffries, having not participated, not voting)

This Order was **ADOPTED** by the Zoning Commission at its public meeting on May 14, 2007 by a vote of 4-0-1 (Carol J Mitten, John G Parsons, Michael G Turnbull, and Anthony J Hood to adopt , Gregory N Jeffries, having not participated, not voting)

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 ~~OCT 26 2007~~



PUD COVENANT

THIS COVENANT, made as of this 17th day of March, 2008, by and between MARINA VIEW TRUSTEE, LLC (hereinafter referred to as "Developer") and the DISTRICT OF COLUMBIA, a municipal corporation (hereinafter referred to as the "District")

WITNESSETH:

WHEREAS, Developer is the owner of Lot 61 in Square 499, premises address 1050 6th Street, SW, 480 K Street, SW, 475 M Street, SW, 445 M Street, SW, 455 M Street, SW, 465 M Street, SW, and 495 M Street, SW, as recorded in the Office of the Surveyor in Book 202 at Page 116 (such property hereinafter referred to as the "Subject Site"), and

WHEREAS, Developer intends to develop the Subject Site for use as a Planned Unit Development (hereinafter referred to as the "Project") under Chapter 24 of the Zoning Regulations of the District of Columbia in accordance with Zoning Commission Order No 05-38 effective October 26, 2007, in Zoning Commission Case No 05-38, and

WHEREAS, said Chapter 24 and Zoning Commission Case No 05-38 further require that Developer enter into this Covenant with the District of Columbia assuring Developer's (and its respective successors in title) development and operation of the Project as approved by the Zoning Commission of the District of Columbia (hereinafter referred to as the "Zoning Commission") in Order No 05-38 and all modifications, alterations or amendments thereto

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

1. Recitals The above recitals are incorporated herein
2. Approved Plans The terms and conditions of the Zoning Commission's approval of the Planned Unit Development under Order No 05-38 effective October 26, 2007, in Zoning



Commission Case No 05-38 (as the same may be amended and/or modified from time to time, the "Order"), are incorporated herein by reference and made a part hereof as Exhibit A and shall be considered a part of this Covenant. The Subject Site will be developed and used in accordance with the plans approved by said Order and in accordance with conditions and restrictions contained in said Order, subject to such changes thereto as the Zoning Commission and/or the Zoning Administrator of the District of Columbia may authorize. The conditions and restrictions in the Order include, but are not limited to, the condition that Developer reserve 16,000 square feet of the Project for affordable housing for households having an income not exceeding 80 percent of the Area Median Income for the Washington, D C Metropolitan Statistical Area. Developer covenants that it will use the Subject Site only in accordance with the terms of the Order, as the same may be further amended and/or modified from time to time, subject to the terms and conditions contained herein and the provisions of Chapter 24 of the Zoning Regulations.

3 Additional Time to Construct Planned Unit Development If Developer should fail to file for a building permit and to commence construction of the approved Planned Unit Development within the time specified in Sections 2408.8 and 2408.9 of the Zoning Regulations and the Order, the Zoning Commission may duly consider an application for an extension of time for good cause shown.

4 Default In the event that Developer fails to file for a building permit and to commence construction of the approved Planned Unit Development within the time specified in Sections 2408.8 and 2408.9 of the Zoning Regulations and the Order or within any extension of time granted by the Zoning Commission for good cause shown, the benefits granted by the Order shall terminate pursuant to Section 2408.14 of the Zoning Regulations.

5 Future Conveyance Developer covenants that if any conveyance of all or any part of the Subject Site takes place before completion of the Planned Unit Development in accordance with the approvals of the Zoning Commission as aforesaid, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns to develop and use the Subject Site in accordance with the terms and conditions of this Covenant

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

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

8 Counterparts This Covenant may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

9 Rescission/Alteration of Chapter 24 Covenant The covenants hereby created may not be extinguished without the prior written consent of the District. In the event any amendment, modification, rescission or alteration of the Order is adopted or authorized by the Zoning Commission, or in the event of a lapse of said Order by its terms, the District shall, upon the request of Developer, execute an instrument, in recordable form, evidencing such action or lapse, which instrument shall amend, modify, rescind, nullify or alter this Covenant, as the case may be

IN WITNESS WHEREOF, Marina View Trustee, LLC has, as of the day and year first above written, caused this Covenant to be signed with its corporate name by Ted R Bradford Sr. V.P. of Marina View Trustee, LLC, and their seals to be affixed hereto and attested by Sandra L. Hill, Asst Secretary of Marina View Trustee, LLC, and does hereby appoint the said Ted R. Bradford to be its attorney-in-fact, and in its name to acknowledge and deliver this Covenant according to law

MARINA VIEW TRUSTEE, LLC

ATTEST

By [Signature]
SANDRA L. HILL
Its Asst. Secretary

By [Signature]
Name Ted R. Bradford
Title Senior Vice President

TEXAS
State of ~~Maryland~~

I, Kelley A. Pippin, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that T Bradford, Marina View Trustee, LLC, a Delaware limited liability company, party to the foregoing Covenant, the said T Bradford being named as attorney-in-fact for said organization in the foregoing and annexed Covenant, personally appeared before me and, being personally well known to me as such attorney-in-fact, acknowledged said Covenant to be the act and deed of said organization and that he delivered the same as such

GIVEN under my hand and seal this 7 day of November, 2007

[Signature]
Notary Public

My commission expires 3-9-2008



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, D C , who has hereunto set her hand and affixed the seal of the District of Columbia hereto under authority of the Act of Congress entitled "An Act to Relieve the Commissioners of the District of Columbia of Certain Ministerial Duties," approved February 11, 1932

WITNESS

Tabatha Braxton
Secretary, D C
(Corporate Seal)

DISTRICT OF COLUMBIA
a Municipal Corporation

By Stephaine D. Scott

DISTRICT OF COLUMBIA, ss

I, Tabatha Braxton, a Notary Public in and for the District of Columbia, do hereby certify that Stephaine D. Scott who is personally well known to me as the person named as Secretary of the DISTRICT OF COLUMBIA in the foregoing PUD Covenant hereunto annexed, personally appeared before me in said District and, as Secretary of the DISTRICT OF COLUMBIA aforesaid, and by virtue of the authority in her vested, acknowledged the same to be the act and deed of the Mayor of the DISTRICT OF COLUMBIA

GIVEN under my hand and seal this 17 day of March, 2008
Tabatha Braxton
Notary Public, D C

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

APPROVED AS TO LEGAL SUFFICIENCY:

Alan Boyle
Chief, Land Use Section
D C Office of the Attorney General

APPROVED AS TO FORM AND CONTENT:

Math Z to let 3/11/08

Zoning Administrator of the District of Columbia

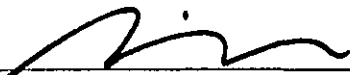
GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



DISTRICT OF COLUMBIA, ss


I attest and certify that I am the Director of the District of Columbia Office of Zoning, and that attached hereto, and bearing my initials in red ink in the lower right corner of each page, is a true copy of the following records that are in my custody and possession in my official capacity

Twenty-two page Order No 05-38 of the Zoning Commission of the District of Columbia, dated October 26, 2007, in Case ZC Case No 05-38



JERRILY R. KRESS, FAIA ✓
Director
Office of Zoning

Signed and sworn to before me this 1st day of November,
2007



Betty J. Williams
NOTARY PUBLIC, D C

My Commission expires February 14, 2011

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 05-38

Zoning Commission Case No. 05-38

**Consolidated Planned Unit Development and Related Amendment to the Zoning Map –
Marina View Trustee, LLC (Square 499, Lots 50 and 853)**

May 14, 2007

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on February 28, 2007 to consider an application from Marina View Trustee, LLC ("Applicant") for the consolidated review and approval of a planned unit development ("PUD") and a related amendment to the zoning map of the District of Columbia from the R-5-D Zone District to the C-3-C Zone District for Lots 50 and 853 in Square 499 pursuant to Chapter 24 of the District of Columbia Municipal Regulations ("DCMR") Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

At its public meeting on April 9, 2007, the Commission took proposed action by a vote of 4-0-1 to approve the application and plans that were submitted into the record, subject to conditions.

The proposed action of the Commission was referred to the National Capital Planning Commission ("NCP") pursuant to § 492 of the District Charter. The NCP Executive Director, through a Delegated Action dated May 10, 2007, found that the proposed PUD would not be inconsistent with the Comprehensive Plan nor would it have any adverse impact on any federal interest.

The Commission took final action to approve the application, subject to conditions, on May 14, 2007 by a vote of 4-0-1.

FINDINGS OF FACT

PUD SITE

1. The property that is the subject of this application is Lots 50 and 853 in Square 499. It is bounded by K Street, S W to the north, M Street, S W to the south, 6th Street, S W to the west, and the site formerly known as Waterside Mall to the east (the "Subject Property" or "Property"). The Property consists of approximately 135,263 square feet of land and is currently occupied by two residential towers (Exhibit 26, p. 2).
2. The PUD site is located in the R-5-D Zone District and the Medium-Density Commercial land use category on the Generalized Land Use Map of the Comprehensive Plan. The

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Web Site www.dcoz.dc.gov

FIN

Applicant requested a rezoning of the entire site to the C-3-C Zone District in the context of the PUD (Exhibit 26, p 1)

3. Two existing residential structures, known as the Marina View Towers, currently occupy the site ("Pei Towers"). Surface parking lots occupy the northern and southern ends of the Property. The Marina View Towers were designed by I M Pei and are an example of his modernist design as well as the design typical in Southwest D C during the 1960s (Exhibit 26, Exhibit B)
4. The Waterside Mall is directly east of the Property and consists of 13.4 acres that was rezoned to the C-3-C Zone District in a first-stage PUD approval pursuant to Zoning Commission Order No 02-38 (Exhibit 2, pp 4-5, Exhibit 26, p 2)
5. Arena Stage is located directly to the west of the Property across 6th Street and is located in the Medium-Density Residential category of the Generalized Land Use Map (Exhibit 2, p 5, Exhibit 26, p 2)
6. Directly to the north of the Property, across K Street, is the west end of Town Center Park which is designated as Parks, Recreation, and Open Space on the Generalized Land Use Map (Exhibit 2, p 5, Exhibit 26, pp 2-4)
7. Directly south of the Property is a mixture of medium- and moderate-density residential buildings in the Tiber Island residential complex (Exhibit 2, p 5, Exhibit 26, p 2.)
8. The Property is located less than two blocks from the Waterfront-SEU Metrorail Station at 4th and M Streets, S W (Exhibit 26, p 3)

PROCEDURAL HISTORY

9. The Applicant filed an application for consolidated review and approval of a PUD and a related amendment to the Zoning Map of the District of Columbia on November 30, 2005 (Exhibit 2)
10. The application initially proposed a building height of 120 feet for the two new buildings to be constructed on the existing surface parking lots. At its March 13, 2006 public meeting, the Commission voiced concern about the height of the proposed buildings and asked the Applicant to reconsider its design (Exhibit 2, Exhibit F)
11. The Applicant filed a supplemental submission on June 16, 2006 with revised plans for the new buildings at a height of 112 feet, with the top floor set back at a one-to-one ratio at 102 feet on the M, K, and 6th Streets sides of the new structures. The Applicant also changed the footprint of the new buildings to feature a contraflexive "S" curve to

- complement the flat, highly ordered, regular grid of the facades of the Pei Towers (Exhibit 26, Exhibit A)
- 12 The Commission considered the revised application at its July 24, 2006 public meeting and voted 5-0-0 to set the case down for a public hearing
 13. The Applicant filed its pre-hearing statement with the Office of Zoning on October 12, 2006 and a public hearing was scheduled before the Commission for February 15, 2007 Due to weather conditions on February 15, 2007, the public hearing was postponed until February 28, 2007 Notice of the new hearing date was posted in the Pei Towers
 - 14 At the February 28, 2007 public hearing, Paul Tummonds of Pillsbury Winthrop Shaw Pittman, LLP presented the case on behalf of the Applicant The Commission accepted Phil Esocoff of Esocoff & Associates as an expert in architecture, Donald Richardson of Zion Breen & Richardson Associates as an expert in landscape architecture, and Lou Slade of Gorove/Slade as an expert in traffic and parking
 - 15 The Commission denied a request from Tiber Island Cooperative Homes, Inc (“Tiber Island”) and Paul Greenberg for party status in opposition to the application Advisory Neighborhood Commission (“ANC”) 6D, whose boundaries include the PUD site, was automatically a party in this proceeding
 - 16 At the close of the hearing, the Commission requested additional information regarding the Applicant’s commitment to a minimum number of points on the LEED scorecard, the condominium discount purchase program and alternative amenities, the proposed rental program for existing tenants, a reduction in the amount of parking provided with the PUD, the phasing of the PUD, details about the lighting on the Property, and the feasibility of an increased setback along M Street The Applicant filed its post-hearing submission on March 12, 2007 (Exhibit 69)

PUD APPLICATION AND PROJECT

- 17 The PUD will preserve the two existing Pei Towers and will include two new residential structures at the north and south ends of the Property, replacing existing surface parking lots (Exhibit 26, p 4)
- 18 The two new buildings will contain 285 to 315 residential units and the Pei Towers will include approximately 255 units The Applicant anticipated a mixture of rental and for-sale units in this project (Exhibit 26, p 4)
- 19 The new south building will provide approximately 8,900 square feet of ground-floor retail space, with a 14-foot ceiling height, along M Street This retail space will provide an opportunity for a restaurant at the intersection of M and 6th Streets, facing the Arena Stage (Exhibit 26, p 4)

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- 20 The new buildings will rise to approximately 102 feet, with an additional top floor set back at a one-to-one ratio on the M, K, and 6th Streets sides of the new structures, for a total building height of 112 feet. The measuring point used for the calculation of building height was the midpoint of the Subject Property's frontage along M Street. (Exhibit 26, p. 4)
- 21 The Delegated Action of the NCPC Director, attached to her letter to the Commission dated May 10, 2007 (Exhibit 74), requested that these Findings of Fact "reflect NCPC's position that height for each of the proposed buildings for purposes of the Height Act should be determined from a separate measuring point." The Delegated Action also indicated that doing so would not affect the lawfulness of the height achieved.
- 22 Approval of the 112-foot tall buildings will allow for a ground-level clearance height of approximately 14 feet in the new south building to allow for marketable retail space. On the northern building, the greater clearance height at the ground level will allow for taller residential units and the possibility of converting those units to commercial, arts-related, or community service use if the market exists for such uses along K Street. (Exhibit 26, p. 4)
- 23 The site formerly known as Waterside Mall to the east of the Property proposed a maximum building height of 130 feet. The step-down in height from the 130-foot Waterside Mall office tower to the 112-foot proposed residential height (with setbacks at 102 feet) to the 90-foot height of the Pei Towers, is typical of the stepping skyline arrangements of mid-twentieth century Modernist urban design. (Exhibit 26, p. 5)
- 24 The footprint of the new buildings will enhance the scale relationship between the proposed and existing buildings. The Pei Towers will read as "buildings in the round," consistent with Pei's original design for the two towers. The two new buildings will feature a contraflective "S" curve that will create a more dynamic relationship between the new and existing buildings. The sinuous curve will also serve as a lively counterpoint to the flat, highly ordered, regular grid of the Pei facades. Like the stepping heights of the buildings, this contrast is also an element of Modernism. (Exhibit 26, p. 5)
- 25 The new structures will be primarily glass and masonry piers with perforated metal panels used as balcony rails and sun screens. The alternating balcony design will reduce the scale of the new buildings and allow for two-story high clearance at many balconies. The glazing system proposed and the perforated metal panels are contemporary additions to the architectural language of this neighborhood. (Exhibit 26, p. 5)
- 26 Each set of buildings will also contain an underground parking facility. The point of entry on 6th Street will be a ramp leading down to an underground "auto court" rotary to allow traffic to circulate for both self-parking and valet parking. The parking garages will hold approximately 573 parking spaces, one space for every residential unit and eight parking spaces dedicated to the retail uses. (Exhibit 26, p. 6)

- 27 The building was also designed to be friendly to bicyclists. Air-conditioned bicycle rooms and maintenance areas will be located adjacent to the auto courts in order to make the use of bicycles convenient. The project will include approximately 565 bicycle storage spaces, approximately one bike space for every residential unit. Bicycle access will be safe as the driveways into the auto court will include designated bike/pedestrian lanes. (Exhibit 26, p 6)
- 28 As a part of its transportation demand management program, the Applicant coordinated with a local car-sharing vehicle service to reserve five parking spaces for residents and visitors of this project. (Exhibit 56)
- 29 The roofs of the new buildings will serve as recreational open spaces. Each new building will feature an irregularly-shaped pool at its west end, oriented toward the Washington Channel and waterfront. Pool and sun deck areas will also be provided on the roofs of the buildings. (Exhibit 26, p 6)
- 30 A key component of the Modern development pattern that characterizes Southwest Washington is the "tower in the park" rhythm of tall residential structures with generous and varied open space. The landscape architecture firm Zion Breen & Richardson, which was known as Zion Breen when it prepared the original landscape plan for the Subject Property, will renovate and update its original landscape plan. (Exhibit 26, p 7)
- 31 The PUD will include a large green space in the center of the Subject Property (the "Great Lawn") and two new "vest pocket" parks located between the Pei Towers and the new residential buildings. The PUD will also include a new linear garden flanking 6th Street between the Pei Towers that will be open to the public during the day. Two small pavilions that will define the ends of this space will allow for vending of light refreshments. (Exhibit 26, p 7)
- 32 An eight-foot-wide east-west path parallel to the Great Lawn will allow pedestrians and bicyclists to traverse the site to access Metro and the future developments to the east. (Exhibit 26, p 8)
- 33 The Applicant will create a shared north/south service drive on the east side of the Subject Property with the adjacent property owner. This shared drive will be paved and will be safely accessible by pedestrians as well as bicyclists in the defined pedestrian crossings areas. Access to the north and south ends of the shared private drive will be provided on the site formerly known as Waterside Mall. The shared route will bend westward behind the central garden and amenity building on the Subject Property. The minimum width of two 11-foot-wide drive aisles will be maintained throughout the length of the shared drive. Sidewalks will be provided along both sides of the "pedestrian crossing zone". (Exhibit 32, p 2)

- 34 On the east end of the Great Lawn, the Applicant will provide an amenities building that will include fitness facilities, recreation space, and a large swimming pool with lap lanes. This building will be available to all residents of the Property (Exhibit 26, p 8)
- 35 The PUD will provide several public benefits and project amenities, including the following
- a Housing and Affordable Housing The PUD will create approximately 540 to 570 new and upgraded residential units and at least 11,500 square feet of workforce affordable housing (Exhibit 26, p 22)
 - b Preservation of Private or Public Structures, Places, or Parks The Applicant will preserve the IM Pej buildings on the Subject Property and integrate those structures into an aesthetically-pleasing residential development designed for the needs of a 21st century urban community (Exhibit 26, p 23)
 - c Urban Design, Architecture, Landscaping, or Creation or Preservation of Open Spaces The massing of the new buildings along M, K, and 6th Streets will create an appropriate urban development pattern that will visually define the adjacent streets and public spaces while preserving significant open space within the center of the Subject Property. The southern building will be oriented along a significant east-west corridor and will create an attractive streetscape for pedestrians exiting the Metrorail station headed for the Arena Stage or the Southwest waterfront. Eliminating the existing surface parking and replacing it with multiple ground-level retail and residential entrances will reduce the sidewalk and street to a human scale and will help remake the public space into an active pedestrian thoroughfare (Exhibit 26, p 23)
 - d Site Planning and Efficient and Economical Land Uses: The proposed project will take advantage of its site location along a significant link between a mass transit hub and cultural and recreational destinations by placing retail at the ground-floor street level. The project will create an ensemble of well-defined outdoor spaces for various purposes
 - i M Street, S W The M Street right-of-way will be defined by a building of appropriate size and scale, accomplishing the important urban design goals of defining the public realm as envisioned in the L'Enfant plan and marking the western terminus of M Street at the nexus of Maine Avenue and the Waterfront. The 18-foot, 8-inch setback of the building will establish the M Street corridor, consistent with the L'Enfant plan
 - ii K Street, S W The project will define the K Street edge of the public park to the north with a building of appropriate scale to that important urban space

- iii 6th Street, S W The project design will create a garden open to the public along 6th Street between the Pei Towers Pavilions flanking the space will house facilities for serving light refreshments These facilities will also mark the entry point to the interior of the site
 - iv Great Lawn At the project's core, a central green will be restored on the Property that will be gated but visually open to view as the public traverses the site
 - v Vest-Pocket Parks These spaces will serve as a communal space for passive recreation primarily for the residents of each pair of buildings and the public The central focus of these spaces will be a glass pyramid located directly above and providing natural light to the auto court below Wall fountains at the east end of these spaces and groves of trees will create two urbane spaces with dappled light and the sound of water
- e Effective and Safe Vehicular and Pedestrian Access The PUD will provide two points of entry and exit into two shared parking garages for the north and south ends of the Subject Property These garage access ramps will be located along 6th Street, S W and will allow for traffic circulation via an underground "auto court" rotary The shared service drive transversing the back of the development will be accessible from K Street and M Street The project will provide separate pedestrian entrances and exits for both residents and shoppers along M and K Streets These separate entrances/exits will mitigate any potential pedestrian and vehicular conflicts The Subject Property, two blocks from the Waterfront-SEU Metrorail Station, will be integrally connected to the District's mass transit system (Exhibit 26, p 26) The Applicant agreed to implement a transportation demand management program consisting of
- i Coordinating with a local car-sharing service to reserve five parking spaces for residents and visitors of the project,
 - ii Providing a one-time membership fee subsidy of \$35 per residential unit for residents to join a local car-sharing service,
 - iii Providing all new residents, upon move-in, a complimentary SmarTrip card with \$20 Metro fare to encourage the use of mass transit,
 - iv Providing an on-site business center to provide residents access to a copier, facsimile machine, and internet services,
 - v Designating a member of building management as a point of contact responsible for coordinating and implementing transportation demand management incentives, and

- vi Providing a secure bicycle storage space for each residential unit (Exhibit 56)
- f Uses of Special Value The Applicant has agreed to provide the following community benefits as a result of this project
 - i Tenant Condominium Discounts The Applicant created a homeownership opportunity by offering existing tenants the chance to purchase a condominium at a discount of approximately \$100 per square foot. The total value of this program exceeds \$3,240,000
 - ii Tenant Rental Discount The Applicant created a program that will provide existing Marina View Towers tenants the opportunity to rent a newly renovated apartment in the project at no additional cost. The monthly rental rate will remain the same, provided the tenant chooses to stay in a similarly sized unit. The total value of this program is expected to exceed \$384,000 annually
 - iii If fewer than 80 residents take part in either the condominium purchase program or the rental program by December 31, 2007, the Applicant will increase the amount of work-force affordable housing provided in the PUD to 16,000 square feet. The workforce affordable housing will be reserved for those households making up to 80 percent of the Area Median Income ("AMI") for the Washington, D.C. Metropolitan Area. These units will be restricted through a deed restriction, covenant, and/or other legal means in their resale for a period of 20 years
 - iv Jefferson Junior High School The Applicant will make a financial contribution of \$17,000 to Jefferson Junior High School. These funds will be used for enhancement of the school's computer and technological development capabilities
 - v Amidon Elementary School The Applicant will make a financial contribution of \$17,000 to Amidon Elementary School. These funds will be used to renovate the school's library
 - vi Bowen Elementary School The Applicant will make a financial contribution of \$17,000 to Bowen Elementary School. These funds will be put toward technological advancements, including computers and Smart Boards
 - vii Friends of the Southwest Library The Applicant will make a financial contribution of \$15,000 to the Friends of the Southwest Library. These funds will be used to expand the Library's resource collection

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- viii Study of the Potential Renovation of the Town Center West Park This park is located immediately north of the Property and its ownership was recently transferred from the U S Government to the District of Columbia The Applicant will engage the original designers of this park (Wallace Roberts Todd) to assess the current condition of the park and recommend steps to utilize the park as a true community amenity The cost of this study is \$15,000
- ix Proposed Retail Operators In response to resident and community requests for neighborhood-serving retail, the Applicant will seek a mix of retail uses that may include a full-service restaurant with alcohol service, dry cleaners, bakery, or coffee shop
- x Green Space The Applicant brought the original landscape architecture firm, now known as Zion Breen & Richardson, back to renovate and update its original landscape plan to accommodate the new project Zion Breen & Richardson will design a new linear garden flanking 6th Street between the Pei Towers that will be open to the public during the day (Exhibit 54)
- xi Revenue for the District The addition of 540-570 new and upgraded housing units and accompanying retail uses in the new buildings will generate significant additional tax revenues in the form of recordation, transfer, property, income, sales, use, and employment taxes for the District (Exhibit 26, p 27)
- xii First Source Employment Program The Applicant will enter into an agreement to participate in the Department of Employment Services (“DOES”) First Source Employment Program to promote and encourage the hiring of District of Columbia residents (Exhibit 26, p 27)
- xiii Local Business Opportunity Program The Applicant will enter into a Memorandum of Understanding (“MOU”) with the Office of Local Business Development (“OLBD”) to use the resources of the OLBD to utilize local business enterprises in the development of this project (Exhibit 26, p 28)
- xiv Comprehensive Plan As described in greater detail below, the PUD is consistent with and furthers many elements and goals of the Comprehensive Plan (Exhibit 26, p 28)
- xv Public Benefits of the Project Attributes of the PUD project will include superior architecture (no thru-wall vents, complete architectural treatment of all sides of the buildings, extensive soft and hardscape elements of the landscape plan), affordable housing, transit-oriented development, ground-floor retail establishments, preservation of existing building, significant open space and public space, extensive “green” design features, including green roofs on the Pei

Towers and intensive plantings on the new buildings The Applicant will employ a roof assembly with pavers on pedestals to collect rain water on the new buildings The rain water will drain into cisterns at the garage level and then be pumped back to the roofs to water the intensive, somewhat less-drought resistant plants that will provide necessary shade (Exhibit 26, p 28, Exhibit 32, Exhibit D)

- 36 The proposed project is consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan The project is consistent with the following major themes of the Comprehensive Plan (Exhibit 26, pp 30-32, Exhibit 38, pp 3-4)
- a. Stabilizing the District's neighborhoods The creation of 540 to 570 new and upgraded residential units will help stabilize and enhance the existing Southwest neighborhood The retail component will strengthen the neighborhood by providing shopping and dining opportunities in an area that suffers from a general lack of retail activity
 - b. Respecting and improving the physical character of the District The development will preserve the existing structures and open space, while replacing unattractive surface parking lots with retail, restaurant, and residential opportunities that befit the urban character of the immediate neighborhood.
 - c. Preserving existing buildings This PUD will preserve the Marina View Towers designed by IM Pei and landscaping designed by Zion Breen, which reflect the development patterns of mid-20th century Washington, and integrate them into a more modern and appropriate 21st century urban development
 - d. Preserving and promoting cultural and natural amenities The improved streetscape along M Street will boost Metro and pedestrian access to the Arena Stage across from the Subject Property and to the Southwest waterfront
 - e. Preserving and ensuring community input The Applicant met with the Marina View Towers Tenant Association on two occasions, the Southwest Neighborhood Assembly, Tiber Island Condominium Board, Tiber Island Cooperative Board, and ANC 6D on four occasions The Applicant also held "office hours" for residents of the Marina View Towers on more than 30 occasions
- 37 The PUD is consistent with many Major Elements of the Comprehensive Plan, including the Housing Element, the Urban Design Element, the Land Use Element, the Generalized Land Use Map, and portions of the Ward 6 Element (Exhibit 26, pp 32-37, Exhibit 38, pp 4-5) The proposed PUD is also compatible with other plans of the District of Columbia, including the Southwest Waterfront Development Plan of the Anacostia Waterfront Initiative

- 38 The PUD will further the goals of the Housing Element through the creation of approximately 285 to 315 new residential units and by enhancing the existing 255 residential units in the two Pei Towers. The project will provide at least 11,500 square feet of workforce affordable housing
- a The PUD will further the goals of the Housing Element through the creation of approximately 285 to 315 new residential units and by enhancing the existing 255 residential units in the two Pei Towers. The project will provide at least 11,500 square feet of workforce affordable housing
 - b The PUD will further the goal of the Urban Design Element through the construction of two prominent residential buildings with approximately 8,900 square feet of ground floor retail and residential amenities that will complement the existing buildings and established residential neighborhood, which surrounds the Subject Property. The ground-floor retail stores and the building will activate the streetscape along M Street between the Waterfront-SEU Metro Station at 4th and M Streets and Arena Stage and the waterfront to the west
 - c The PUD will further the goal of the Transportation Element by providing a mixed-use development with ground floors retail two blocks from the Waterfront-SEU Metrorail Station. The location near the Metro ensures that mass transit will be a desirable and preferred option for its residents. Moreover, the availability of ground-floor retail in the new south building along M Street, close to the Metro station, will establish the project as a center for the neighborhood
 - d The PUD will further the goals of the Land Use Element by preserving existing residential structures in the neighborhood and adding new residents and accompanying retail and residential opportunities that will benefit the entire neighborhood
 - e The PUD will further the goals of the Preservation and Historic Features Element by preserving the significant buildings and replacing surface parking lots with two new residential buildings that will integrate the old and new structures, stabilize the site, and ensure the preservation of this facet of District history

GOVERNMENT REPORTS

- 39 The Historic Preservation Office (“HPO”) filed a report dated October 5, 2006. The report described the PUD as a compatible design in its context and a model for how to integrate substantial new construction within the Southwest environment. (Exhibit 26, Exhibit B)

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- 40 The Applicant submitted the project to the Historic Preservation Review Board ("HPRB") for concept design review of a potential historic property. While no Southwest Historic District formally exists, HPRB evaluated the project as if the historic district existed and the Pei buildings were contributing buildings to the historic district (Exhibit 26, pp 10-11). The HPRB reviewed the project at its public hearing on October 5, 2006 and adopted a "consensus endorsement of the project" (Exhibit 26, p 11).
- 41 In its February 5, 2007 report, the Office of Planning ("OP") recommended approval of the project. OP found that the project would complement redevelopment plans for both the Arena Stage and Waterside Mall sites, and was supportive of "green building" and smart growth principles. OP also stated that the PUD was consistent with the 2006 Comprehensive Plan Future Land Use Map, which designated the site as "high density residential" where "high-rise (8 stories or more) apartment buildings are the predominant uses" (Exhibit 38, pp 3-12).
- 42 OP's support for the project was subject to: (1) the provision of additional detail and certainty regarding amenity items, particularly those related to housing discounts for existing tenants, green building elements, and contributions to neighborhood schools and parks; (2) registration of easements to ensure that the mid-block connections through the site would remain open and accessible to the public, and (3) concurrence from the District Department of Transportation ("DDOT") regarding the proposed parking, loading and rear alley provisions (Exhibit 38, p 12).
- 43 DDOT submitted a report dated February 8, 2007, stating that it would not support the PUD application unless the Applicant amended its transportation study to modify the traffic generation assumptions and expanded the transportation demand management benefits to prospective residents (Exhibit 40, p 1).
- 44 DDOT submitted a supplemental report on February 14, 2007, indicating that the Applicant had provided additional information in response to DDOT's concerns. The Applicant agreed to implement all transportation demand management measures recommended in DDOT's initial report and the Applicant agreed to expand its scope of study. DDOT requested flexibility in filing additional comments once the Applicant filed its supplemental traffic analysis (Exhibit 43, p 1).
- 45 On February 26, 2007, DDOT submitted a final report indicating that the Applicant complied with the conditions outlined in DDOT's initial report and that it did not object to the planned development (Exhibit 68, p 1).

ANC REPORT

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- 46 ANC 6D voted 6-0 at its regularly scheduled meeting held on February 12, 2007 to recommend approval of the PUD subject to the following conditions (1) the setbacks of the newly constructed building on M Street, S W should be consistent with and equivalent to the setbacks for the adjacent Waterside Mall development, but in no event less than 22 feet from the curb line, (2) the Applicant should demonstrate that it is duly licensed to do business in the District of Columbia by the Department of Consumer and Regulatory Affairs ("DCRA"), (3) the Applicant should pay in full any fines levied by DCRA, and (4) the Applicant should prepare a formal condominium conversion and renovation plan for distribution to the Marina View Towers residents not less than 30 days after the approval of this PUD so residents may vote on the plan in accordance with District law (Exhibit 60)

PERSONS IN SUPPORT

- 42 The Commission received letters or heard testimony from a number of persons in support of the application. The statements in support of the proposed PUD generally cited the Applicant's consideration of concerns and issues raised by tenants of the Marina View Towers, benefits to the neighborhood from the redevelopment plans for the Waterfront area, specifically the Marina View Towers Complex, the architectural and landscape design of the PUD, and the provision of desired amenities for tenants as well as the greater community

PERSONS IN OPPOSITION

- 43 The Commission received letters or heard testimony from a number of persons in opposition to the application. The statements in opposition to the proposed PUD generally cited the height, bulk, and design of the proposed towers, concerns about the Applicant's proffer of affordable housing, the proposed setback on M Street, and the impact on the amount of open space available in the neighborhood,

CONCLUSIONS OF LAW

- 1 Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide public benefits (11 DCMR §2400 1) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience " (11 DCMR § 2400 2) The application is subject to compliance with D C Law 2-38, the Human Rights Act of 1977
- 2 Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards. In this

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- application, the Commission finds that the requested flexibility to permit multiple buildings on a single record lot can be granted without detriment to the zone plan or map
- 3 The development of this 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 than that achievable under matter-of-right development
 - 4 The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1
 - 5 The PUD is a project of exemplary architectural quality, character, and design, considering the attention paid to architectural design details, the appropriate renovation of the Pei Towers, the landscaping treatment throughout the site, and the commitment to "green" design. The Commission finds that the proposed massing and building height will relate well to the Pei Towers and neighboring properties, including the Tiber Island complex. The project respects the existing character of the Southwest D.C. community while merging the neighborhood with the urban design proposed for the nearby Southwest waterfront.
 - 6 The Commission agrees with the testimony of the project architect and the representatives of the Applicant in finding that this project provides superior features that will benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Subject Property would provide. The Commission finds that the condominium purchase discount and the rental discount programs offered to existing tenants are significant amenities of the project. The Commission also finds that the financial contributions to the local D.C. public schools, the Southwest Library, and for the study of the renovation of the adjacent Town Center West Park are appropriate and will provide significant benefits to the surrounding community.
 - 7 Approval of the PUD and the PUD-related Zoning Map amendment is not inconsistent with the Comprehensive Plan. The PUD will create new residential units, including workforce affordable housing, retain existing residents, and provide retail opportunities in place of existing surface parking lots.
 - 8 The Commission agrees with the conclusions of the Applicant's traffic and parking expert, as well as the conclusions of DDOT, that the proposed project will not create any adverse traffic or parking impacts on the surrounding community. The Commission finds that the Applicant's transportation demand management program will help mitigate any adverse impacts related to increased vehicular traffic or parking demand in the surrounding area that may arise as a result of this project.

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- 9 The Commission finds that the development and construction management plan submitted by the Applicant will effectively mitigate any adverse impacts that construction activity on the Property will have on the surrounding community
- 10 In accordance with D C Official Code §1-309 10(d)(2001), the Commission must give "great weight" to the issues and concerns of the affected ANC ANC 6D voted to support the project subject to several conditions The Commission carefully reviewed the conditions proposed by the ANC and has determined that conditions related to the Applicant's license to do business in the District of Columbia and the conversion of the rental building to a condominium are outside the scope of the Commission's purview
- 11 The Commission considered the written submissions and testimony of the representatives of ANC 6D and Tiber Island that the Applicant be required to further set back the new building from the property line along M Street The Commission finds that in light of the testimony of OP, the support of this project from the HPO and the HPRB, and the written submission and testimony of the Applicant at the public hearing, such a setback is not appropriate or necessary The Commission finds that such a setback would impair the urban fabric of the project and the area by pulling the building further away from the property line The Commission agrees with the Applicant's post-hearing submission that fundamental design principles argue against setting the building further back from its property line along M Street The proposed siting and height of the building along M Street are consistent with the 1910 Height Act and will create an appropriate spatial relationship at the western terminus of M Street The Commission also finds that an appropriate visual corridor along M Street will be created with the approval of this application
- 12 The Commission finds that no adverse impact to the amount of light, air, or open space available to neighboring properties (including the Tiber Island properties) will occur as a result of the proposed siting and height of the new south building along M Street The Commission notes that the M Street right of way is 120 feet wide at this point and that the additional setback requested by the ANC and Tiber Island would have no discernible impact on the surrounding properties, yet would create a suboptimal width of the proposed vest pocket park or width of the residential units in the new south building For these reasons, the Commission approves the height and location of the new south building along M Street
- 13 Approval of the application will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia
- 14 Notice of the public hearing was provided in accordance with the Zoning Regulations

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- 15 The Applicant is subject to compliance with D C Law 2-38, the Human Rights Act of 1977

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for consolidated review of a planned unit development and related zoning map amendment application from the R-5-D Zone District to the C-3-C Zone District for Lot 50 and 853 in Square 499. The approval of this PUD and related zoning map amendment is subject to the following guidelines, conditions, and standards:

- 1 The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 2, 20, 21, 26, 32, 53, 54, 55, 56, and 69 of the record, as modified by the guidelines, conditions, and standards of this Order
- 2 The Applicant shall make the following financial contributions, prior to the issuance of a building permit for the new south building on the Subject Property
 - a Jefferson Junior High School The Applicant shall make a financial contribution of \$17,000 to Jefferson Junior High School to be used for enhancement of the school's computer and technological development capabilities
 - b Amidon Elementary School The Applicant shall make a financial contribution of \$17,000 to Amidon Elementary School to be used to renovate the school's library
 - c Bowen Elementary School The Applicant shall make a financial contribution of \$17,000 to Bowen Elementary School to be put toward technological advancements, including computers and Smart Boards
 - d Friends of the Southwest Library The Applicant shall make a financial contribution of \$15,000 to the Friends of the Southwest Library to be used to expand their resource collection
 - e Study of the Potential Renovation of the Town Center West Park The Applicant shall engage the original designers of this park (Wallace Roberts Todd) to assess the current condition of the park and recommend steps to utilize the park as a true community amenity at a cost of \$15,000
- 3 No later than six months after making the contributions described in subparts (a) through (d) of Condition 2, the Applicant shall provide evidence to the Office of Zoning's Compliance Review Manager demonstrating that named organizations have applied the funds to the designated use. If the money has not been applied to the designated uses within six months, the Applicant shall provide a reasonable explanation to the Office of

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Zoning's Compliance Review Manager as to why not and shall present evidence to the Office of Zoning's Compliance Review Manager within one year thereafter indicating that the contribution has been properly allocated

- 4 Prior to the sale of the first condominium unit, the Applicant shall establish a condominium discount purchase program whereby existing Marina View Towers tenants may purchase a condominium at a discount of no less than \$100 per square foot
- 5 Prior to the sale of the first condominium unit, the Applicant shall establish a program providing existing Marina View Towers tenants the opportunity to rent a newly renovated apartment in the project at no additional cost. The monthly rental rate for the tenant will increase only in connection with the annual Consumer Price Index increases, provided the tenant chooses to stay in a similarly sized unit
- 6 Prior to the sale of the first condominium unit, the Applicant shall establish a transportation demand management program includes the following
 - a Coordination with a local car-sharing service to reserve five parking spaces for residents and visitors of this project,
 - b A one-time membership fee subsidy of \$35 per residential unit for residents to join a local car-sharing service,
 - c A complimentary SmarTrip card with \$20 Metro fare for all new residents upon move-in, to encourage the use of mass transit,
 - d An on-site business center to provide residents access to a copier, facsimile machine, and internet services,
 - e A secure bicycle storage space for each residential unit, and
 - f A member of building management designated as a point of contact who is responsible for coordinating and implementing transportation demand management incentives
- 7 The Applicant shall preserve the Pei Towers and shall renovate their exteriors, including the replacement of exterior glass walls and windows with insulated glass panels and windows in the same geometric configuration, repairing exposed concrete, and expanding the lobbies in each structure
- 8 The Applicant shall use the landscape firm known as Zion Breen & Richardson to renovate and update its original landscape plan to accommodate the new project, to design two new "vest pocket" parks located between the existing Pei Towers and the

Applicant's proposed residential buildings, and a new linear public garden flanking 6th Street between the Pei Towers

- 9 The Applicant shall coordinate its design for a shared driveway in the rear of the property with the adjacent property owners. The Applicant and the adjacent property owner shall create reciprocal easement agreements that will ensure that the mid-block pedestrian connections between the properties will remain open and accessible to the general public. The Applicant shall provide the Commission with evidence of a recorded easement prior to the issuance of a certificate of occupancy for any units in the new south building.
- 10 The Applicant shall provide public access through the site in designated areas to accommodate pedestrian/bicycle traffic between 6th Street and the Waterfront/SEU Metrorail Station.
- 11 The Applicant shall abide by the development and construction management plan submitted on January 26, 2007 (Exhibit 32). This development and construction management plan includes a pest control program to ensure that no increase in pest activity occurs during the period of construction activity on the Property.
- 12 The Applicant shall reserve 11,541 square feet of gross floor in the PUD as affordable units to households having an income not exceeding 80 percent of Area Median Income for the Washington, D C Metropolitan Statistical Area (adjusted for family size), and consistent with the eligibility requirements and enforcement mechanisms enumerated in Exhibit G of Exhibit 26. Should fewer than 80 residents participate in the condominium discount purchase program or the rental program described in Conditions 4 and 5 by December 31, 2007, the Applicant shall increase its commitment to affordable housing to a total of 16,000 square feet. To the extent that minor modifications are needed in the execution of this program to conform to District or Federal housing programs, the Applicant shall work with the Department of Housing and Community Development ("DHCD") to make such changes comply with the same.
- 13 The PUD shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit for the construction or renovation of one of the residential buildings as specified in 11 DCMR §§ 2404.8 and 2409.1, the filing of the building permit application will vest the Zoning Commission Order. An application for the final building permit completing the development of the approved PUD project must be filed within seven (7) years of the issuance of the final certificate of occupancy for the first building.
- 14 The Applicant shall enter into a memorandum of understanding ("MOU") with the Office of Local Business Development ("OLBD") in substantial conformance with the memorandum of understanding submitted as Exhibit I of Exhibit 26 of the record. A

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fully signed MOU between the Applicant and OLBD must be filed with the Office of Zoning prior to the issuance of a building permit for the new south building

- 15 The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services ("DOES") in substantial conformance with the First Source Agreement submitted as Exhibit I of Exhibit 26 of the record. A fully signed First Source Employment Agreement between the Applicant and DOES must be filed with the Office of Zoning prior to the issuance of a building permit for the new south building
- 16 The Applicant shall achieve a minimum of 20 points as defined by the U S Green Building Council in the LEED certification process and further described in Exhibit D of Exhibit 32 of the record
- 17 The Applicant shall have flexibility with the design of the PUD in the following areas
 - To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures,
 - To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials, and
 - To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit
- 18 The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA and no building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof by the Zoning Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning
- 19 The change of zoning from the R-5-D Zone District to the C-3-C Zone District for the Property shall be effective upon the recordation of the covenant discussed in Condition No. 18, pursuant to 11 DCMR § 3028.9
- 20 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

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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, 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, which 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 denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order


On April 9, 2007 the Zoning Commission **APPROVED** the application by a vote of 4-0-1 (Carol J Mitten, Michael G Turnbull, Anthony J Hood, and John G Parsons to approve, Gregory N Jeffries, having not participated, not voting)

This Order was **ADOPTED** by the Zoning Commission at its public meeting on May 14, 2007 by a vote of 4-0-1 (Carol J Mitten, John G Parsons, Michael G Turnbull, and Anthony J Hood to adopt , Gregory N Jeffries, having not participated, not voting)

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 OCT 26 2007



CAROL J. MITTEN
Chairman
Zoning Commission



JERRILY R. KRESS, FAIA
Director
Office of Zoning

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DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., April 23, 2005

Plan for Building Permit of EOLIANE 490 LOTS 60 & 63

Scale 1 inch = 50 feet

Recorded in A & T Book Page 3062-C (Lot 63)

Book 129 Page 98 (Lot 60)

Receipt No. 18678

Furnished to PWS

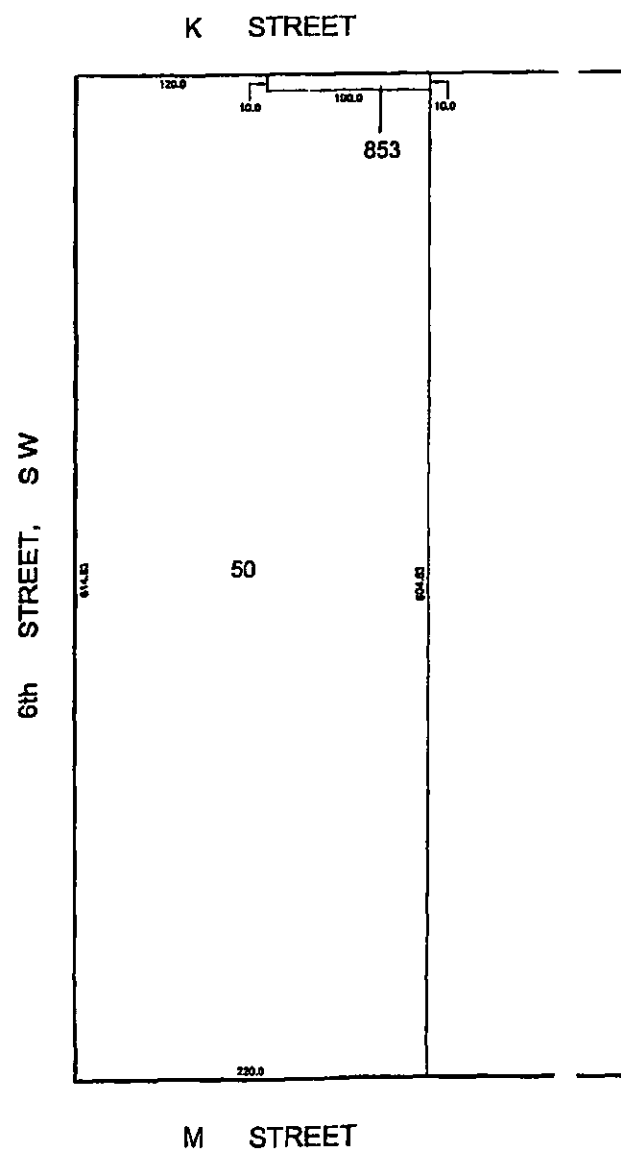
Me [Signature]
Surveyor D.C.
By: L.E.S. *[Signature]*

I hereby certify that all existing improvements shown hereon, are completely discontinued, and no further shown; that all proposed buildings or construction, or parts thereof, including elevated portions, are exactly dimensioned and plotted and agree with plans accompanying this application; that the boundaries shown on these plans are shown, and thereon are shown, according to the survey made on the property from which on this plan, and that by reason of the proposed improvements to be erected to, within limits the site of any existing lot or premises to not improved to an area less than is required by the zoning regulations for light and ventilation, and it is further certified and agreed that construction pending and when required by the zoning regulations will be observed; in accordance with the zoning regulations, and that the area has been correctly shown and dimensioned hereon; it is further agreed that the structure of the accounts to pending with respect to the Highway Department, approved such and they grade will not exceed in a rate of grade along centerline of property of any point on public property by virtue of 20% for single-lane pavements or less, or in excess of 12% at any point for other pavements. (The policy of the Highway Department permits a maximum clearance grade of 12% across the public roadway and the private retained property.)

Date: _____

(Signature of owner or his authorized agent)

NOTE: This plan is for Assessment and Taxation Lots or Premises and in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with street displays.



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Government of the District of Columbia
Office of Zoning



Z.C. CASE NO.: 05-38

OCT 18 2007

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Order No. 05-38 were mailed first class, postage prepaid or sent by inter-office government mail to the following

- | | | | |
|----|---|-----|--|
| 1 | <i>D C Register</i> | 6. | Councilmember Tommy Wells |
| 2 | Paul Tummonds Jr, Esq.
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128 | 7 | Office of Planning (Harriet Tregoning) |
| 3 | Robert Moffatt, Chair
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25 M Street, SW
Washington, DC 20024 | 8 | Ken Laden, DDOT |
| 4. | Commissioner Max Skolnik
ANC/SMD 6D01
700 7th Street, SW #610
Washington, DC 20024 | 9 | Matt LeGrant, Acting Zoning Administrator |
| 5 | Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 | 10. | Jill Stern, Esq.
General Counsel - DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002 |
| | | 11. | Office of the Attorney General
(Alan Bergstem) |

ATTESTED BY:

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

Doc# 2008029245 Fees \$362 00
03/18/2008 2 34PM Pages 30
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WASH DC RECORDER OF DEEDS LARRY TODD

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COPIES	\$	135 00
CERTIFICATION	\$	4 50

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