



LT1-5-2010107191-1

PUD COVENANT

THIS COVENANT, made as of this 11th day of November, 2010, by Kelsey

Gardens Property Company LLC, a District of Columbia limited liability company (hereinafter also referred to as "Developer") for the benefit of the DISTRICT OF COLUMBIA, a municipal corporation (hereinafter referred to as the "District").



LT2-0-0-26

RECITALS:

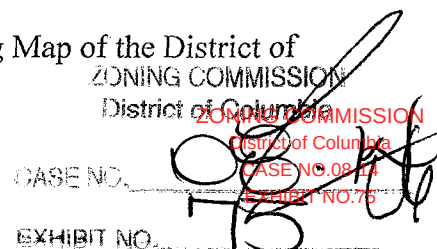
WHEREAS, Developer is the owner of all of that real property in the District of Columbia known as Lots 67 and 68 in Square 421 (the "Subject Site" with premises address of 7th Street NW between P Street and Q Street, more fully identified on Exhibit A hereto);

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 (hereinafter referred to as the "Zoning Regulations") in accordance with Order No. 08-14 of the Zoning Commission of the District of Columbia (hereinafter referred to as the "Zoning Commission"), effective February 12, 2010, in Case No. 08-14 (hereinafter referred to as the "Order"); and

WHEREAS, Section 2409.3 of the Zoning Regulations requires that Developer enter into this Covenant in favor of the District of Columbia assuring that the Developer (and its respective successors in title) will develop and use the Project as approved by the Zoning Commission in the Order 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. Approved Plans, Terms and Conditions. The terms and conditions of the Zoning Commission's approval of the Project and Amendment to the Zoning Map of the District of



Columbia under the Order (as the same may be amended and/or modified from time to time) are incorporated herein by reference and made a part hereof as Exhibit B 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 the 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 (hereinafter referred to as the "Zoning Administrator") may authorize pursuant to 11 DCMR §§ 2409.6 and 2409.9, respectively. 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 by the Zoning Commission, subject to the terms and conditions contained herein and the provisions of Chapter 24 of the Zoning Regulations.

2. Additional Time To Construct Planned Unit Development. If Developer should fail to file for a building permit and/or to commence construction of the approved Project 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 in accordance with Section 2408.10 of the Zoning Regulations.

3. Default. In the event that Developer fails to file for a building permit and/or to commence construction of the approved Project 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 in accordance with Section 2408.10 of the Zoning Regulations, the benefits granted by the Order shall terminate pursuant to Section 2400.7 of the Zoning Regulations.

4. Future Conveyance. Developer covenants that if any conveyance of all or any part of the Subject Site takes place, such conveyance shall contain a specific covenant binding

the grantee, its successors and assigns to use the Subject Site in accordance with the terms and conditions of this Covenant.

5. 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.

6. 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 copy of this Covenant with the Zoning Administrator and the Zoning Commission.

7. 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.

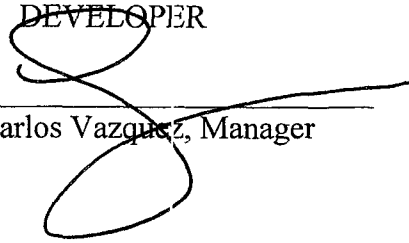
8. Rescission/Alteration of Chapter 24 Covenant. The covenants hereby created may not be modified or extinguished without the prior approval of the Zoning Commission and the written consent of the District. In the event any amendment, modification, rescission or alteration of the Order is adopted or 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, Kelsey Gardens Property Company LLC, has, as of the day and year first above written, caused this Covenant to be signed with its corporate name by Carlos Vazquez, Manager, and does hereby appoint the said Carlos Vazquez to be its attorney-in-fact, and in its name to acknowledge and deliver this Covenant according to law.

WITNESS/ATTEST:



By:

DEVELOPER

Carlos Vazquez, Manager

DISTRICT OF COLUMBIA, ss:

I, Jean Twyman Peterson, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Carlos Vazquez, party to the foregoing Covenant bearing date as of the 11 day of November, 2010, the said Manager 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 she delivered the same as such.

GIVEN under my hand and seal this 17 day of November, 2010.

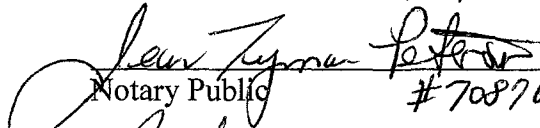
Jean Twyman Peterson
NOTARY PUBLIC

Commonwealth of Virginia

My Commission Expires

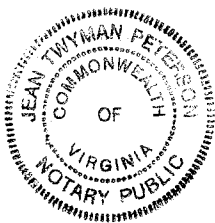
March 31, 2011

County, Virginia
Ferry State


Notary Public

#7087689

March 31, 2011



APPROVED:

Matthew Z Zeff 12/1/2010

Zoning Division
Department of Consumer and Regulatory Affairs,
Building and Land Regulation Administration

APPROVED AS TO LEGAL SUFFICIENCY:

Jim Perry
Office of the Attorney General
for the District of Columbia

EXHIBIT A

Legal Description

All that certain lot or parcel of land located and being in the City of Washington in the District of Columbia and being more particularly described as follows:

Lot numbered sixty-seven (67) in Square numbered four hundred twenty-one (421) in the subdivision made by D.C. Redevelopment Land Agency, as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 159 at Folia 4.

PAGE 20

Washington, D.C., November 2, 2007

Plat for Building Permit of: **SQUARE 421 LOT 87**

Scale: 1 inch = 20 feet Recorded in Book 159 Page 4

Receipt No. 01108

Furnished to: **SHELDON WILLIAMS**

[illegible]

Date: _____

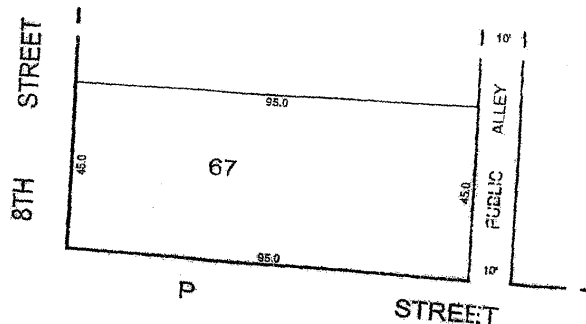
Surveyor, D.C.

By: D.M. 

(Signature of owner or his authorized agent)

RECEIVED
D.C. OFFICE OF ZONING
2008 MAY -1 PM 2:13

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessor's Administration, and do not necessarily agree with deed description.



SO-67-1000000

Doc# 2010107191 Fees \$194.50
12/02/2010 11:00AM Pages 26
Filed & Recorded in Official Records of
WASH DC RECORDER OF DEEDS LARRY TODD

RECORDING
SURCHARGE

188.00
6.50

EXHIBIT A

Legal Description

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EXHIBIT B

ZONING COMMISSION FOR THE DISTRICT OF CLOUMBIA ZONING COMMISSION ORDER NO. 08-14

Z.C. Case No. 08-14

Consolidated Planned Unit Development and Related Zoning Map Amendment (Kelsey Gardens Property Company LLC - Square 421, Lots 67 and 68) March 9, 2009

Pursuant to notice, the Zoning Commission for the District of Columbia, (the "Commission") held a public hearing on October 30, 2008, to consider an application from Kelsey Gardens Property Company LLC (the "Applicant"), owner of Lots 67 and 68 in Square 421, for consolidated review and one-step approval of a planned unit development ("PUD") and related amendment to the Zoning Map from the C-2-A Zone District to the C-2-C Zone District to construct a mixed-use development on the property. The Commission considered the applications pursuant to Chapter 24 and § 102, respectively of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the contested case provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the applications subject to the specified conditions.

FINDINGS OF FACT

Applications, Parties, and Hearings

1. On May 1, 2008, the Applicant, as owner of Lots 67 and 68 in Square 421 (the "Subject Property"), filed applications with the Commission requesting consolidated review and one-step approval of a PUD and a related map amendment from the C-2-A Zone District to the C-2-C Zone District for the Subject Property ("Application" or "PUD Application"). (Exhibits 4-7.)
2. The Subject Property has a combined land area of approximately 42,750 square feet and is currently zoned C-2-A. Square 421 is located in the northwest quadrant of the District, and is bounded by Q Street on the north, 7th Street on the east, P Street on the south, and 8th Street on the west. Square 421 is bisected by an alley running north-south through the property from P Street to Q Street.
3. The Applicant proposes to construct a mixed-use development ("Project") consisting of market-rate rental housing, affordable rental housing, neighborhood-serving retail, and townhouses. The new development will contain approximately 272,820 square feet of gross floor area, a 5.94 floor area ratio ("FAR"), and a maximum building height of 80 feet 10 inches. Approximately 251,430 square feet will be devoted to multifamily residential uses; approximately 14,760 square feet will be devoted to retail uses. In addition, the Project includes townhouses

with a total of 13,700 square feet that will be devoted to either residential or office uses. The Project includes 230 parking spaces in a two-level underground parking garage.

4. At its public meeting held on July 14, 2008, the Commission voted to schedule a public hearing on the Application.
5. On August 1, 2008, the Applicant submitted a Prehearing Statement, along with revised architectural drawings. (Exhibits 16-18.)
6. On October 14, 2008, the Applicant submitted additional supplemental hearing materials, which included revised architectural drawings, additional drawings of a community-proposed alternative eight-story design, an updated list of community proffers, a LEED checklist, and the resume of Joe Schneider, project architect. (Exhibits 38-43.)
7. After proper notice, the Commission held a public hearing on the Application on October 30, 2008. The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 2C, the ANC within which the subject property is located. No requests for party status were submitted.
8. The Applicant presented three witnesses at the hearing of October 30, 2008, including Joe Schneider, an architect with Lessard Group; Pastor ViCuris Little of the Deliverance Church of God in Christ and a member of the Applicant team; and Rachael Preston, Development Manager with Metropolitan Development.
9. Rinaldo Washington, Director of Program Services for Emmaus Services for the Aging, testified in support of the project on behalf of Reverend Joseph Williams, Executive Director of Emmaus Services for the Aging. Leroy Thorpe, President of the East Central Civic Association, and Alexander M. Padro, Single Member District Commissioner for ANC 2C01, testified in support of the Project as well.
10. ANC 2C submitted a report in support of the Application. ANC 2C was fully supportive of the project's density and mix of uses. The ANC suggested changes to the PUD to allow for loading from P Street, a 20' alley width, and an eight-story design. (Exhibit 33.)
11. On November 21, 2008, the Applicant submitted a Post-Hearing Submission, which included updated architectural drawing sheets presenting a modified eight-story building design at the preference of the community and garage access and loading access from the alley, in response to the direction of the Commission. This submission also included a traffic impact study and a transportation management plan provided by O. R. George & Associates Inc. (Exhibits 51-53.)

12. At a special public meeting on December 8, 2008, the Commission considered the Application but deferred action on the Application and plans that were submitted to the record. The Commission requested additional clarification on the demand for parking in the vicinity of the Subject Property, the loading of the retail, the details of the interior residential corridors, and changes to the façade of the building design and building materials.
13. On January 12, 2009, in response to the Commission's request, the Applicant submitted a supplemental post-hearing submission, which included updated architectural drawing sheets, and a supplemental memo on parking from traffic engineers at O. R. George & Associates, Inc. (Exhibits 56-59.) The Applicant submitted corrected plans on January 16, 2009. (Exhibit 59A.)
14. At a special public meeting on January 26, 2009, the Commission took proposed action to approve the Application. The Commission expressed continued concern about the design of the northern ground floor of the mixed-use building and of the end unit of the P Street townhouse component, and invited the Applicant to submit revised drawings to deal with these design issues.
15. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. The NCPC Executive Director, through a Delegated Action dated January 29, 2009, found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital. (Exhibit 68.)
16. On February 18, 2009, the Applicant submitted an additional post-hearing submission addressing the concerns raised by the Commission when it took proposed action. The submission included a revised design of the interior of the ground floor of the mixed-use building and the elimination of the end townhouse residential unit. The elimination of the townhouse unit does not affect the exterior of the building, but instead is accomplished by a re-configuration of the interior space and a reduction in the overall unit count. (Exhibits 69 and 69A.)
17. The Commission took final action to approve the application with conditions on March 9, 2009.

The PUD Site and Area

18. The PUD site includes the entire west side of 7th Street, N.W. between P and Q Streets, as well as a vacant lot located along P Street at the corner of 8th Street, N.W. A ten-foot-wide public alley separates the two parts of the site and forms

the western boundary of the 7th Street lot. The Kelsey Gardens Apartments currently occupy the 7th Street lot.

19. Surrounding the site are row houses to the west along 8th Street, a recently approved 95-foot-high mixed-use PUD project at the old O Street market site to the south, and various low scale commercial uses to the east and north.

The PUD Project

20. The Project will have an overall density of 6.0 FAR and a total gross floor area of approximately 272,818 square feet dedicated to a mixed-use development that includes affordable residential rental units, market-rate residential rental units, and approximately 14,760 square feet of retail. The proposed project includes six townhouses totaling approximately 13,700 square feet with flexibility to rent or sell as residential or offices. (Exhibit 69A3)
21. The height of the project steps down from south-to-north and east-to-west, creating a smooth transition from higher-density development to the south and lower-density rowhouse development to the west. The southern portion of the building, fronting on 7th Street, will be built to a height of 80 feet 10 inches at the roofline. The height of the building along 7th Street will remain at 80 feet 10 inches for the length of the building then stepping down at Q Street. At the rear of the building, facing the alley to the west between 7th and 8th Streets, there are five projections of varying lower heights than the 7th Street facade. The townhouses are 41 feet high, complementing the existing townhouses along 8th Street, N.W.
22. The project includes 230 parking spaces. Thirty-six of the total spaces are separated from the balance of parking by a second security gate; 25 of these spaces are allotted for use by retailers and 11 are allotted for use by residential guests. The remaining 194 parking spaces are secured parking for residents of the development. The project also includes two loading docks. The PUD requests zoning relief with respect to the loading berth requirements. One 55-foot loading berth and one 30-foot loading berth instead of three loading berths are provided. All loading and the garage access will be located in the alley at the southern end of the project off of P Street.

PUD-Related Map Amendment

23. The Subject Property is currently zoned C-2-A. The C-2-A Zone District is designed to serve commercial and business functions, housing, and mixed uses for segments of the District of Columbia outside of the central core. (11 DCMR § 720.2.) The C-2-A Zone Districts are generally located in low- and medium-density residential areas with access to main highways or rapid transit stops, and include office employment centers, shopping centers, and medium-bulk mixed-use centers. (11 DCMR § 720.3.)
24. The maximum permitted matter-of-right height in the C-2-A Zone District is 50 feet, with no limit on the number of stories. (11 DCMR § 770.1.) The C-2-A Zone District permits a maximum density of 2.5 FAR, all of which may be residential, but of which not more than 1.5 FAR may be used for other, non-residential permitted purposes. (11 DCMR § 771.2.) Pursuant to § 772.1 of the Zoning Regulations, no building or portion of a building in the C-2-A Zone District devoted to a residential use may occupy more than 60% of the lot upon which the structure is located. (11 DCMR § 771.2.) There is no lot occupancy limitation for commercial use in the C-2-A Zone District.
25. Development under the PUD guidelines for a C-2-A Zone District would allow a maximum building height of 65 feet and a maximum density of 3.0 FAR, of which not more than 2.0 FAR may be devoted to commercial use, including hotels. (11 DCMR §§ 2405.1 and 2405.2.)
26. The Applicant sought a PUD-related map amendment to the C-2-C Zone District. The C-2-C Zone District permits commercial and residential functions similar to the C-2-A Zone District and with higher-density residential and mixed uses. It permits a maximum height of 90 feet and a maximum density of 6.0 FAR for all uses. The C-2-C Zone District allows a maximum lot occupancy of 80%.
27. Pursuant to § 774 the Zoning Regulations, a minimum 15-foot rear yard must be provided for each structure in the C-2-C Zone District which may be measured from the center line of an abutting alley for the first 20 feet of building height. There is no side yard requirement for a building or structure located in a C-2-C Zone District.
28. The off-street parking requirement of the C-2-C Zone District for an apartment house or multiple dwelling is one parking space per four dwelling units. For a retail establishment in excess of 3,000 square feet, the parking requirement is one additional parking space for each additional 750 square feet of gross floor area and cellar floor area. (11 DCHR § 2101.)

Additional PUD-Related Zoning Flexibility

29. Under PUD guidelines for the C-2-C Zone District, the maximum permissible building height on the subject property is 90 feet and the maximum density is 6.0 FAR for all uses.
30. The Applicant requested flexibility from the zoning requirements of the proposed C-2-C District in the following areas:
 - (a) Flexibility for courts that do not meet minimum width or depth requirements.
 - (b) Variance from the rear yard requirement.
 - (c) Special exception from the number and height of roof structures.
 - (d) Variance from the setback for roof structures.
 - (e) Variance from the loading requirements (two berths instead of three).

Public Benefits and Amenities

31. As detailed in the Applicant's testimony and written submissions, the following public benefits and amenities will be provided as a result of the PUD:
 - (a) *Housing and Affordable Housing.* The delivery of well over 250,000 square feet of gross floor area dedicated to residential use, including 237 market-rate units and 54 restricted-income units consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative. The affordable units range in size from one to four bedrooms, providing much needed family housing, and all units are restricted to 60% of the Washington Metropolitan Area Median Income ("AMI"), providing a deep level of affordability.
 - (b) *Sustainable Design and Environmental Benefits.* The PUD provides a green roof over 50% of the roof area, decreasing the building's impact on the public storm water service. The Applicant has committed to achieving a minimum of 26 LEED points based on the standards of the US Green Building Council's Leadership in Energy and Environmental Design New Construction 2.2 program.
 - (c) *Neighborhood-Serving Retail.* The PUD project delivers 14,760 square feet of ground-floor retail. This retail brings economic opportunity to an underserved community. The scale and design of the retail along 7th Street also provides

an activity node for the broader community, with attractive and inviting retail facades, and pedestrian-scaled and -oriented design.

(d) The Applicant has entered into a First Source Employment Agreement with the Department of Employment Services. The Applicants have also executed a Certified Business Enterprise ("CBE") Memorandum of Understanding with the District's Office of Local Business Development.

(e) *Community Benefits through Contributions to Local-serving Organizations.* The Applicant has committed through letters of intent to contribute \$220,000 to non-profit organizations providing services to Shaw. These organizations include the Shaw Middle School, the Watha T. Daniel Library, Emmaus Services for the Aging, Shaw Main Streets, and The Green Team. These commitments are fully described in Exhibit 41, which is incorporated herein by reference. The Applicant has already made some of the contributions listed in Exhibit 41. The conditions of this order reflect only those contributions that the Applicant has not yet made.

32. The Commission finds that the PUD project is acceptable in all proffered categories of public benefits and amenities, and superior in many.

Consistency with the Comprehensive Plan and Convention Center Area Strategic Development Small Area Action Plan

33. The Comprehensive Plan for the National Capital: District Elements ("Comprehensive Plan"), adopted through the Comprehensive Plan Amendment Act of 2006, effective March 8, 2007 (D.C. Law 16-300), Future Land Use Map designates the southern portion of the Subject Property as being located in a mixed-use, medium-density residential and moderate-density commercial category, while the remainder of the site is designated as low-density commercial and moderate-density residential. The Comprehensive Plan's Generalized Policy Map includes the Subject Property in a Main Street Mixed Use Corridor, the key objective of which is a pedestrian-oriented environment with traditional store fronts and residential units on the upper floors, fostering economic and housing opportunities, serving neighborhood needs, and supporting transit use.
34. The Commission finds that the Project is consistent with the Future Land Use and Generalized Policy Maps.
35. The Project is also consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, and building green and healthy communities as follows:

- (a) *Managing Growth and Change.* The Comprehensive Plan encourages growth that protects the positive aspects of life in the city and reduces negatives such as crime. The principles for managing growth and change also emphasize the inclusion of housing for households of varying sizes, including families, and the inclusion of non-residential uses. The proposed redevelopment of the Subject Property replaces a blighted site that has attracted criminal activity in the past with a productive, urban mixed-use project that delivers family-style housing and commercial uses that will create jobs and opportunities for less-affluent households.
 - (b) *Creating Successful Neighborhoods.* Guiding principles for the Comprehensive Plan in creating successful neighborhoods include the preservation of affordable housing to grow inclusively. There is also an emphasis on including local citizens in the planning process and land use decisions. The PUD delivers a project that is upgrading existing affordable units and providing the residents of those units the opportunity to continue to be a part of their community as it changes around them. The proposed design is the result of collaboration with citizens and their local government representatives.
 - (c) *Increasing Access to Education and Employment.* The project delivers on the guiding principles of expanding the economy by increasing shopping and services for many District neighborhoods by providing local serving retail.
 - (d) *Building Green and Healthy Communities.* The proposed project will utilize building construction that minimizes the use of non-renewable resources and promotes energy and water conservation. The project is also sited and situated to reduce air pollution and facilitate pedestrian and bicycle travel. The green roof of the project will minimize storm water runoff and thereby improve surface and groundwater quality.
36. The Commission finds that the proposed PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as follows:
- (a) *Land Use Element.* The Land Use Element encourages infill development and development near metro stations and along transit corridors and "Great Streets." The Land Use Element expresses a preference for mixed residential and commercial uses rather than single purpose uses, particularly a preference of housing above ground-floor retail uses, and a preference for diverse housing types, including both market-rate and affordable units. The Project is located 700 feet from an entrance to the Shaw/Howard Metrorail Station, includes a mix of residential and commercial uses, with housing located above ground-floor retail, and a mix of market-rate and affordable housing units.

- (b) *Housing Element.* Housing Element policies are oriented to ensure continued production of housing, including housing for all segments of the District's population.
- i. H-1.1.2 Production Incentives. Applicant's PUD specifically requests conforming production incentives, in response to the Comprehensive Plan policy to provide incentives to meet housing production goals.
 - ii. H-1.1.3 Balanced Growth. The Comprehensive Plan encourages the development of new housing on surplus, vacant, and underutilized land in all parts of the city. The existing Kelsey Gardens site is under-utilized in a neighborhood with housing (and retail) needs. It comprises more than an acre of land and can yield a significant number of affordable and market-rate housing units.
 - iii. H-1.1.4 Mixed-Use Development. Applicant's proposed development on the Seventh Street commercial corridor is within a five-minute walk of a Metrorail station, which responds to the call for mixed-use development, including housing, on commercially zoned land, particularly in neighborhood commercial centers and around appropriate Metrorail stations.
 - iv. H-1.1.5 Housing Quality. The Comprehensive Plan requires the design of affordable housing to meet the same architectural standards required of market-rate housing. The affordable dwellings will be scattered throughout the building and they will not be distinguishable from the market-rate units, except that some will have several more bedrooms than the market-rate units.
- (c) *Urban Design Element.* The Applicant's design follows the principles of breaking structures on larger than prevailing neighborhood lots into smaller more varied forms (UD-2.2.8 Large Site Development) by utilizing projecting bays, cornices, varied fenestration, and a variety of building materials and colors to break up the multifamily building façades.
- (d) *Environmental Protection Element.* The Applicant has included a green roof combined with solar reflective roofing, low-flow water fixtures, irrigation efficient landscaping, energy efficient fixtures and appliances, green cleaning products, and a green living educational program for building residents, meeting the principle of encouraging green building methods in new construction and using green methods of operations and maintenance (E-3.2).

37. The Convention Center Area Strategic Development Small Area Action Plan, adopted by the D.C. Council pursuant to Resolution No. 16-759 on June 20, 2006, is intended to provide supplemental guidance to the Zoning Commission and other District agencies in carrying out the policies of the District of Columbia Comprehensive Plan. It addresses affordable housing, retail, and other planning issues within the study area. The PUD site is included in the Convention Center Plan study area.
38. The Convention Center Area Strategic Development Small Area Action Plan articulates the following needs which are addressed by the Project:
 - (a) "Maintain or increase existing number of affordable housing units"
 - (b) "Concentrate multi-unit buildings in areas with good access to mass transit"
 - (c) "Maximize development opportunities on sites suitable for multiple-unit buildings."
39. The Convention Center Area Plan also establishes a number of retail development goals and recommendations addressed by the Project, including the following:
 - (a) Concentrate ground floor retail in locations that reinforce a traditional "main street" pattern of commercial development and creates a unified identity for the community; and
 - (b) Locate retail in areas already zoned for commercial development.
40. The PUD site is located in Sub-Area III: Retail Corridor designated in the Convention Center Area Plan. According to the plan, the vision for this area is "New infill buildings have residential above ground floor retail. Larger projects include affordable units. Parking is located below grade or off alleys." All of these elements are in place in the Project.

Office of Planning Report

41. By a report dated October 20, 2008 and testimony at the public hearing, the Office of Planning ("OP") recommended approval of the Application. (Exhibit 44.) OP indicated that they preferred the original design alternative featuring a maximum height of 90 feet because (1) the design maintained a greater step down to the north end of the site which OP believed more closely matched the scale of buildings north of Q Street and would have better divided the long block into distinct visual segments; and (2) the design has access to parking; and loading from the alley rather than P Street. OP noted that the application is not

inconsistent with the Comprehensive Plan including the Convention Center Strategic Development Plan and will further a number of the Plan's Guiding Principles. OP indicated that the proposed amenities are sufficient and commensurate with the amount of relief required for the project. Further, OP indicated that the proffered amenities are acceptable in all categories listed in § 2403.9 and superior in many. OP supported all of the requested zoning flexibility requested. (Exhibit 44.)

42. OP submitted a supplemental report dated November 26, 2009, that responded to the Commission's request that OP contact the D.C. Fire and Emergency Medical Services Department ("DCFEMS") to explore the design implications of its comments detailed in Findings of Fact ("FF") 43. The OP report attached a DCFEMS November 12, 2008 letter stating that DCFEMS had no objections to the design.

Other Government Agency Reports

43. DCFEMS submitted a letter dated October 9, 2008 indicating that the proposed design was not in compliance with IFC Section 503.1. In a letter dated November 12, 2008, DCFEMS indicated that they have no objections to the proposed design.
44. The D.C. Water and Sewer Authority ("DCWASA") submitted a memorandum dated October 10, 2008. The memorandum reviewed the Project's water, sewer, and storm sewer requirements, suggested installation of a backflow prevention device, and stated that DCWASA would issue a water and sewer availability certificate and recommend the issuance of a building permit if the final plans meet DCWASA requirements.
45. The District Department of Transportation ("DDOT") submitted a memorandum dated October 17, 2008, supporting the project proposal subject to providing additional measures to increase multi-modal transit use and a traffic impact study. (Exhibit 45.)
46. DDOT submitted additional comments dated October 29, 2008, rejecting a community recommendation that parking and loading access be from P Street instead of the alley to the west of the site. (Exhibit 46.)
47. The Applicant responded to DDOT's requests in its post-hearing submission dated November 21, 2008. This submission included a traffic impact study and a transportation management plan. The transportation management plan specifically responded to DDOT requests by opting Kelsey Gardens out of the residential parking permits program and committing to provide two car-share spaces in the parking garage for the project. The Applicant did not commit to

installing a SmartBike station at the site, due to number of bike racks located in the garage, but agreed to pursue the issue further with DDOT. (Exhibits 51-53.)

48. DDOT provided a memorandum dated December 8, 2008, recommending a more aggressive transportation management plan, including the provision of an annual car-sharing membership for all new residents, an annual SmartBike membership for all new residents, and SmarTrip cards for all new residents. DDOT also recommended reduction of the total parking spaces to a number closer to the minimum required 90 spaces. The memorandum recommended approval of the development with the above implemented multi-modal transit uses. (Exhibit 55.)
49. The Applicant responded to DDOT's memorandum in its supplemental post-hearing submission dated January 12, 2009. This submission included changes to the transportation management plan including providing an annual membership to a car-share program for new residents and providing a SmarTrip card to new residents. The new transportation management plan also promises to maximize the benefits of the parking garage by implementing shared parking strategies. A supplemental memorandum by traffic engineers O. R. George and Associates further clarified the Applicant's reasons for not consenting to reduce the total number of parking spaces. (Exhibit 58.)
50. The Commission agrees with the Applicant and finds that reducing the number of parking spaces to the degree requested by DDOT would be inconsistent with the Applicant's understanding with the community and would likely have an adverse impact on an already congested neighborhood parking situation.

ANC Report

51. By report dated October 2, 2008 and testimony at the public hearing, ANC-2C indicated that at a duly noticed meeting of a quorum of the Commissioners on October 1, 2008, the ANC voted 4-0 to recommend approval of the PUD by the Zoning Commission with changes in loading access (off of P Street instead of the adjacent alley); alley width (20 feet for the entire length of the alley); and building massing (eight stories along 7th Street with density deleted from 7th Street shifted to the rear projections instead). The ANC advised that the PUD provides both a depth and range of community benefits and serves to eliminate a blighted site in Shaw. (Exhibit 33.)

CONCLUSIONS OF THE LAW

1. The PUD process is an appropriate means for controlling development of the site in a manner consistent with the best interests of the District of Columbia. The PUD process is designed to encourage high-quality development that provides