

September 10, 2008

**VIA HAND DELIVERY**

Zoning Commission for the  
District of Columbia  
441 4th Street, N.W., Suite 210S  
Washington, D.C. 20001

RECEIVED  
D.C. OFFICE OF ZONING  
2008 SEP 10 AM 11:22

**Re: Zoning Commission Case No. 04-14  
Certified PUD Covenant**

Dear Members of the Commission:

On behalf of Florida Rock Properties, Inc., enclosed please find a certified copy of the PUD Covenant that was recorded with the Recorder of Deeds on September 4, 2008, as Instrument Number 2008093980. The filing of a certified copy of the PUD Covenant is required by Paragraph No. 6 in the PUD Covenant and satisfies Condition No. 14 as stated in Zoning Commission Order No. 04-14.

Should you have any questions or need additional information, please do not hesitate to call me.

Sincerely,

Holland & Knight LLP

By:   
Christy Moseley Shiker

Enclosures

cc: Matt LeGrant, Zoning Administrator

(Via Hand Delivery; w/enclosure)

ZONING COMMISSION  
District of Columbia

CASE NO. 04-14-106

EXHIBIT NO. 106

ZONING COMMISSION  
District of Columbia  
CASE NO.04-14  
EXHIBIT NO.106

AM 11:23  
2008 SEP 10

**PUD COVENANT WITH TERMINATION**

THIS PUD COVENANT WITH TERMINATION ("Covenant") is entered into as of this 31<sup>st</sup> day of July, 2008, by and between FLORIDA ROCK PROPERTIES, INC., a Florida corporation (hereinafter referred to as "FRP"), and the DISTRICT OF COLUMBIA, a municipal corporation (hereinafter referred to as the "District").

**RECITALS**

WHEREAS, FRP is the subject owner of Lots 800, 801, and 802 in Square 707, Lot 809 in Square 708, Lots 807 and 808 in Square 708E, and Lot 806 in Square 708S (such property hereinafter referred to as the "Subject Site" and being more fully described in Exhibit A attached hereto and made a part hereof); and

WHEREAS, FRP filed an application with the Zoning Commission of the District of Columbia (the "Zoning Commission") on December 1, 1995, requesting approval of a first-stage planned unit development ("PUD") and zoning map amendment for the Subject Site in accordance with the provisions of Chapters 24 and 30 of the Zoning Regulations for the District of Columbia (Title 11, District of Columbia Municipal Regulations) (the "Zoning Regulations"); and

WHEREAS, the Zoning Commission approved the first-stage PUD application and related zoning map amendment for the Subject Site and adopted Zoning Commission Order No. 850, dated June 8, 1998, and effective as of July 3, 1998 ("Order No. 850") in Zoning Commission Case No. 95-16P; and

WHEREAS, FRP filed an application with the Zoning Commission in August 1998, requesting approval of a second-stage PUD and zoning map amendment for the Subject Site in accordance with the provisions of Chapters 24 and 30 of the Zoning Regulations; and

**THIS IS TO CERTIFY THAT THIS IS A TRUE COPY**  
*Jay J. Toal*  
Recorder of Deeds, D.C. SEP 04 2008

WHEREAS, the Zoning Commission granted the second-stage PUD approval and related zoning map amendment for the Subject Site and adopted Zoning Commission Order No. 910, dated November 8, 1999, and effective as of November 26, 1999 ("Order No. 910") in Zoning Commission Case No. 98-17F; and

WHEREAS, the Zoning Commission denied FRP's request for a time extension of Order No. 910 by Zoning Commission Order No. 910-A, dated May 13, 2002, and effective as of November 22, 2002 ("Order No. 910-A"); and

WHEREAS, based upon a Motion for Reconsideration of Order No. 910-A, the Zoning Commission approved a time extension of Order No. 850, which had approved the first-stage PUD for the Subject Site, for a period of one year as was set forth in Zoning Commission Order No. 910-B, dated March 10, 2003, and effective as of May 23, 2003 ("Order No. 910-B"); and

WHEREAS, on May 22, 2004, FRP filed a second application with the Zoning Commission, requesting approval of a second-stage PUD and zoning map amendment for the Subject Site in accordance with the provisions of Chapters 24 and 30 of the Zoning Regulations and Order No. 850 and within the timeframe permitted by Order No. 910-B; and

WHEREAS, the Zoning Commission approved the second-stage PUD and related zoning map amendment and adopted Zoning Commission Order No. 04-14, dated May 22, 2008, and effective as of June 27, 2008 ("Order No. 04-14"); and

WHEREAS, Chapter 24 of the Zoning Regulations requires that an applicant, who seeks to develop a site in accordance with an approved PUD, shall first enter into a covenant with the District binding on the applicant and its successors in title that states that the site, if developed in accordance with an approved planned unit development, will

be used and constructed only in accordance with the adopted orders, or amendments thereof, of the Zoning Commission with regard to such approval; and

WHEREAS, FRP entered into such a covenant with regard to Order No. 910, which covenant was recorded among the land records of the District (the "Land Records") on January 25, 2001, as Instrument No. 2001007599 (the "Initial FRP PUD Covenant"); and

WHEREAS, Order No. 910 lapsed by its own terms as a result of the Zoning Commission's denial of FRP's request for a time extension of Order No. 910; and

WHEREAS, paragraph 8 of the Initial FRP PUD Covenant states that the covenants created by the Initial FRP PUD Covenant may not be extinguished without the prior written consent of the District and that the District shall upon the request of FRP execute an instrument in recordable form evidencing the lapse of the Order, which shall nullify the Covenant; and

WHEREAS, Condition No. 14 of Order No. 04-14 requires that FRP record a covenant in the Land Records between itself and the District, that is satisfactory to the Office of Attorney General for the District and the Zoning Division of the Department of Consumer and Regulatory Affairs and that binds FRP and all successors in title to construction on and use the Subject Site in accordance with Order No. 04-14 or amendment thereof by the Zoning Commission; and

WHEREAS, FRP seeks to terminate the Initial FRP PUD Covenant in accordance with paragraph 8 of the Initial FRP PUD Covenant and to satisfy the requirements of Chapter 24 of the Zoning Regulations as well as the requirement of entering into a covenant as set forth in Condition 14 of Order No. 04-14 by entering into and recording in the Land Records this new PUD Covenant.

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. The terms and conditions of the Zoning Commission's approval of the PUD and related zoning map amendment under Order No. 04-14 (as the same may be amended and/or modified from time to time) for the development of the Subject Site are incorporated herein by reference. Order No. 04-14 is made a part hereof as Exhibit B and shall be considered a part of this Covenant. The Subject Site, if developed by FRP in accordance with the approval granted by the Zoning Commission in Order No. 04-14, shall be developed and used in accordance with the plans approved by Order No. 04-14 and in accordance with the conditions and restrictions contained in Order No. 04-14, subject to such changes thereto as the Zoning Administrator of the District of Columbia and/or Zoning Commission may authorize pursuant to 11 DCMR §§ 2409.6 and 2409.9, respectively. FRP covenants that, if the Subject Site is developed in accordance with the approval granted by Order No. 04-14, it shall use the Subject Site only in accordance with the terms of Order No. 04-14, as the same may be 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.

2. Additional Time To Construct Planned Unit Development. If FRP should fail to file for a building permit and to commence construction of the approved PUD in accordance with Order No. 04-14, within the time specified in Sections 2408.8 and 2408.9 of the Zoning Regulations, as modified by the applicable conditions of Order No. 04-14, the Zoning Commission may duly consider an application for an extension of time for good cause in accordance with 11 DCMR § 2408.10.

3. Default. In the event that FRP fails to file for a building permit and to commence construction of the approved PUD within the time specified in Sections 2408.8 and 2408.9 of the Zoning Regulations, as modified by the applicable conditions in Order No. 04-14, or within any extension of time granted by the Zoning Commission for good cause shown pursuant to 11 DCMR § 2408.10, the benefits granted by Order No. 04-14 shall terminate pursuant to Section 2408.14 of the Zoning Regulations.

4. Future Conveyance. FRP covenants that if any conveyance of all or any part of the Subject Site takes place before completion of the PUD in accordance with the approval granted in Order No. 04-14, such conveyance shall contain a specific covenant, binding upon the grantee, its successors and assigns, that requires that any grantee, its successors and assigns that seeks to develop and use the Subject Site in accordance with the second-stage PUD approval documented in Order No. 04-14, shall do so only 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. FRP shall record this Covenant, as fully executed by the parties hereto, among the Land Records, and shall file a certified copy of this Covenant with each of 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 this Covenant. If Order No. 04-14 is modified or amended by the Zoning Commission, no formal amendment of this Covenant shall be required, provided that FRP, or its successors or assigns, records a notice of modification in the Land Records. No other amendment of the obligations created by this Covenant is permitted without the written consent of the District and, if determined by the District to be necessary, without the prior approval of the Zoning Commission.

9. Termination. The recordation of this Covenant in the Land Records hereby terminates the covenants, conditions and restrictions contained in the Initial FRP PUD Covenant recorded in the Land Records on January 25, 2001, as Instrument No. 2001007599.

**SIGNATURES FOLLOW**

IN WITNESS WHEREOF, FLORIDA ROCK PROPERTIES, INC., a Florida corporation, has, as of the day and year first above written, caused this Covenant to be signed by David H. deVilliers, Jr., its President, and does hereby constitute and appoint the said David H. deVilliers, Jr., to be its lawful attorney-in-fact, for it and in its name to acknowledge and deliver this Covenant according to law.

**FLORIDA ROCK PROPERTIES, INC.,**  
**a Florida corporation**

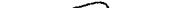
By:

Name: David H. deVilliers, Jr.  
Title: President

# District of Columbia

I, David M. Lautenbacher, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that David H. deVilliers, Jr., President of Florida Rock Properties, Inc., a Florida corporation, party to the foregoing Covenant bearing a date as of the 31<sup>st</sup> day of July, 2008, the said David H. deVilliers, Jr., 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 31<sup>st</sup> day of July, 2008.



Anna M. Johnson  
Notary Public

My commission expires: **David M. Lautenberger**

**David M. Lautenberger  
Notary Public, District of Columbia  
My Commission Expires 12-14-2009**

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.

DISTRICT OF COLUMBIA,  
a Municipal Corporation

WITNESS:

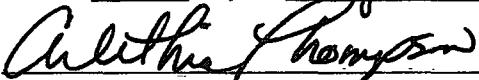
By:   
Secretary, D.C.

(Corporate Seal)

DISTRICT OF COLUMBIA, ss:

I, Arlethia Thompson, a Notary Public in and for the District of Columbia, do hereby certify that Stephanie Scott, who is personally well known to me as the person named as Secretary of the DISTRICT OF COLUMBIA in the foregoing Covenant bearing date of the \_\_\_\_\_ day of \_\_\_\_\_, 2008, and 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 22 day of August, 2008.



Notary Public, D.C.  
Arlethia Thompson  
Notary Public, District of Columbia  
My Commission Expires 9/14/2011

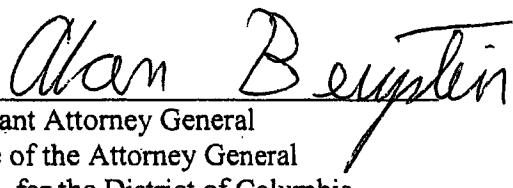
My commission expires: \_\_\_\_\_.

APPROVED:

Mark Zweig 8/7/88

Zoning Division, Department of  
Consumer and Regulatory Affairs

APPROVED AS TO LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
Alan Bernstein  
Assistant Attorney General  
Office of the Attorney General  
for the District of Columbia

## EXHIBIT A

### **Legal Description of Subject Property**

Original Lots 1 and 2 in Square 707; Also part of 1st Street Closed, Half Street Closed, Half Place Closed, and Q Street Closed as per plat entitled "Closing of Public Highways" recorded in the Office of the Surveyor for the District of Columbia in Liber 120 at folio 189, and as per order recorded in the aforesaid Surveyor's Office in Liber 120 at folio 191, all described in one Parcel as follows:

BEGINNING for the same on the Southerly line of Potomac Avenue at the Northwest corner of said Original Lot 2 and running thence Southwesterly along said Southerly line of said Avenue to the center line of said Half Place Closed; thence South along said center line of said Half Place Closed to the center line of said Q Street Closed; thence East along said center line of said Q Street Closed to the Bulkhead Line of the Anacostia River; thence Northeasterly along the said Bulkhead Line to a point on a line distant 40 feet East of the West line of 1st Street Closed; thence North along said line parallel with the West line of 1st Street Closed to the said Southerly line of Potomac Avenue and thence Southwesterly along said Southerly line of Potomac Avenue to the place of beginning.

NOTE: At the date hereof the above described land is designated on the Records of the Assessor for the District of Columbia for assessment and taxation purposes as Lots numbered 800, 801 and 802 in Square 707.

### **ALSO**

Lots 12 and 13 in the subdivision made by Isabella C. Harron of Original Lot 6 in Square East of Square 708, as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 25 at folio 23. ALSO Part of Original Lot 1 and all of Original Lots 2, 3, 4, and 5 and Lots 7 to 11, both inclusive, in Square East of Square 708. ALSO Part of Half Place Closed and Part of "Q" Street Closed in said Square East of Square 708, as per plat entitled "Closing of Public Highways" recorded in Liber 120 at folio 189 and as per Order recorded in Liber 120 at folio 191 of the Records of the Office of the Surveyor for the District of Columbia, all being described as follows:

BEGINNING for the same at the Southeast corner of said Lot 1, said point being the intersection of the South line of said Lot with the Bulkhead Line of the Anacostia River and running thence West along the South line of said Lot 1, 117.68 feet to the Southwesterly line of the Bridge right of way; thence Northwesterly along said line of said Bridge right of way being the arc of a circle deflecting to the right the radius of which is 922.38 feet to the center line of Half Place Closed; thence North along the said center line of Half Place Closed to intersect the center line of said "Q" Street Closed; thence East along said center line of "Q" Street Closed to the said Bulkhead Line of said Anacostia River; thence Southwesterly along said line of said Bulkhead Line to the place of beginning.

ALSO Parts of Original Lots 6 and 7 in Square 708; ALSO Part of Half Place Closed and Part of "Q" Street Closed, as per plat entitled "Closing of Public Highways" recorded in Liber 120 at folio 189 and as per order recorded in Liber 120 at folio 191 of the Records of the Office of the Surveyor for the District of Columbia, being described as follows in one Parcel:

BEGINNING for the same at the intersection of the center line of said Half Place Closed with the Northeasterly line of the Bridge right of way and running thence North along the said center line of Half Place Closed to the Southerly line of Potomac Avenue; thence Southwesterly along said line of Potomac Avenue to intersect the said Northeasterly line of the Bridge right of way; thence Southeasterly along the Bridge right of way being the arc of a circle deflecting to the left the radius of which is 822.38 feet to the Northwest corner of the land conveyed to the Esso Standard Oil Company of New Jersey by Deed dated November 26, 1941, and recorded in Liber 9614 at folio 381 among the Land Records of the District of Columbia; thence East along the North line of said conveyance 55.73 feet to the West line of said Half Place Closed; thence South along the said West line of Half Place Closed 15.43 feet; thence South 18 degrees 59 minutes 50 seconds East 92.16 feet to a point in the said Northeasterly line of the Bridge right of way and the place of beginning.

ALSO Part of "R" Street Closed, as per plat entitled "Closing of Public Highways", as per plat recorded in Liber 120 at folio 189 and as per Order recorded in Liber 120 at folio 191 of the Records of the Office of the Surveyor for the District of Columbia, described as follows:

BEGINNING for the same at the intersection of the center line of "R" Street Closed with the Bulkhead Line of the Anacostia River and running thence West along the Center line of said "R" Street Closed 10 feet; thence Southwesterly and parallel with the said Bulkhead Line to the South line of said "R" Street Closed, 10 feet to the said Bulkhead Line and thence Northeasterly along said Bulkhead Line to the place of beginning.

ALSO Part of "R" Street Closed, as per plat entitled "Closing of Public Highways", as per plat recorded in Liber 120 at folio 189, and as per Order recorded in Liber 120 at folio 191, of the Records of the Office of the Surveyor for the District of Columbia, described as follows:

BEGINNING for the same at the intersection of the center line of "R" Street Closed with the Bulkhead Line of the Anacostia River and running thence West along said Center line of said "R" Street Closed, 10 feet; thence Northeasterly and parallel with the said Bulkhead Line to the North line of said "R" Street Closed; thence East along the said North line of "R" Street Closed, 10 feet to the said Bulkhead Line and thence Southwesterly along said Bulkhead Line to the place of beginning.

NOTE: At the date hereof the above described land is designated on the Records of the Assessor for the District of Columbia for assessment and taxation purposes as Lots numbered 807 and 808 in Square East of 708 (E 708), Lot 809 in Square 708, and Lot 806 in Square South of 708 (S 708).

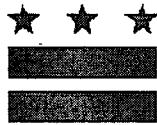
AND BEING FURTHER DESCRIBED IN ONE PARCEL AS FOLLOWS:

Beginning on the Southerly line of Potomac Avenue, S.E. (160 feet wide) at the intersection of said line with the easterly line of a 40 feet wide portion of First Street, S.E., Closed, as shown on a plat recorded among the records of the Office of the Surveyor for the District of Columbia in Liber 120 at folio 189 and running thence along said First Street line, South 140.67 feet to the Anacostia River Bulkhead Line as shown on map titled "Anacostia River Harbor Lines", Sheet 1, File B-39-18, dated revised Oct. 1, 1925, and Sheet 2, File B-39-19 dated revised July 21, 1939, both among the records of the Corps of Engineers, U.S. Army; thence with said Anacostia River Bulkhead Line, along the arc of a curve to the left with a radius of 1,888.86 feet an arc distance of 501.78 feet to a point of tangent; thence South 27 degrees 20 minutes 33 seconds West 367.28 feet to the South line of R Street Closed, as shown on aforementioned plat recorded in Liber 120 at folio 189; thence along said line West, 11.26 feet; thence North 27 degrees 20 minutes 33 seconds East 95.70 feet; thence along the North line of aforementioned R Street Closed, West 106.45 feet; thence along the arc of a curve to the right with a radius of 922.38 feet an arc distance of 90.10 feet (chord North 53 degrees 21 minutes 05 seconds West, 90.07 feet), thence North 135.35 feet; thence North 18 degrees 59 minutes 50 seconds West, 92.16 feet; thence North 15.43 feet; thence West 55.74 feet; thence along the arc of a curve to the right with a radius of 822.38 feet an arc distance of 126.27 feet (chord North 30 degrees 49 minutes 38 seconds West, 126.14 feet) to the Southerly line of aforementioned Potomac Avenue; thence along said Potomac Avenue line North 62 degrees 27 minutes 40 seconds East, 847.78 feet to the place of beginning, containing 253,191 square feet, more or less.

**EXHIBIT B**

**Zoning Commission Order No. 04-14**

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 04-14

Z.C. Case No. 04-14

Second-Stage Planned Unit Development and Related Zoning Map Amendment for  
Florida Rock Properties, Inc. – 100 Potomac Avenue, S.E.  
May 22, 2008

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on March 20, 2008, to consider applications from Florida Rock Properties, Inc. (“Applicant”) for second-stage approval of a planned unit development (“PUD”) and a related map amendment to the C-3-C Zone District. The Commission considered the applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the applications.

**FINDINGS OF FACT**

**The Applications, Parties, and Hearings**

1. On May 21, 2004, the Applicant filed applications for second-stage review and approval of a PUD and related map amendment to the C-3-C Zone District approved in the first-stage PUD approval (the “May 2004 Application”). The subject property is located in the 100 block of Potomac Avenue, S.E., bounded by Potomac Avenue along its northwestern edge, a portion of the former right-of-way of First Street, S.E. to the east, the Anacostia River to the southeast and south, and the Frederick Douglass Memorial Bridge and the bridge’s approaches to the west and southwest (the “PUD Site”). The PUD Site consists of approximately 253,500 square feet of land in Squares 707 (Lots 800, 801, and 802), 708 (Lot 809), 708E (Lots 807 and 808), and 708S (Lot 806).
2. At its July 12, 2004, public meeting, the Commission considered the May 2004 Application for set-down. The Commission identified several matters related to the proposed project on which additional information was needed. On August 26, 2004, the Applicant filed a Supplemental PUD Submission providing this additional information.
3. At its September 13, 2004, public meeting, the Commission set the case down for hearing. In anticipation of a hearing scheduled for December 8, 2005, the Applicant filed

a Prehearing Submission on May 2, 2005, and a Supplemental Prehearing Submission on November 18, 2005.

4. Prior to the hearing, the District announced that a new Ballpark would be constructed immediately across Potomac Avenue from the PUD Site. Plans were also underway to reconstruct South Capitol Street, including the intersection of South Capitol Street and Potomac Avenue, S.E., and to replace and realign the Frederick Douglass Memorial Bridge. In light of various area-wide planning issues, the Applicant agreed to a request by the Anacostia Waterfront Corporation (“AWC”) to postpone the scheduled hearing.
5. During an eight-month postponement, the Applicant worked with AWC, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), and the D.C. Sports and Entertainment Commission to craft modifications to the originally proposed PUD to respond to changes in the surrounding area. The revised project was set forth in the Applicant's Modified Prehearing Submission filed with the Commission on August 25, 2006 (the May 2004 Application, as modified or supplemented by the Supplemental PUD Submission, Prehearing Submission, the Supplemental Prehearing Submission, and the Modified Prehearing Submission, collectively the “Modified PUD Submissions”).
6. After proper notice, the Commission held a public hearing on the Modified PUD Submissions on September 18, 2006. The parties to the case were the Applicant and Advisory Neighborhood Commission (“ANC”) 6D, the ANC within which the PUD Site is located.
7. At the conclusion of the public hearing on September 18, 2006, the Commission requested that several matters be further reviewed and addressed in a post-hearing submission by the Applicant. The Applicant submitted materials on November 17, 2006 in response to those matters of inquiry. The Commission held a further public hearing on November 27, 2006, for the purpose of asking questions related to the post-hearing materials submittal. The Applicant made three additional submittals for the record arising out of the November 27<sup>th</sup> hearing; those submittals were made on December 11, 2006 (the Supplemental Post-hearing Submission, with the Modified PUD Submissions, as otherwise modified or supplemented, being the “Modified Revised Applications”).
8. At its public meeting held on February 22, 2007, the Commission discussed several issues of concern in the Modified Revised Applications and requested that the Applicant submit revised plans to address those concerns.
9. By letter dated March 2, 2007, the Applicant requested clarification from the Commission. At its regular meeting on March 12, 2007, the Commission confirmed that the Applicant's letter correctly summarized the Commission's primary concerns, which included the following:

- a. The footprint of the east end of the proposed East Office Building, as revised before the November, 2006, hearing, did not satisfactorily recognize the location and nature of the grand stair of the Ballpark to the north and the view corridor from that grand stair to the river;
  - b. The continued recognition in the site plan of the legacy of Half Street through the project to the river was no longer necessary;
  - c. The proposed project lacked the right “civic character” and a greater presence of residential uses, preferably apartment units, would be more appropriate;
  - d. The proposed project lacked a “sense of place” or defining elements, notwithstanding its unique location adjacent to the Ballpark and its frontage on the Anacostia River; and
  - e. The proposed project amenity of a viewing pier extending into the Anacostia River was not a necessary or contributing element to the project.
10. By correspondence dated June 1, 2007, the Applicant submitted a modified site plan for the project that proposed changes in use allocation, density, and building heights responsive to the Commission’s concerns. The Commission commented favorably on the modified plan and requested that the Applicant submit a revised PUD application.
11. On September 21, 2007, the Applicant filed a revised application, which was further supplemented on November 8, 2007. The Commission set the Final PUD Application (collectively, the September 2007, November 2007, and February 2008 submissions) for hearing at its public meeting on November 19, 2007. On February 28, 2008, the Applicant submitted its Supplemental Prehearing Submission in advance of the hearing.
12. After proper notice, the Commission held a public hearing on the Final PUD Application on March 20, 2008. The parties to the case were the Applicant and ANC 6D.
13. The Applicant presented three witnesses in its direct presentation, David deVilliers of Florida Rock Properties, Inc.; Davis Buckley, architect with the firm of Davis Buckley Architects and Planners; and Steven Sher, Land Planner with Holland & Knight. Messrs. Buckley and Sher were accepted as experts in their respective fields. Additional expert witnesses answered questions and were accepted as experts in their designated fields, including Ray Kaskey, expert in sculpture, and Jon Eisen, expert in retail development and retail planning.
14. At the conclusion of the hearing, the Commission took proposed action to approve the Final PUD Application. The Commission requested additional information regarding two specific issues – a revised design for the South Capitol Street façade of the Hotel

Building and information regarding the structural design aspects of the Potomac and Capitol Quay.

15. The Applicant submitted its Post-Hearing Submission on May 1, 2008, presenting a revised design for the Hotel Building's South Capitol Street façade and summarizing an example of a structural design similar to the proposed design of the Potomac and Capitol Quay.
16. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by delegated action dated April 25, 2008, found that the project would not be inconsistent with the Comprehensive Plan for the National Capital or adversely affect any other federal interests.
17. The Commission took final action by a vote of 5-0-0 to approve the Final PUD Application at its special public meeting held on May 22, 2008.

**Procedural History**

18. In 1998, the Commission reviewed and approved a first-stage PUD application and related zoning map amendment for the PUD Site in Case No. 95-16P, as reflected in Order No. 850. In that case, the Commission approved a development plan which included a maximum height of 130 feet with a maximum density of 6.0 floor area ratio ("FAR") to be devoted to commercial and retail uses, and approved a related zoning map amendment for the PUD Site to the C-3-C Zone District.
19. By Order No. 910, dated November 8, 1999, the Commission granted second-stage approval for a PUD, allowing approximately 1.5 million square feet of commercial development in two buildings, with heights of 110 and 130 feet, constructed above a single below-grade, off-street parking facility.
20. On November 9, 2001, the Applicant timely filed a request for extension of the second-stage PUD approval, which was due to expire on November 26, 2001. In Order No. 910-A, dated May 13, 2002, the Commission denied the Applicant's request for a time extension due to a concern that the approved second-stage PUD would be in conflict with planning efforts for the near Southeast and Southwest areas, including Buzzard Point.
21. On December 2, 2002, the Applicant filed a motion for reconsideration of the Commission's decision to deny the time extension. In the motion, the Applicant asserted that the Commission had erred in denying the time extension, but also put forth a set of design guidelines, developed in consultation with OP, which would set the parameters for any second-stage PUD proposal that the Applicant could submit to the Commission for second-stage review and approval. The design guidelines changed the proposed program for the project, reducing the maximum heights of buildings, reducing the permitted

density, increasing the width of the Waterfront Esplanade along the Anacostia River waterfront, and introducing additional access to the waterfront from Potomac Avenue, which reduced the perceived massing of the project. Additionally, the Applicant proposed to change the project from one containing retail and office uses only to one containing a mix of residential, hotel, office, retail, and commercial uses. OP filed a report with the Commission supporting the Applicant's request.

22. At its January 13, 2003 meeting, the Commission voted not to reconsider its denial of the time extension for the second-stage approval of the PUD, but agreed to reconsider its previous denial of a time extension related to the first-stage approval of the PUD. The Commission expressed concern about the building height permitted under the proposed design guidelines offered by the Applicant, indicating that lesser heights would be preferable. On February 14, 2003, the Applicant submitted revised design guidelines, which proposed lesser heights of buildings and resulting changes in gross floor area calculations.
23. On February 24, 2003, the Commission voted to grant a time extension of the first-stage approval of the PUD for one year, subject to and as modified by the OP-endorsed revised design guidelines. This approval was set forth in Order No. 910-B and the design guidelines ("Design Guidelines") were attached thereto and made part of that order.

#### **PUD Site and Area**

24. The PUD Site is situated in Ward 6 and consists of approximately 253,500 square feet of land with approximately 827 linear feet of frontage along the Anacostia River. The PUD Site is currently used for concrete mixing and batching operations and for the open storage of gravel and other stone aggregates used in these operations.
25. Based on the Comprehensive Plan in effect at the time the May 2004 Application was filed, the Generalized Land Use Map of the Comprehensive Plan designated the PUD Site and surrounding area as mixed use for medium-high density commercial, production and technical employment, and high-density residential. It also designated the PUD Site within a development opportunity area and within the Central Employment Area. Prior to the submission of the Final PUD Application, the Comprehensive Plan of 2006 went into effect. Under this plan, the PUD Site was designated by the Future Land Use Map in the mixed-use medium-density residential/medium-density commercial category.
26. The PUD Site is not a designated historic landmark nor is it within a historic district.
27. Developments in the immediate vicinity of the PUD Site include the Ballpark, immediately to the north of the PUD Site, and, to the east, a mixed-use project, the Southeast Federal Center, that includes the recently completed Department of Transportation headquarters.

28. DDOT has begun the reconstruction of South Capitol Street, including construction of an oval ("South Capitol Street Oval") at the intersection of South Capitol Street and Potomac Avenue, and relocation of the bridge on a southern alignment at South Capitol Street.
29. The boundaries of the PUD Site assume a land exchange with DDOT. Construction of the South Capitol Street Oval requires acquisition of a portion of the PUD Site by the District. DDOT and the Applicant reached a preliminary agreement for a land exchange in the future. (See Tab B to the Applicant's Modified Supplemental Prehearing Submission, Exhibit 31, and DDOT's Supplemental Report, dated November 27, 2006, Exhibit 52.) The land exchange would create a more uniform property line between DDOT holdings and the PUD Site and would regularize the shape of the resulting land parcels held by each. The land exchange would not alter the total lot area of the PUD Site.

**Existing and Proposed Zoning**

30. In 1958, the PUD Site and the area immediately to the east, south, and west were designated in the M Zone District. The M and C-M-2 Zone Districts were also mapped in the surrounding area.
31. By Order No. 850, the Commission approved a PUD-related map amendment for the PUD Site to the C-3-C Zone District in connection with the first-stage approval.
32. By Order No. 971, the area surrounding the PUD Site was included within the Capitol Gateway Overlay District, with accompanying rezoning to the underlying base zone. The overlay designated specific areas for mixed-use redevelopment, as identified in the Comprehensive Plan. In addition to restrictions on use, density, and height, many properties included within the Capitol Gateway Overlay District were made subject to a development review process. Absent a PUD-related map amendment, the PUD Site would be zoned CG/W-2.
33. The Final PUD Application includes a PUD-related map amendment to C-3-C. The C-3 Zone District is designed to accommodate important sub-centers supplementary to the Central Business District. The C-3-C Zone District permits medium-high density development, including office, retail, housing, and mixed-use development which is compact in area. The C-3-C Zone District permits a maximum height of 90 feet, with no limit on the number of stories, and a maximum density of 6.5 FAR. Under the PUD guidelines for the C-3-C Zone District, the maximum height may be 130 feet and the maximum density may be 8.0 FAR. The Applicant proposed to develop a project within these development parameters, having a maximum density of 4.4 FAR and a maximum height of 130 feet, generally consistent with the Design Guidelines.

### **The PUD Project**

34. The Final PUD Application proposed the construction of a mixed-use project of office, retail, residential, and hotel uses on the PUD Site. The project will be developed as four separate buildings situated to create multiple vistas and views to and from the Anacostia River and the Ballpark.
35. The east end of the PUD Site will be developed with an office building with ground-floor retail (the “East Office Building”). The East Office Building will have a maximum height of 92 feet, and will be sited to respect the view corridors from the Ballpark’s grand staircase. Adjacent to the East Office Building will be an apartment building with ground-floor retail (the “Residential Building”). The Residential Building will have a maximum height of 130 feet. The East Office Building and the Residential Building will be linked together by the Potomac Quay, a glass-enclosed retail galleria extending from Potomac Avenue to the waterfront. A second office building with ground-floor retail will turn the corner at the intersection of Potomac Avenue, S.E., and South Capitol Street, S.E. (the “West Office Building”). The West Office Building will have a maximum height of 112 feet. To the south of the West Office Building and connected by a glass-enclosed Capitol Quay, a hotel will be constructed (the “Hotel Building”). The Hotel Building, with a maximum height of 130 feet, will have hotel-related retail uses on the ground floor and residential uses located on the top two floors.
36. The project will include a total of 1,115,400 square feet of gross floor area, or a maximum of 4.4 FAR. The PUD will include 569,623 square feet of gross floor area devoted to residential and hotel uses, or 2.25 FAR. The PUD will also include 545,777 square feet of gross floor area, or 2.15 FAR, devoted to commercial uses, including a minimum of 80,000 square feet of gross floor area devoted to retail use.
37. The project will incorporate two open civic spaces: Anacostia Place at the east end and Cascade Plaza at the western end. Each space will provide direct access to a terraced and landscaped waterfront esplanade (the “Esplanade”), which will extend for the full length of the project’s frontage on the Anacostia River.
38. Anacostia Place will provide for the free flow of pedestrians from the Ballpark’s grand staircase and from First Street through and to both the Esplanade and to Diamond Teague Park. This space will feature a monumental fountain/sculpture that will celebrate the heritage of the Anacostia River by featuring representations of wildlife, flora and fauna of the river in its original state. The artwork centerpiece will be surrounded by three seasonal sculptural fabric structures serving as potential vendor pavilions and shade structures. The design and plantings for Anacostia Place have been coordinated with the Office of the Deputy Mayor for Planning and Economic Development (“DMPED”) and its developing plans for Diamond Teague Park, immediately east of Anacostia Place.

39. The Cascade Plaza will be the center of civic activity on the western portion of the PUD Site, serving as a focal, organizing civic space as well as the entryway to the Residential Building, West Office Building, and Hotel Building. The Cascade Plaza will provide vehicular access for the three buildings, giving them an “address” on the Plaza. The central portion of the space will have a landscaped water sculpture with water pools and plant materials. In addition to the center water oval component, the Cascade Plaza will include a cascading water stair between the two staircases linking the Cascade Plaza to the Esplanade and the river. The cascade water elements as well as the center water oval component will be elements of the overall biofiltration program for the project while providing an aesthetic focal point for the uses that surround the plaza.
40. The project will incorporate a bike path along the waterfront, with special paving, two directional lanes with a divider strip and reflectors, and light bollards to visually define the path where the bike path traverses the pedestrian zones. The bike path will ultimately connect to the trail to the southwest and east of the PUD Site.
41. The design of the project as presented in the Final PUD Application was substantially modified throughout the PUD process as a result of discussions with OP, DDOT, DMPED, and the community. The resulting project responded to the surrounding contextual determinants, including celebrating its waterfront location, being a fitting complement to the Ballpark and providing an important façade for the future South Capitol Street Oval.

**East Office Building**

42. The Commission noted its concern regarding the footprint of the east end of the East Office Building, especially in its relationship to the grand stair of the Ballpark and the impact on the view corridor from that grand stair to the river. In the Final PUD Application, a curved building line for the East Office Building was introduced along Potomac Avenue and the orientation of the East Office Building was rotated slightly off-line with the Potomac Avenue right-of-way line. These two changes brought the west end of the planned East Office Building closer to the river on its south side. This re-orientation eliminated any vestige of Half Street, and instead recognized the importance of the Potomac Avenue right-of-way.
43. The view corridors created at the Potomac Quay and at the lane leading to the Cascade Plaza to the west of the Residential Building will further eliminate the earlier Half Street viewshed. The re-aligned East Office Building will respond to and emphasize the view corridors and access points through the project when approached from the grand staircase of the Ballpark along Potomac Avenue, as well as from the entrance of the Ballpark at the intersection of Potomac Avenue and South Capitol Street. This orientation, along with the sculptural elements of the designs of the East Office Building and the Residential Building, will create a complementary relationship between the Potomac Avenue façades of the project and the design of the Ballpark.

44. In its report, OP noted that the proposed location of the East Office Building was moved to the west to improve views from the south entrance of the Ballpark. OP further noted that the overall form and massing of the buildings along Potomac Avenue were improved, resulting in more interesting and varied spaces and a better relationship to the form of the Ballpark.
45. The Commission finds that the proposed design and siting will create a project that will achieve the desired goals for this important location. The design of the eastern end of the project – including the siting of the East Office Building and the design for Anacostia Place – will preserve the view corridors for visitors to the Ballpark, complement the designs for Diamond Teague Park, create a welcoming civic space, and link the Ballpark to the waterfront. The East Office Building will introduce a dynamic waterfront and retail/entertainment experience that will be further enhanced as later phases of the project are developed.

#### Legacy of Half Street

46. The continued recognition of the legacy of Half Street through the project to the River was not necessary. The Final PUD Application deleted the perceived extension of Half Street by rotating the façade of the Residential Building so that a centerline axis through the tower would be generally perpendicular to Potomac Avenue rather than following the alignment of the former Half Street right of way. This design element will open up a view corridor to and from the Ballpark and the river between the Residential Building and the West Office Building.
47. The Commission finds that the site plan of the project as set forth in the Final PUD Application is appropriate for the PUD Site and will create important view corridors and interesting façades.

#### Mix of Uses

48. While a density of 4.4 FAR was appropriate for the PUD Site, the Commission noted a preference for a mix of uses including increased gross floor area for apartments. The Final PUD Application incorporated an increase in gross floor area devoted to residential uses by increasing the height of both the Residential Building and the Hotel Building to 130 feet. All the additional gross floor area resulting from the increased height will be devoted to apartments (either for rent or sale). As a result, the project will include approximately 323,433 square feet of gross floor area devoted to apartments. The density of residential use – including the gross floor area devoted to apartments and the hotel use deemed residential for the PUD Site – will be 2.25 FAR, or more than 50% of the proposed gross floor area of the project as a whole.
49. The Commission finds that the mix of uses – including the increased residential use and the commitment to a minimum of 80,000 square feet of retail space – will create day and

night traffic and lend vibrancy to the project and the area south of the Ballpark. The Commission further finds that the use of increased height to achieve the additional residential use is appropriate and will add aesthetic interest to the roof line of the project.

### **Creation of Civic Spaces**

50. The Commission noted concerns that planned civic spaces were not influential in the project. The Final PUD Application incorporated significant and well-proportioned open, civic spaces, where the Applicant's proposal to increase the planned open spaces was a result of the increased height for both the Residential Building and the Hotel Building. In addition to the Esplanade, the two primary open, civic spaces will include Anacostia Place and the Cascade Plaza, which are intended to attract the public and bring vibrancy and activity to the project. The project will also incorporate two publicly accessible covered spaces, the Potomac Quay and the Capitol Quay, which will link the project and waterfront and the South Capitol Street Oval.
51. OP noted in its report that the project will incorporate a variety of open spaces – both visually open but physically enclosed spaces, such as the Potomac Quay and the Capitol Quay, as well as open spaces, including the Esplanade, with segregated walking and biking trails, green space, and space for outdoor patios associated with adjacent retail uses, the Cascade Plaza, and the Anacostia Place.
52. The Commission finds that creation of a variety of civic spaces is a superior aspect of the project.

### **Sense of Place**

53. The Commission noted that the project as previously conceived lacked a sense of place. In the Final PUD Application, the Applicant presented a project defined through its unique location in the near Southeast. A sense of place will be achieved through the creation of new public spaces, as well as through the enhancement to previously proposed public spaces, such as the Esplanade. The public spaces will enhance the project and complement adjacent public spaces, such as Diamond Teague Park.
54. The project's more fully developed retail vision will also create a sense of place for the project. The Applicant set forth a detailed retail merchandising plan, prepared by StreetSense and found at Tab A in the Revised PUD Submission (Exhibit 67), intended to enliven the Anacostia Riverfront with a mix of visible and accessible retail, restaurant, entertainment, and other activity-generating uses.
55. The project will also create a sense of place by its design complementary to the adjacent Ballpark. The project will provide visual and physical transparency between the Ballpark neighborhood to the north and the Anacostia River to the south, including wide use of

non-reflective glass, curved and carefully oriented building forms, and inviting pedestrian links including the open civic spaces, the through-building connections to the river, and the Esplanade.

56. The Commission finds that the project will achieve the goal of creating a sense of place through a variety of elements, including its civic spaces, retail vision, enhanced residential component, architectural treatment, and festive waterfront experience.

**Elimination of Viewing Pier**

57. The Commission commented that a proposed project amenity viewing pier extending into the Anacostia River was not a necessary or contributing element to the project. The Commission concurs with the Applicant's proposal, made in the Final PUD Application, to eliminate the viewing pier and to incorporate the funds previously allocated to the viewing pier amenity instead into a proposed contribution to the District for application to Diamond Teague Park.

**Phasing of Project**

58. The project was proposed to be constructed in four phases, as shown on the phasing plans (Exhibit 82):
  - a. Phase One will include the East Office Building, Anacostia Place, and the adjacent portion of the Esplanade;
  - b. Phase Two will include the Residential Building, the Potomac Quay, and the adjacent portion of the Esplanade;
  - c. Phase Three will include the West Office Building, the Cascade Plaza, and the remainder of the Esplanade; and
  - d. Phase Four will include the Hotel Building and the Capitol Quay.
59. The Applicant must file for a building permit for Phase One of the project as specified in 11 DCMR § 2409.1. Construction of Phase One must begin within three years of the effective date of this Order. Within two years of the issuance of a certificate of occupancy for Phase One, the Applicant must file an application for a building permit for Phase Two, and construction of Phase Two must begin within three years of the issuance of a certificate of occupancy for Phase One.
60. Construction of Phases Three and Four cannot commence until the final realignment of the Frederick Douglass bridge and the land exchange with the District are completed for the South Capitol Street Oval. Therefore, the timeframe for the construction of these two phases must be tied to these two District transportation projects. Based on preliminary

estimate dates for the construction of these District transportation projects, construction of Phase Three is estimated to commence in 2013 and construction of Phase Four is estimated to commence in 2016.

61. The Commission finds that the phasing of the project is appropriate and the timing for construction of the project in these phases is appropriate, as set forth in Condition 15.

#### Public Benefits and Project Amenities

62. The project incorporates the following public benefits and project amenities:
  - a. *Housing and Affordable Housing* (*§ 2403.9(f)*). The Applicant committed to the construction of 323,433 square feet of gross floor area devoted to apartment units. The Applicant agreed to reserve approximately 29,000 square feet of gross floor area of the residential development for workforce housing, meaning housing available to households making a maximum of 80% of Area Median Income in the District of Columbia. The workforce housing will be implemented in accordance with the Workforce Housing Program, attached as Tab 1 to the Summary of Amenities and Benefits (Exhibit 94).
  - b. *Landscaping or Creation or Preservation of Open Spaces* (*§ 2403.9(a)*). The project will incorporate an esplanade that will extends for approximately 719 linear feet along the Anacostia River, not less than 75 feet in depth, with limited projections above and into the air space of the esplanade by the Residential and Hotel Buildings. The Esplanade will be accessed by pedestrians from Anacostia Place, the Potomac Quay, the Cascade Plaza, and the Capitol Quay and will enable the creation of an attractive waterfront experience. The design of the Esplanade will incorporate biofiltration elements providing environmental benefits. The Applicant agreed to contribute \$800,000 to the District for construction and on-going maintenance of the Diamond Teague Park. The Commission finds that this contribution of funds is appropriate and sufficient to warrant treatment as a recognized public benefit of the PUD.
  - c. *Environmental Benefits* (*§ 2403.9(h)*). The Applicant committed to develop a sustainable design for the project, including a biofiltration plan to manage stormwater run-off. The Applicant also agreed to develop the project with the goal of achieving at least U.S. Green Building Council LEED certification for each phase of the project. The Applicant agreed that, if it was unable to achieve certification prior to issuance of a certificate of occupancy for each phase of the project, the Applicant will post a bond, letter of credit, escrow account, or other similar security (“Security”) prior to the issuance of a certificate of occupancy, in an amount equal to one percent of the construction cost for that phase of the project, as identified on the building permit application. When the applicable phase of the project achieved LEED certification, the Security would be released

to the Applicant. In the event that the Applicant did not achieve LEED certification for that phase of the project at the later of 30 months after the date of a certificate of occupancy for that phase or the date that the U.S. Green Building Council determined the building would not obtain certification for that phase, the Security would be released to the District in accordance with applicable laws.

- d. *Transportation Management Measures* ( $\S$  2403.9(c)). The Applicant agreed to implement a transportation management program intended to provide services and incentives to increase the efficiency of the roadway network without adding additional capacity. Elements of the transportation management program include a transportation coordinator, coordination of carpools and vanpools, encouragement of flexible work hours, and parking management. The project will also include a below-grade loading dock that will permit a majority of loading activities to take place on-site and not visible from Potomac Avenue. To manage the loading area, the transportation management program included a truck management plan. (See Tab 3 to the Summary of Amenities and Benefits – Exhibit 94.)
- e. *Employment and Training Opportunities* ( $\S$  2403.9(e)). The Applicant entered into a First Source Employment Agreement with the Department of Employment Services (“DOES” requiring the Applicant to use DOES as its first source to fill all new jobs created as a result of construction of the project. The Applicant will seek to have at least 51% of these newly created jobs, and at least 51% of the apprentices and trainees positions, filled by District residents. The Applicant also renewed its offer of a supplemental program related to job opportunities that was incorporated into the originally approved PUD. This amenity will be implemented throughout each phase of the project. The Applicant committed to make a bona fide effort to utilize Local, Small, or Disadvantaged Business Enterprises (“LSDBE”) (now called Certified Business Enterprises (“CBE”)) certified by the D.C. Department of Small and Local Business Development (“DSLBD”) to achieve, at a minimum, the goal of 35% participation in the contracted development costs in connection with design, development, construction, maintenance, and security of the project. This amenity will be implemented throughout each phase of the project.

63. Pursuant to  $\S$  2403.10, the Commission finds that the project qualifies for approval by being acceptable in all proffered categories of public benefits and project amenities, and superior with respect to housing, affordable housing, and environmental benefits.

#### Development Flexibility and Incentives

64. The Applicant requested the following areas of flexibility from the C-3-C PUD standard and the Design Guidelines:

- a. *Height Established by Design Guidelines.* The Design Guidelines stated that the maximum heights of the buildings in the project would be 90, 100, and 110 feet. In order to provide more attractive retail space, the Applicant requested an increase by two feet from the maximum heights for the East Office Building and the West Office Building to provide for 14-foot ceiling heights for the retail spaces on the ground floor. The resulting maximum heights will be 92 feet and 112 feet, respectively. The Applicant also requested increases in height for the Residential Building and the Hotel Building from 100 feet and 110 feet respectively, to 130 feet. This increased height will allow the project to provide additional gross floor area for apartments, increased open space, and greater ceiling heights for the retail spaces. This maximum height is permitted for a PUD in the C-3-C Zone District. The Commission finds that the increased heights are warranted to achieve important goals of the project.
- b. *Loading.* Due to the multiple uses on the PUD site, the loading requirement would be two loading berths at 55 feet, 14 loading berths at 30 feet, and eight service-delivery spaces. The project will provide two loading berths at 55 feet, 12 loading berths at 30 feet, and eight service-delivery spaces. The loading areas will be located primarily within a below-grade loading facility and will be operated consistent with the Applicant's truck management plan. The Commission finds that the proposed loading will be sufficient for the proposed mix of uses in the PUD.
- c. *75-Foot Setback.* The Design Guidelines required a minimum setback of 75 feet. While the project will comply with this requirement at the ground level, the Residential Building and the Hotel Building will include projections of 25 feet at the second floor and above. The projections will maintain a minimum setback of 50 feet. The Commission finds that the projections into the setback will result in a varied and interesting façade at the upper levels of the affected buildings, and are appropriate for the project.

#### **Compliance with PUD Standards**

65. The Final PUD Application complies with the standards for a PUD set forth in Chapter 24 of the Zoning Regulations. The Commission finds that the project offers a sufficient level of public benefits and project amenities in proportion to the flexibility and incentives requested by the Applicant.
66. The PUD Site area is approximately 253,500 square feet of land, which exceeds the minimum area requirement of 15,000 square feet for a PUD in the C-3-C Zone District, in accordance with § 2401.1(c) of the Zoning Regulations.
67. The project has been evaluated under the PUD guidelines for the C-3-C Zone District. The project will be in compliance with the height and density permitted for a PUD in the

C-3-C Zone District. The project has been evaluated under the Design Guidelines and is generally in compliance with those standards.

68. The project will have no adverse impact on the surrounding area. The existing water and sewer services are adequate to serve this facility.
69. By virtue of the extension of the First-Stage PUD approval in Order No. 910-B, the Commission found that the first-stage approval, as modified by the Design Guidelines, was not inconsistent with the Comprehensive Plan. The Commission reaffirms that conclusion. The Commission credits the testimony of OP and of the Applicant's expert in finding that the project will not be inconsistent with and will further the District-wide elements of the Comprehensive Plan, the Lower Anacostia Waterfront/Near Southwest Area element, and the Future Land Use Map adopted as part of the Comprehensive Plan of 2006.

**Office of Planning**

70. By report dated March 10, 2008, OP recommended approval of the Final PUD Application subject to the following conditions: (a) concurrence of DMPED regarding the proposal to contribute \$800,000 for the construction of Diamond Teague Park; (b) additional detail regarding the Applicant's CBE commitment and supplemental employment and skills training plan; (c) DDOT approval of the proffered traffic management plan; and (d) further review of the fountain design in Anacostia Place. In its testimony at the public hearing, OP noted that the first three conditions were resolved by materials submitted by the Applicant in its Summary of Amenities and Benefits (Exhibit 94), which included a letter from DMPED (Tab 2) that indicated DMPED's willingness to accept a contribution for Diamond Teague Park; the executed First Source Employment Agreement with the Department of Employment Services, including information regarding the supplemental employment and skills program (Tab 4) and the executed agreement for utilization of CBEs (Tab 5); and a detailed transportation management program, including a truck management plan (Tab 3).
71. OP concluded that the project was not inconsistent with, or would further, the Comprehensive Plan of 2006, noting that the project was not inconsistent with the objectives and action items within the District-wide elements of the Comprehensive Plan, particularly those related to the provision of more housing, retail and job opportunities, better connectivity to the waterfront, and new open space. The project also would further the objectives and action items contained in the Lower Anacostia Waterfront/Near Southeast Area element (Chapter 19).
72. The Commission notes that OP raised questions about the design of the fountain in Anacostia Place, but finds that the proposed fountain design will be appropriate to anchor the open, civic space.

**District Department of Transportation**

73. DDOT did not comment on the Final PUD Application, but in a report dated September 14, 2006 (Exhibit 38) and through its testimony at the hearing, DDOT recommended approval of the Modified Revised Applications, conditioned on the resolution of issues relating to vehicular site access, bike and pedestrian connections along the Esplanade, its water taxi dock proposal, and coordination with adjacent infrastructure projects. Following discussions with the Applicant, DDOT submitted a supplemental report, dated November 27, 2006 (Exhibit 52), in which DDOT concluded that the Applicant had successfully addressed DDOT's concerns.

**ANC 6D Report and Testimony**

74. By letter dated March 17, 2008, ANC 6D indicated that it voted 5-2 at its January 14, 2008, duly noticed public meeting, to support the Final PUD Application (Exhibit 90). ANC 6D reaffirmed its support for the application, commenting favorably on the new design and layout of the project. According to ANC 6D, the PUD will be a high quality, thoughtful development that will provide a lively destination and will be an asset to the Southwest/Near Southeast community.

**CONCLUSIONS OF LAW**

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process, the Commission has the authority to consider this application as a second-stage PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts.
3. The development of this project will carry out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The proposed PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

5. The PUD is within the applicable height, bulk, and density standards of the Zoning Regulations. The project complies in all material respects with the Design Guidelines, with the exception of additional height. The size, scale, design, and use of the project are appropriate for the PUD Site and for the general Ballpark district. The impact of the project on the surrounding area is not unacceptable. Accordingly, the Final PUD Application should be approved.
6. The Final PUD Application can be approved with conditions to ensure that the potential adverse effects on the surrounding area from the development will be mitigated.
7. The number and quality of the project benefits and amenities offered are sufficient for the flexibility and development incentives requested.
8. Approval of the Final PUD Application is appropriate because the project is consistent with the proposed future character of the area.
9. Approval of the Final PUD Application is not inconsistent with the Comprehensive Plan.
10. The Commission is required under D.C. Code § 1-309.10(d) (2001) to give great weight to the issues and concerns raised by the affected ANC. The Commission has carefully considered ANC 6D's support of the project and concurs in its recommendation.
11. The approval of the Final PUD Application will promote the orderly development of the PUD Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
12. The rezoning of the PUD Site to the C-3-C Zone District is consistent with the purposes and objectives of zoning as set forth in the Zoning Enabling Act, § 6-641.01 of the D.C. Code.
13. Notice was provided in accordance with the Zoning Regulations and applicable case law.
14. The Final PUD Application is subject to compliance with the provisions of the D.C. Human Rights Act of 1977 (D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 *et seq.*).
15. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP's recommendations. For the reasons stated above, the Commission concurs in OP's recommendation for approval.

16. Pursuant to 11 DCMR § 2608.2, all other provisions of Chapter 26 of the Zoning Regulations (Title 11 DCMR), Inclusionary Zoning, do not apply to this application because it was set down for hearing prior to March 14, 2008.

**DECISION**

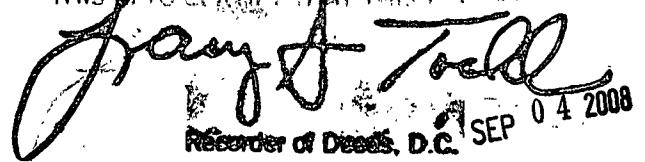
In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders APPROVAL of the Final PUD Application for the second-stage review of a planned unit development under the C-3-C Zone District. This approval is subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the plans prepared by Davis Buckley Architects and Planners, dated February 28, 2008, in the record at Exhibit 83, as supplemented by the plans dated May 1, 2008, in the record at Exhibit 100 (collectively the "Plans") as modified by the guidelines, conditions, and standards herein.
2. The PUD shall be a mixed-use project, containing a maximum of 1,115,400 square feet of gross floor area, or 4.4 FAR. The PUD shall include at least 569,623 square feet of gross floor area devoted to residential and hotel uses, or 2.25 FAR, including at least 29,000 square feet devoted to housing affordable to households earning a maximum of 80% of Area Median Income. The PUD shall include a maximum of 545,777 square feet of gross floor area, or 2.15 FAR, devoted to commercial uses, including office and retail and service uses. A minimum of 80,000 square feet of gross floor area shall be devoted to retail and service uses.
3. The East Office Building shall have a maximum height of 92 feet. The Residential Building shall have a maximum height of 130 feet. The West Office Building shall have a maximum height of 112 feet. The Hotel Building shall have maximum height of 130 feet.
4. The Applicant shall construct and landscape the open spaces, including the Esplanade, the Cascade Plaza, and Anacostia Place, generally as shown on the Plans.
5. The project shall include a minimum of 1,010 parking spaces in the below-grade parking garage.
6. The project shall provide loading as shown on the Plans. Use of the loading facilities shall be subject to the truck management program set forth in Tab 3 to the Summary of Amenities and Benefits (Exhibit 94).
7. The Applicant shall implement a transportation management plan that shall integrate strategies to reduce single-occupant vehicular trips and promote alternative modes of travel. The transportation management program shall be as set forth in Tab 3 to the Summary of Amenities and Benefits (Exhibit 94).

8. The Applicant shall make a payment in the total amount of \$800,000 to the District for construction, installation, and/or on-going maintenance of the adjacent Diamond Teague Park. The Applicant's contribution shall be made in one payment to the District no later than 60 days after the date this Order is published in the *D.C. Register*, or at a later date as determined by the Deputy Mayor for Planning and Economic Development, or his designee
9. The Applicant shall reserve a minimum of 29,000 square feet of gross floor area in the Residential Building devoted to workforce housing implemented in accordance with the Workforce Housing Program, attached as Tab 1 to the Summary of Amenities and Benefits (Exhibit 94).
10. The project shall obtain LEED certification for each phase of the project. In the event that the Applicant is unable to achieve LEED certification prior to the issuance of a certificate of occupancy for each phase of the project, the Applicant shall post a bond, letter of credit, escrow account, or other similar security ("Security") prior to the issuance of a certificate of occupancy for that phase, in an amount equal to one percent (1%) of the construction cost for that phase of the project shown on the building permit application. When the applicable phase of the project achieves LEED certification, the Security shall be released to the Applicant. In the event that the Applicant does not achieve LEED certification for that phase of the project at the later of 30 months after the date of a certificate of occupancy for that phase or the date that the US Green Building Council determines the building will not obtain certification for that phase, the Security shall be released to the District, in accordance with then applicable laws of the District.
11. The Applicant shall abide by the terms of the executed Memorandum of Understanding with the D.C. Department of Small and Local Business Development attached as Tab 5 to the Summary of Amenities and Benefits (Exhibit 94) to achieve the target goal of 35% participation by Certified Business Enterprises in the contracted development costs in connection with the design, development, construction, maintenance and security for the project to be created as a result of the PUD project.
12. The Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services, attached as Tab 4 to the Summary of Amenities and Benefits (Exhibit 94), to achieve the goal of utilizing District of Columbia residents for at least 51% of the new jobs created by the PUD project. The Applicant shall also abide by the Employment and Skills Training Plan made part of that agreement, also attached as Tab 4 to the Summary of Amenities and Benefits (Exhibit 94).
13. The Applicant shall have flexibility with the design of the PUD in the following areas:
  - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atrium and mechanical

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Gary A. Toell  
Recorder of Deeds, D.C. SEP 04 2008

rooms, elevators, escalators, and toilet rooms, provided that the variations do not change the exterior configuration of the building;

- b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, without a reduction in quality, based on availability at the time of construction;
- c. To vary the location of storefront entrances to the retail spaces as determined by leasing considerations and needs of individual tenants;
- d. To vary the landscaping and bike paths of the Esplanade to coordinate with development of adjacent parcels;
- e. To refine the sculptural centerpiece of Anacostia Place and make adjustments to its size and design so long as it maintains the same general character as shown in the Plans;
- f. To make refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylights, architectural embellishments and trim, or any other changes to comply with the District of Columbia Construction Codes or that are otherwise necessary to obtain a final building permit or any other applicable approvals;
- g. To make refinements to the garage configuration, including layout, number of parking spaces and/or other elements, as long as the project includes a minimum of 1,010 parking spaces; and
- h. To incorporate such items of final engineering design into the final design of the streetscape, such as, but not limited to, code and/or utility required sidewalk gratings, and access manholes and other similar cover plates for utility meters.

14. No building permit shall be issued for any building in the approved PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners(s) and the District of Columbia, that is satisfactory to the Office of the Attorney General for the District of Columbia and the Zoning Division of the Department of Consumer and Regulatory Affairs (“DCRA”). The covenant shall bind the Applicant and all successors in title to construct on and use the PUD Site in accordance with this Order or amendment thereof by the Zoning Commission.

15. The PUD approved by the Zoning Commission 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 Phase One as specified in 11 DCMR § 2409.1. Construction of Phase One shall begin within three years of the effective date of this order. Within two years of the issuance of a certificate of occupancy for Phase One, an application must be filed for

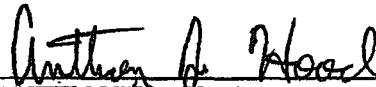
a building permit for Phase Two, and construction of Phase Two shall begin within three years of the issuance of a certificate of occupancy for Phase One. An application for a building permit for Phase Three shall be filed within one year after the later of the completion of the reconstruction of the Frederick Douglass bridge or the completion of the construction of the South Capitol Street Oval. Construction of Phase Three must begin within one year of the issuance of a building permit for Phase Three. Within two years of the issuance of a certificate of occupancy for Phase Three, an application must be filed for a building permit for Phase Four, and construction of Phase Four shall begin within three years of the issuance of a certificate of occupancy for Phase Three.

16. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act"). This Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is prohibited by the Act. In addition, harassment based on any of the above protected categories is 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 March 20, 2008, the Zoning Commission took proposed action to APPROVE the application by a vote of: 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, Curtis J. Etherly, Jr. and Michael G. Turnbull to approve; Peter G. May abstaining).

At its special public meeting on May 22, 2008, the Commission took final action to ADOPT this Order by a vote of: 5-0-0 (Gregory N. Jeffries, Michael G. Turnbull, Anthony J. Hood, Curtis L. Etherly, Jr., and Peter G. May).

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 JUN 27 2008.

  
\_\_\_\_\_  
ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION

  
\_\_\_\_\_  
JERRILY R. KRESS, FAIA  
DIRECTOR  
OFFICE OF ZONING

Surveyor's Office  
DISTRICT OF COLUMBIA

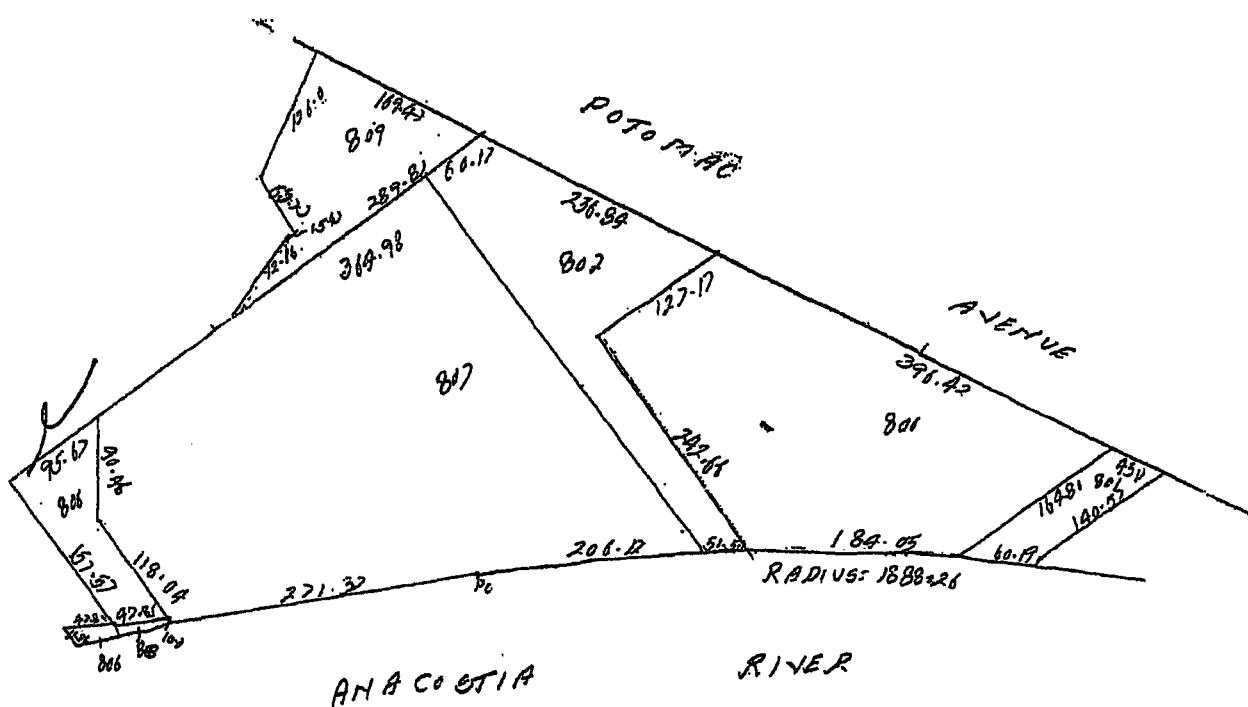
Plat, for Building Permit of SQUARE NO. 107, LOTS 800, 801, 812  
SQUARE NO. 107, LOTS 800, 801, 812  
Recorded in Book 107-23 Page 1198  
Scale 1 inch = 80 feet

Furnished to DAVIS, BUCKLEY ARCHITECTURE  
Architect, District of Columbia  
5/17/5

I hereby certify that all existing dimensions shown herein, are accurately dimensioned and are necessary for the proposed building or structure to be erected on the property described and plotted as above with due consideration for the application; that the boundaries, plots or dimensions shown in drawing, are dimensioned accurately to the same scale as the property lines shown on this plan; and that the proposed improvements will be located on the property as shown on this plan; that the dimensions are not determined for an area but taken as recorded by the Surveyor's Office for lots and boundaries and it is further certified and agreed that unavoidable portions of the property shown on this plan will be removed to accommodate the proposed building as required by the Building Department, and will be restored in accordance with the Building Department's plan of the area to be removed, and dimensioned herein. It is further agreed that the elevation of the drivable parking area will conform to the Highway Department approved curb or drive grade and not exceed a rate of 5% from the elevation of the driveway to the driveway for a distance of 100 feet. The Building Department will not require a radius of 125' at any point for other buildings. The plan of the Highway Department provides a maximum driveway grade of 12% across the public parking and the private recorded property.

Date 5/17/59  
John Miller  
(Signature of surveyor or his authorized agent)

NOTE: DATA SHOWN ON ASSESSMENT AND TAXATION LOTS OR PARCELS ARE FOR RECORDS OF ASSESSOR, D. C.  
BUT DO NOT NECESSARILY AGREE WITH SOLES DESCRIPTION.



Z. C. Case 04-14

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission



RECORDING	\$ 265.00
SURCHARGE	6.50
COPIES	166.50
CERTIFICATION	4.50

Z.C. CASE NO.: 04-14

JUN 20 2008

As Secretary to the Commission, I hereby certify that on \_\_\_\_\_ copies of this Z.C. Order No. 04-14 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. David Briggs, Esq. Holland & Knight, LLP 2099 Pennsylvania Avenue, N.W. Washington, D.C. 20006	5. Gottlieb Simon ANC 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004
2. Robert Moffatt, Chair ANC 6D P.O. Box 71156 Washington, DC 20024	6. Councilmember Tommy Wells
3. Commissioner Rhonda N. Hamilton ANC/SMD 6D06 44 O Street SW, # 12 Washington, 20024	7. Office of Planning (Harriet Tregoning)
4. Commissioner Robert Siegel ANC/SMD 6D07 919 5th St SE Washington, 20003	8. DDOT (Karina Ricks)
	9. Zoning Administrator (Matt LeGrant)
	10. Office of the Attorney General (Alan Bergstein)
	11. General Counsel - DCRA 941 North Capitol Street, N.E. Suite 9400 Washington, D.C. 20002

ATTESTED BY:

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