GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA ZONING COMMISSION ORDER NO. 08-34L
Z.C. Case No. 08-34L
Capitol Crossing III, LLC & Capitol Crossing IV, LLC – 2nd-Stage PUD, Center Block Square 566, Lots 862 and 864[1]

October 21, 2021

Pursuant to notice, at its October 21, 2021, virtual public hearing, the Zoning Commission for the District of Columbia (the "**Commission**") considered an application (the "**Application**") from Capitol Crossing III, LLC and Capitol Crossing IV, LLC (together, the "**Applicant**") for property located at Square 566, Lots 862 and 864 (together, the "**Property**") requesting a second-stage planned unit development ("**PUD**") in accordance with the first-stage PUD approved by Z.C. Order No. 08-34 (the "**First-Stage Order**") under the Zoning Regulations of the District of Columbia (Title 11 of the District of Columbia Municipal Regulations ("**DCMR**"), to which all subsequent citations refer unless otherwise specified) and to approve a special exception pursuant to Subtitle C § 1500.3(c) and X §§ 300.13 and 901 to permit a nightclub ,bar, cocktail lounge, and restaurant uses in the penthouse of the Hotel Building (defined below).

The Commission reviewed the Application pursuant to the Commission's Rules of Practice and Procedures, which are codified in Subtitle Z of the Zoning Regulations. For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

PARTIES

1. The following are automatically parties in this proceeding pursuant to Subtitle Z § 403.5:
   - The Applicant;
   - Advisory Neighborhood Commissions ("**ANC**") 2C and 6C, in which districts the Property is located and so "affected ANCs" pursuant to Subtitle Z § 101.8.

2. The Applicant served a Notice of Intent to file the Application on ANC 2C, ANC 6C, and owners of property within 200 feet of the Property on February 26, 2021, as evidenced by the Certificate of Service included with the Application (Exhibit ["**Ex.**"] 3K).

3. The Commission received no requests for party status in this proceeding.

[1] The original application referenced Lots 861 and 862. However, the Office of Tax and Revenue issued a division of lots disclaimer dated March 30, 2021, which established a new Assessment & Taxation lot number for Lot 861, such that it is now known as Lot 864. The division of lots also reduced the land area of Lot 861 by approximately 68 square feet but otherwise did not impact the lot configuration.

NOTICE

4. On August 10, 2021, the Office of Zoning ("**OZ**") sent a corrected[2] notice of the October 21, 2021, virtual public hearing (Ex. 15A, 16A) to:
   - ANCs 2C and 6C;
   - ANC Single Member District 2C03 and 6C02, in which the Property is located;
   - The Office of Planning ("**OP**");
   - The District Department of Transportation ("**DDOT**");
   - The Department of Energy and the Environment ("**DOEE**");
   - The Office of the Attorney General ("**OAG**");
   - The Department of Consumer and Regulatory Affairs;
   - The Ward 2 Councilmember, whose ward includes the Property;
   - The Ward 6 Councilmember, whose ward includes the Property;
   - The Chair and At-Large members of the District of Columbia Council; and
   - The owners of property within 200 feet of the Property.

5. OZ also published the corrected notice[3] of the October 21, 2021, virtual public hearing in the *D.C. Register* on August 20, 2021, (68 DCR 34) as well as through the calendar on OZ's website. (Ex. 14A, 15A.)

PRIOR APPROVALS

6. Pursuant to the First-Stage Order (Ex. 3A), the Commission approved the overall Capitol Crossing development project, which included the following:
   - A first-stage PUD for land and air rights above the Center Leg Freeway in an area generally bounded by Massachusetts Avenue, NW to the north, 2nd Street, NW to the east, E Street, NW to the south, and 3rd Street, NW to the west (the "**Overall PUD Site**") (the "**First-Stage PUD**");
   - A consolidated PUD for the platform and the North Block (hereinafter defined) (the "**Consolidated PUD**");[4] and
   - A Zoning Map amendment to the C-4 District for the Overall PUD Site. The approved development of the Overall PUD Site is hereinafter referred to as the "**Overall Project**."

[2] OZ sent an original notice of public hearing on July 19, 2021 (Ex. 15, 16), which was superseded by the corrected notice. The corrected notice of pubic hearing modified the original notice by (i) identifying the correct lot numbers for the Property; (ii) correctly stating the height of the Commercial Building (herein defined); and (iii) correctly identifying the flexibility requested for the terrace above the podium.

[3] OZ published the original notice of public hearing in the D.C. Register on July 30, 2021 (68 DCR 31).

[4] The consolidated PUD included (i) the entire platform and base infrastructure; (ii) the mix of uses, height, and density of each building, and the site plan for the Overall Project; (iii) the North Block; (iv) the construction of all below-grade parking, concourse, and service levels; and (v) the landscaping and streetscape design for the Overall Project.

7. The First-Stage Order established three segments for the Overall PUD Site: Square 564, Lots 858 and 859 (the "**North Block**"), Square 566, Lots 860-863 and 7000 (the "**Center Block**"), and Square 568, Lots 862-864 and 7000 (the "**South Block**").[5]

8. The First-Stage Order approved an approximate gross floor area ("GFA") of 2,226,625 square feet for the Overall Project, or 8.74 floor area ratio ("**FAR**") based on the Overall PUD Site, including:
   - Approximately 1,910,386 square feet of GFA devoted to office uses;
   - A minimum of 62,687 square feet of GFA devoted to retail uses;
   - Approximately 180,384 square feet of GFA devote to residential uses; and
   - Approximately 73,168 square feet of GFA devoted to institutional uses related to the Holy Rosary Church ("**HRC**") and the Jewish Historical Society ("**JHS**).

9. The First-Stage PUD included the following approvals for the Property:
   - Lot 861 (now known as Lot 864) was approved to be developed with a new commercial building containing office use with ground floor retail (the "**Commercial Building**"). The Commercial Building was approved to have approximately 297,311 square feet of GFA devoted to office and ground-floor retail uses, and a maximum building height of 130 feet and 12 stories; and
   - Lot 862 was approved to be developed with a new residential building with ground floor retail (the "**Residential Building**"). The Residential Building was approved to have approximately 180,384 square feet of GFA devoted to approximately 150 units and ground-floor retail.
   - All of the components within the Center Block, which include the Commercial Building, the Residential Building, and facilities for the HRC, were approved to be connected internally at or above the level of the main floor to form a single building with frontage on 3rd Street, NW. Based on the Center Block's frontage on 3rd Street, NW, which has a right-of-way width of 110 feet, the Center Block building was entitled to a maximum height of 130 feet under the 1910 Height Act and the C-4 Zone District.

10. The First-Stage Order also approved:
    - A total of 1,146 parking spaces for the Overall Project, located in the shared below-grade parking garage; and
    - One 55-foot loading berth with one 200 square foot platform, eight 30-foot loading berths with eight 100 square foot platforms, and four service delivery spaces, all located within the below-grade loading facility.

11. Pursuant to Z.C. Case No. 08-34A, the Commission approved a second-stage PUD for development of a portion of the South Block;

12. Pursuant to Z.C. Case No. 08-34B, the Commission approved a time extension for portions of the Consolidated PUD;

[5] Pursuant to the Theoretical Lot Disclaimer, Lot 861 became Lot 864; Lot 863 became Lot 865; and Lot 7000 became Lot 7001.

13. Pursuant to Z.C. Case No. 08-34C, the Commission approved a second-stage PUD for the portion of the Center Block involving the HRC facilities;[6]

14. Pursuant to Z.C. Case No. 08-34E, the Commission approved modifications to the Consolidated PUD for the North Block;

15. Pursuant to Z.C. Case No. 08-34F, the Commission approved modifications to the second-stage PUD for a portion of the South Block approved by Z.C. Order 08-34A;

16. Pursuant to Z.C. Case No. 08-34G, the Commission approved additional modifications to the Consolidated PUD for the North Block, as previously modified by Z.C. Order No. 08-34E;

17. Pursuant to Z.C. Case No. 08-34H, the Commission approved a second-stage PUD for a portion of the South Block;[7]

18. Pursuant to Z.C. Case No. 08-34K, the Commission approved a modification of significance to the First-Stage PUD to permit office, hotel, and/or college/university educational uses in the Commercial Building.

II. THE APPLICATION

19. The Application (Exs. 1-4) filed on April 23, 2021, requested:
    - Second-stage PUD approval for the Residential Building and Commercial Building; and
    - A special exception pursuant to Subtitle C § 1500.3 and Subtitle X § 901.2 to authorize restaurant/bar uses for the penthouse of the Commercial Building.

SECOND-STAGE PUD APPLICATION

20. The Application proposed a second-stage PUD for the Property consistent with the First-Stage Order, with no change to maximum GFA, FAR, or building heights approved for the Property in the First-Stage Order, as modified by Z.C. Order No. 08-34K, to develop the Property with two distinct towers comprised of the Commercial Building, which the Applicant confirmed would be devoted to lodging use (hereinafter referred to as the "**Hotel Building**"), and the Residential Building, connected through a shared two-story podium (the "**Podium**") and considered a single building for zoning purposes (the Podium, Hotel Building, and Residential Building hereinafter referred to as the "**Building**");

[6] Z.C. Case No. 08-34D, originally filed as a first-stage PUD modification for the HRC, was withdrawn and consolidated with Z.C. Case No. 08-34C.

[7] Z.C. Case No. 08-34I, originally filed as a modification of consequence to the First-Stage PUD to convert the Residential Building to hotel use, was withdrawn.

Z.C. Case No. 08-34J, originally filed as a modification of consequence to the First-Stage PUD to permit office, hotel, and/or educational uses in the Commercial Building, was withdrawn and refiled as a modification of significance decided in Z.C. Case No. 08-34K.

21. The Application proposed that the Podium would include the following:
    - Approximately 20,567 square feet of ground floor retail;
    - Residential and hotel amenity spaces and an exterior terrace at the second level;
    - A lobby for the Residential Building fronting on G Street, a primary lobby for the Hotel Building on F Street, and a north-south connection to provide access to the Hotel Building from G Street;
    - A material palette comprised of white finished precast concrete, glass and aluminum storefronts, and bronze colored accents.

22. The Application proposed that the Hotel Building would include the following:
    - A maximum building height of 130 feet;
    - Approximately 234,837 square feet of GFA devoted to hotel use and approximately 8,945 square feet in the penthouse devoted to a bar/restaurant use;
    - Approximately 221 hotel rooms; and
    - A design that would achieve LEED Platinum under LEEDv.3 for Building Design and Construction, consistent with the LEED requirement set forth in the First-Stage Order.

23. The Application proposed that the Residential Building would include the following:
    - A maximum building height of 130 feet;
    - Approximately 178,627 square feet of GFA devoted to residential use and approximately 7,120 square feet in the penthouse devoted to residential amenity space;
    - Approximately 166 residential units, of which 50 units would be affordable according to the terms set forth in the First-Stage Order; and
    - A design that would achieve LEED Gold under LEEDv.3 for Building Design and Construction, consistent with the LEED requirement in the First-Stage Order.

24. The shared below-grade garage was approved as part of the Consolidated PUD in the First-Stage Order, as modified in Z.C. Case No. 08-34E to correspond with the re-aligned highway portal system approved as part of the federal Environmental Impact Statement. As of the filing date of the Application, the garage had been fully constructed to span the entire Capitol Crossing development project and serve development on the North, South, and Center Blocks. The below-garage includes:
    - 1,146 total parking spaces, with vehicular access from 3rd Street and G Street;
    - 440 long-term bicycle parking spaces;
    - One 55-foot loading berth with a one 200 square foot platform, eight 30-foot loading berths with 100 square foot platforms, and four service/delivery spaces, all with access from E Street;
    - Direct elevator access into the Building.

25. The public space improvements for the Overall Project, including for the Center Block, were approved by the DDOT Public Space Committee in 2018. The Application did not propose changes to the approved public space plans, other than the following:
    - Removal of two of the four planters in front of the Hotel Building's south lobby entrance and reallocating the distance between the remaining two planters, and slightly reducing the length of the planters;

- Incorporation of a layby adjacent to the parking lane on F Street; and
- Incorporation of a canopy at the entrance to the Hotel Building.

Zoning Flexibility

26. The Application requested second-stage PUD approval for the Building, which request did not include any additional areas of zoning flexibility that were not already granted by the First-Stage Order.

Design Flexibility

27. The Applicant requested the same design flexibility that was approved in the First-Stage Order, as modified in Z.C. Order No. 08-34E, with the exception of subsection (f) which is copied below but was no longer necessary because the I-395 ramp system had already been completed:
    a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
    b. To make refinements to the garage configuration, including layout, parking spaces and other elements, so long as the total number of parking spaces provided meets the number of spaces required by Z.C. Order No. 08-34 (i.e., 1,146 spaces in the below-grade, consolidated parking area);
    c. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of materials;
    d. To vary the location, attributes and general design of the public spaces and streetscapes incorporated in the project to comply with the requirements of and the approval by the DDOT Public Space Division.
    e. To locate retail entrances in accordance with the needs of the retail tenants and to vary the façades[8];
    f. To vary components of the project to coordinate or comply with modifications to the I-395 ramp systems resulting from the environmental review process required by the National Environmental Policy Act, including but not limited to modifications to ramp systems and freeway configuration, so long as such changes do not change the exterior configuration of the buildings or modify the site plan for the Overall Project; and
    g. To make minor refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, window mullions and spacing, or any other changes to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit or any other applicable approvals.

28. The Applicant also requested additional areas of design flexibility for the Building:

[8] The reference to the "Kit of Parts identified in Condition Nos. A.11 and A.12 [of Z.C. Order No. 08-34E]" has been deleted because it does not apply to the Center Block. The reference to the flexibility "to locate retail or service uses where 'retail' is identified and to locate retail, service or office uses where 'retail/office' is identified" has also been deleted because it does not apply to the Center Block and the proposed flexibility set forth in Finding of Fact No. 28(d) provides the flexibility for the types of retail uses permitted.

a. Podium: Flexibility for the use of the terrace above the two-story podium between the Residential and Hotel Buildings to be green roof or usable outdoor terrace space.
b. Exterior Courtyards and Rooftop: To vary the configuration, layout, and design of the exterior courtyards and rooftops, including the amenities provided, so long as the courtyards and rooftops continue to function in a similar manner proposed and the overall design intent, general locations for landscaping and hardscaping, and quality of materials are maintained;
c. Retail Square Footage: To increase or decrease the amount of ground floor retail in the Residential and Hotel Buildings, so long as a minimum of 62,687 square feet of retail GFA is provided across the Overall PUD Site;
d. Retail Uses: To vary the types of uses designated as retail use to include the following use categories (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j)); (v) Medical Care (11-B DCMR § 200.2(p)); and (vi) Arts, Design, and Creation (11-B DCMR § 200.2(e)); and
e. Number of Residential Units and Hotel Rooms: To provide a range in the approved number of residential dwelling units and hotel rooms of plus or minus ten percent (10%).

Project Phasing

29. The Application requested the following phasing plan for the Property:
    - Approval of the Podium and Residential Building shall be valid for a period of two years from the effective date of the Order. Within that time, the Applicant shall file a building permit application(s) for the Podium and the Residential Building. The Applicant shall begin construction of the Podium and Residential Building within three years of the effective date of the Order. Approval of the Hotel Building shall be valid for a period of two years following issuance of the first Certificate of Occupancy for the Podium or Residential Building. Within that time, the Applicant shall file a building permit application for the Hotel Building. The Applicant shall begin construction of the Hotel Building within three years following issuance of the first Certificate of Occupancy for the Podium or Residential Building.

SPECIAL EXCEPTION RELIEF

30. The Application requested special exception relief pursuant to Subtitle C § 1500.3(c) and Subtitle X § 901.2, and not as PUD zoning flexibility, to permit "nightclub, bar, cocktail lounge, and/or restaurant" uses within the penthouse of the Hotel Building.

APPLICANT'S SUBMISSIONS

The Prehearing Submission

31. The Applicant filed a Prehearing Submission on July 14, 2021, which responded to comments raised by OP and the Commission at setdown and provided the following information: (Ex. 12-13)

- A summary of each Zoning Commission case that was approved for the Overall PUD Site following approval of the First-Stage Order;
- Images depicting the pedestrian experience along 2nd Street, NW, and an explanation as to how the Building's ground floor was designed to enliven the streetscape, improve the pedestrian experience, and provide architectural interest;
- A summary of the previously-approved public space improvements and the minor updates proposed by the Application; and
- An update on the Applicant's continued engagement with the affected ANCs.

The Comprehensive Transportation Review

32. The Applicant filed a Transportation Statement dated September 2, 2021, and prepared by Wells + Associates ("**Transportation Statement**"), which concluded that: (Exs. 21-21A)
    - The Application would generate three fewer morning peak hour trips and 20 fewer afternoon peak hour trips compared to the First-Stage PUD for the Center Block;
    - Parking and loading for the hotel, residential, and retail uses on the Center Block would be served by the existing below-grade parking and shared loading facilities for the Overall Project;
    - The curbside management plan for the Overall Project provides accommodations for on-street parking, short-term deliveries, and pick-up/drop-off activity.
    - The Application includes a number of features that support the District's Vision Zero initiatives, including construction of sidewalks along 2nd Street, bulb outs on Massachusetts Avenue, and accommodations for short-term deliveries and pick-up/drop-off activity.
    - In accordance with the Consolidated PUD, the Applicant is required to implement a Transportation Management Plan ("**TMP**"), including Transportation Demand Management ("**TDM**") measures and conduct a Transportation Performance Monitoring Plan ("**PMP**") two years after lease-up of each building.

The Supplemental Prehearing Submission

33. The Applicant filed a Supplemental Prehearing Submission on September 29, 2021, which provided the following: (Ex. 22)
    - Updated drawings to reflect the proposed layby and canopy on the north side of F Street for the Hotel Building;
    - Responses to comments made by DOEE, including the following:
        - DOEE requested that the Applicant pursue LEED Platinum on both buildings. The Applicant responded that it will design the Hotel Building to achieve LEED Platinum and it will design the Residential Building to achieve LEED Gold. While is the Applicant's goal to achieve many points as possible for the Residential Building, it is not committing to more than LEED Gold v.3 for the Residential Building at this time, consistent with the First-Stage Order.
        - DOEE requested that the Applicant consider LEED for Neighborhood Development certification for the Capitol Crossing development as a whole. The Applicant responded that the Overall Project is already part of a LEED Master Site, which includes recognition of the environmental benefits associated with the design and construction of the platform and below-grade

infrastructure, and accounts for site-wide groundwater recovery and stormwater management strategies, among others. The Applicant, with input from the U.S. Green Business Council, determined early in the PUD process that this campus/Master Site approach was more feasible and applicable to the Overall Project than the LEED for Neighborhood Development ("**ND**") rating system because the latter would not sufficiently credit all of the infrastructure development associated with the project or its dense, urban location that has extensive amenities such as public transportation and bicycle facilities. The Applicant noted that applying LEED ND retroactively would also pose issues.

- DOEE requested that the Applicant enhance energy performance by considering the elimination of on-site combustion of fossil fuels and incorporating efficient electric systems. The Applicant responded that it has maximized energy performance for the Residential and Hotel Buildings, including incorporation of a variety of highly energy-efficient systems, such as a four-pipe fan coil unit system with added energy recovery units for ventilation. The Applicant is also studying other opportunities to increase electric option but is unable to commit to all-electric.
- DOEE requested that the Applicant explore net-zero energy construction. The Applicant provided additional information regarding the various energy efficient systems included in the Building and the Applicant's holistic sustainability approach to development of the Overall PUD Site. The Applicant specifically noted its incorporating of the three pillars of net-zero energy design of the project.
- DOEE requested that the Applicant integrate solar photovoltaic ("**PV**") arrays into green roofs or plan for solar-ready roofs. The Applicant responded that it proposes PV panels on the Residential Building roof top in an area of approximately 2,000 square feet. The Applicant will install infrastructure that will make the roof of the Hotel Building be solar ready should the Applicant choose to install PV panels in the future.
- DOEE requested that the Applicant assess how climate change will affect the project and to incorporate resilient design strategies. The Applicant responded that it has designed the Building to address climate change and resiliency through a variety of sustainable design features and best practices and provide examples of the same.
- DOEE requested that the Applicant maximize solar energy generation by also integrating a solar PV array into the hotel's green roof to maximize GAR. The Applicant responded that the Building is exempt from GAR.
- DOEE requested that the Applicant exceed the minimum stormwater retention requirements. The Applicant provided details as to the designed and constructed stormwater management systems as part of the Overall PUD Site.

- Additional information regarding the Applicant's community engagement.

Applicant's Public Hearing Presentation

34. At the October 21, 2021, virtual public hearing, the Applicant proffered and was granted expert status for:
    - Thomas Wong of Ennead Architects in architecture; and

- Jami Milanovich of Wells + Associates in transportation planning.

35. The Applicant made an abbreviated presentation as the request of the Commission, including:
    - Presenting background of the Overall Project as well as the design of the Building, including excerpts from the final set of plans previously submitted to the case record; (Ex. 29) and
    - Providing testimony from the following witnesses:
        - Thomas Wong of Ennead Architects as an expert in architecture;

36. The Applicant provided the following information in response to questions from the Commission:
    - Clarifications regarding the materials of the Building;
    - Clarifications regarding the sustainable features, including responses to DOEE comments;
    - Clarifications regarding the balconies provided; and
    - Clarifications regarding the affordable housing.

37. At the conclusion of the virtual public hearing, the Commission closed the hearing and took final action to approve the Application.

APPLICANT'S JUSTIFICATION OF RELIEF

Second-Stage PUD

38. The Application asserted that it is in compliance with the intent and purpose of the Approved First-Stage PUD and does not require a reevaluation of the PUD criteria pursuant to Subtitle X § 304.3 because:
    - The Application is within the parameters approved by the First-Stage PUD for the Property and does not make any material changes to the approved First-Stage PUD;
    - The Application does not propose any material changes to the Commission's determination that the First- Stage PUD was not inconsistent with the Comprehensive Plan (the "**CP**");
    - The Application does not result in any potential adverse impacts that are not capable of mitigation and that would affect the PUD balancing test used by the Commission in the First-Stage Order;
    - The Application does not change any of the requested flexibility or proffered public benefits in a way that would require the Commission to reevaluate the PUD balancing test; and
    - The proposed second-stage PUD for the Property is consistent with the intent and purposes of the approved First-Stage PUD for the Property.

Special Exception – Restaurant/Bar Uses in Penthouse

39. The Application asserted that the proposed uses for the penthouse will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend

to affect adversely the use of neighboring property, in compliance with the special exception standards of Subtitle C § 1500.3 and Subtitle X § 901.2.

40. The Application provided evidence that restaurant/bar uses proposed for the penthouse would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map because:
    - The zone in which the Hotel Building is located permits a variety of commercial uses, including bar and restaurant uses, and similar uses are located throughout the immediately surrounding neighborhood.
    - The proposed use would permit hotel guests and the general public to take advantage of the penthouse space, which would offer unique views from the top of the Capitol Crossing development project, overlooking the city.
    - The proposed use is consistent with the goals of the penthouse regulations to generate an affordable housing contribution.
    - The penthouse structures would comply with all height, bulk, and setback standards of Subtitle C § 1500.

41. The Application also provided evidence that the proposed restaurant/bar uses would not tend to affect adversely the use of neighboring property because:
    - The area immediately surrounding the Center Block is primarily developed with commercial uses, including the office buildings within the North Block to the north, the Georgetown University Law Center to the east, the office and institutional uses within the South Block to the south, and the HRC and other office/institutional uses to the west.
    - The outdoor portion of the penthouse habitable space would be located on the south side of the Hotel Building, which is the farthest side from the Residential Building.
    - The bar/restaurant use in the penthouse would be operated so as not to impact the hotel guests within the Hotel Building or the Residential Building to the north.
    - The majority of patrons visiting the bar/restaurant use would likely be neighborhood residents, visitors staying at the hotel, and/or employees of the surrounding office/institutional buildings, and therefore would not create adverse impacts related to additional traffic or parking.
    - Most patrons would be expected to walk, bike, or take public transportation to the penthouse given the highly walkable, mixed-use, and transit-oriented location of the Property.

III. RESPONSES TO THE APPLICATION

OP

42. OP submitted a report dated May 28, 2021 (Ex. 11, the "**OP Setdown Report**") that:
    - Concluded that:
        - The Application was not inconsistent with the First-Stage Order or the CP, and that it would further a number of specific CP policies;
        - The Building would meet all development standards of the Zoning Regulations;
        - The benefits and amenities for the Overall Project were proffered as part of the First-Stage PUD, that the Application did not propose any changes to the

previously approved benefits and amenities package, and that the Application furthers the previously-approved benefits and amenities;

- Recommended the Commission setdown the Application for a public hearing; and
- Requested that the Applicant provide additional information about the Application regarding the proposed public space design and building projections.

43. OP submitted a report dated October 12, 2021 (Ex. 25, the "**OP Hearing Report**") that:
    - Stated that OP has solicited comments from DOEE, DDOT, Department of Housing and Community Development, Department of Public Works, Department of Parks and Recreation, DC Public Libraries, DC Public Schools, Fire and Emergency Medical Services Department, Metropolitan Police Department, and DC Water.
    - Noted that OP held an inter-agency meeting on August 25, 2021 and staff from DDOT, DOEE, DC Water, DHCD, and OP's Design Division were in attendance.
    - Concluded that:
        - The Application is consistent with the First-Stage PUD approval or the CP;
        - The Applicant is consistent with the CP as previously evaluated and furthers a number of the CP's policies based on an updated evaluation of the CP;
        - The Application, when evaluated through a racial equity lens, provides housing, affordable housing, economic opportunities, urban connectivity, and environmental benefits for District residents;
        - The Applicant does not propose any changes to the previously approved benefits and amenities package and does not request any additional zoning flexibility; and
        - The proposed restaurant/bar would not adversely affect the use of neighboring properties.
    - Recommended approval of the Application.

44. At the October 21, 2021, virtual public hearing, OP testified in support of the Application. In response to the Commission's question, OP summarized its conclusions based on an evaluation of this zoning action through a racial equity lens as part of the OP's CP consistency analysis.

DDOT

45. DDOT submitted a report dated October 11, 2021 (Ex. 26, the "**DDOT Report**") that:
    - Concluded
        - Vehicular access and parking, long-term bicycle parking, and loading were previously approved by in the First-Stage Order, and access to parking and loading were previously approved in the First-Stage Order;
        - Hotel passenger loading is proposed through a 100-foot layby on the north side of F Street, NW, and a building canopy is proposed for this entrance;
        - The required number of short-term bike parking spaces are provided;
        - New sidewalks around the perimeter of the Center Block have been constructed along 2nd Street, F Street, and G Street in accordance with the Streetscape Plan for the Overall Project, which was approved by the Public Space Committee in October 2017;

- The proposed project is expected to generate three (3) fewer AM peak hour vehicle trips than the project as originally approved in the First-Stage Order, prior to the modification in Order No. 08-34K, and 20 fewer PM peak hour vehicle trips. The change in trip generation would not have a measurable impact on the surrounding transportation network therefore the Applicant was not required to conduct a Traffic Impact Analysis (TIA).
- The Applicant has not submitted any performance monitoring reports under the PMP as set forth in the TMP in the First-Stage Order.
- The TMP, including the PMP, should be incorporated as conditions into the approval of the Application.

- DDOT, therefore, had no objection to the Application with the following conditions:
  - The Center Block will participate in the TMP set forth in the First-Stage Order, as outlined in the Transportation Statement (Ex. 21A), including both the TDM and PMP; and
  - Prior to issuance of Certificate of Occupancy for the Building, the Applicant will initiate the PMP for the Overall Project. At that time, the Applicant will submit and receive concurrence from DDOT on the parameters of the TMP, TDM, and PMP, which were not defined in detail in the First-Stage Order or subsequent second-stage PUDs for the North and South Blocks.

46. At the October 21, 2021, virtual public hearing, DDOT testified in support of the Application and agreed to a revised condition coordinated between the Applicant and DDOT:
    - Prior to issuance of Certificate of Occupancy for the Center Block, the Applicant shall submit a letter to DDOT stating the occupancy levels of each block of the Capitol Crossing development (North, Center, and South) and will submit an updated letter annually until all three blocks reach 80% occupancy. At such time that an individual block reaches 80% occupancy, the PMP set forth in the approved TMP will begin for the block(s) at or above 80% occupancy. As additional blocks reach 80% occupancy, those blocks will be included in the PMP. Prior to commencing the PMP, the Applicant and DDOT will agree on reasonable, specific requirements that will be included in the PMP.

ANC 2C

47. ANC 2C submitted a resolution dated September 30, 2021, (the "**ANC 2C Report**") stating that at a duly noticed and regularly scheduled public meeting, with a quorum of three out of three commissioners present, ANC 2C voted to: (Ex. 23)
    - Support the Application;
    - Indicate that it was pleased with the high-quality architectural design and materiality of both the Hotel Building and Residential Building;
    - Concluded that the residential and lodging uses appropriately complement the surrounding office and institutional uses both within the Overall PUD Site and in the surrounding area;
    - Support the affordable housing component of the Residential Building;
    - Support the revised layby design and canopy proposed for the hotel entrance on F Street; and

- Recommend that the Commission approve the Application.

48. ANC 2C did not attend the virtual public hearing.

ANC 6C

49. ANC 6C submitted a resolution dated October 21, 2021, (the "**ANC 6C Report**") stating that at a duly noticed and regularly scheduled public meeting, with a quorum of six out of six commissioners present, ANC 6C voted to: (Ex. 30)
    - Support the Applicant and recommend that the Commission approve it; and
    - Require one condition to prohibit the use of any amplification device on (or to project sound into or onto) the roof terrace of the Hotel Building.

50. At the October 21, 2021, virtual public hearing, ANC 6C testified in support of the Application with the one condition, which was agreed to by the Applicant.

OTHER RESPONSES

51. The Commission received no responses to the Application from any other person or entity.

52. No other person or entity testified at the virtual public hearing.

CONCLUSIONS OF LAW

AUTHORITY

1. Pursuant to the authority granted by the Zoning Act (June 20, 1938, 52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may approve a PUD and modifications to an approved PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z § 704. 2.

2. Pursuant to Subtitle X § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:
   a. Results in a project superior to what would result from the matter-of-right standards;
   b. Offers a commendable number or quality of meaningful public benefits; and
   c. *Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan*.

3. Pursuant to Subtitle X § 304.3, in evaluating a proposed PUD, the Commission shall: *Judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.*

4. Pursuant to Subtitle X § 304.4, to approve a proposed PUD, the Commission must determine that the proposed development:
   a. Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;

b. *Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and*
c. *Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site*.

5. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the CP's purposes as:
   a. *To define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;*
   b. *To guide executive and legislative decisions on matters affecting the District and its citizens;*
   c. *To promote economic growth and jobs for District residents;*
   d. *To guide private and public development in order to achieve District and community goals;*
   e. *To maintain and enhance the natural and architectural assets of the District; and*
   f. *To assist in conservation, stabilization, and improvement of each neighborhood and community in the District.*

6. In determining whether a PUD is not inconsistent with the CP, the Commission shall balance the various elements of the CP. The D.C. Court of Appeals discussed this balancing test in its review of the PUD and related Zoning Map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (Z.C. Order No. 13-14(6)):

> The Comprehensive Plan is a 'broad framework intended to guide the future land use planning decisions for the District.' *Wisconsin-Newark Neighborhood Coal. v. District of Columbia Zoning Comm'n*, 33 A.3d 382, 394 (D.C. 2011) (internal quotation marks omitted). '[E]ven if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.' *Durant v. District of Columbia Zoning Comm'n*, 65 A.3d 1161, 1168 (D.C. 2013). The Comprehensive Plan reflects numerous 'occasionally competing policies and goals,' and, '[e]xcept where specifically provided, the Plan is not binding.' *Id*. at 1167, 1168 (internal quotation marks omitted). Thus 'the Commission may balance competing priorities' in determining whether a PUD is consistent with the Comprehensive Plan as a whole.' *D.C. Library Renaissance Building/West End Library Advisory Grp. v. District of Columbia Zoning Comm'n*, 73 A.3d 107, 126 (D.C. 2013). '[I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they are outweighed by other, competing considerations.'" (*Friends of McMillan Park v. District of Columbia Zoning Comm'n,* 149

A.3d 1027, 1035 (D.C. 2016) (internal quotation marks and references omitted).)

7. Pursuant to Subtitle X § 302.2, "[a] two-stage [PUD] application has two (2) parts as follows:

- The first-stage application involves general review of the site's suitability as a PUD and any related map amendment; the appropriateness, character, scale, height, mixture of uses, and design of the uses proposed; and the compatibility of the proposed development with the Comprehensive Plan, and city-wide, ward, and area plans of the District of Columbia, and the other goals of the project; and
- The second-stage application is a detailed site plan review to determine transportation management and mitigation, final building and landscape materials and compliance with the intent and purposes of the first-stage approval, and this title." (emphasis added)

8. Pursuant to Subtitle A § 102, the First-Stage PUD approved by the First-Stage Order is vested under the 1958 Zoning Regulations under which it was approved and is subject to those rules except that any modification shall be subject to the current Zoning Regulations.

9. Pursuant to Subtitle X § 309.2, if the Commission finds an application for a second-stage PUD is in accordance with the intent and purpose of the Zoning Regulations, of the PUD process, and of the first-stage PUD approval, the Commission shall grant approval to the second-stage PUD application, including any guidelines, conditions, and standards that are necessary to carry out the Commission's decision.

SECOND-STAGE PUD

10. Based on the case record and the Findings of Fact above, the Commission concludes that the Applicant's proposed Second-Stage PUD, pursuant to the Approved First-Stage PUD Order complies with the applicable standards as discussed below, as confirmed by OP's findings and analysis in the OP Hearing Report.

In Accordance with the Zoning Regulations

11. The Commission concludes that the Application is in accordance with the intent and purpose of the Zoning Regulations applicable to the Center Block.

In Accordance with the PUD Process

Not Inconsistent with the CP (Subtitle X § 304.4(a))

12. The Commission concludes that the Application does not change to the Commission's determination in the First-Stage Order that the Overall Project, including the Building, is not inconsistent with the CP.
13. While no additional CP analysis is required based on the Commission's past determination under the First-Stage Order, the Commission appreciates OP's further evaluation of the Application's consistency with the CP through a racial equity lens and continues to conclude that the Application is not inconsistent with the CP.

Potential Adverse Impacts of the Second-Stage PUD - How Mitigated or Outweighed (Subtitle X §§ 304.3 & 304.4(b))

14. The Commission concludes that the Application will not result in any potential adverse impacts that cannot be mitigated or outweighed because:

- The Application was distributed to all relevant District agencies, which were given an opportunity to provide feedback on the Application and, as noted in the OP Reports and testimony at the virtual public hearing, the Applicant fully addressed all issues raised by District Agencies, including those raised by DOEE.
- In terms of the potential traffic impacts that may result specifically from the Buildings, the Commission concludes that the Applicant's proposed TDM plan, as amended and approved by DDOT, will sufficiently mitigate these potential impacts; and
- The introduction of 166 new residential units, including 50 affordable housing units as approved in the First-Stage Order, will have a positive impact on the neighborhood and the District as a whole by providing additional housing and affordable housing.
- The Commission therefore finds that the Application will not result in a change to the potential adverse impacts of the Overall Project that the Commission considered in the Original Order

Requested Flexibility Balanced by Public Benefits (Subtitle X § 304.3)

15. The Commission concludes that the Application did not request any additional PUD flexibility that would require the Commission to rebalance the flexibility against the public benefits, or require additional public benefits, since the special exception for the penthouse restaurant/bar uses is analyzed separately below.

In Accordance with the First-Stage Approval

16. The Commission concludes that the proposed Second-Stage PUD for the Building because the Application is consistent with the First-Stage Order, as modified by Z.C. Order No. 08-34K, based on the materials submitted by the Applicant in the case record, the OP and DDOT Reports, and the testimony provided at the virtual public hearing because:

- The Applicants proposed development of the Building carries out the purposes of Subtitle X, Chapter 3, 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;
- The Application is in accordance with the Commission's purposes and goals in granting the Approved First-Stage PUD; and
- The potential adverse impacts created by the proposed Second-Stage PUD for the Building are limited to transportation impacts that the Commission concludes will be sufficiently mitigated by the TMP approved by DDOT.

SPECIAL EXCEPTION - PENTHOUSE RESTAURANT/BAR USE (SUBTITLES C § 1500.3(C) & X §§ 303.13 & 901.2)

17. Subtitle X § 303.13 authorizes the Commission to grant special exception relief as part of a PUD, upon demonstration of compliance with the general special exception standards of Subtitle X § 901.2 that the proposed relief:

- Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
- Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- Will meet such special conditions as may be specified in this title.

18. For the Application's requested special exception relief pursuant to Subtitle C § 1500.3(c), there are no special conditions specified elsewhere in the Zoning Regulations
19. The Commission concludes that the Application demonstrated compliance with the general special exception criteria that the proposed penthouse bar/restaurant uses will not tend to adversely affect the use of neighboring property and will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map because the penthouse bar/restaurant uses:

- Would create a unique and enjoyable space at the top of Hotel Building in the Capitol Crossing development and would not create any adverse effects
- Are consistent with the goals of the penthouse regulations to general an affordable housing contribution;
- Will be located in a penthouse that complies with all height, bulk, and setback standards set forth in Subtitle C § 1500
- Will be located in an area that is primarily developed with commercial uses and is located on the south side of the Hotel Building, which is the farthest side from the Residential Buildings; and
- Will not likely cause transportation impacts because most patrons of the penthouse bar/restaurant uses will likely be neighborhood residents, visitors staying at the hotel, and/or employees of the surrounding office/institutional buildings or would be patrons would be expected to walk, bike, or take public transportation to the penthouse given the highly walkable, mixed-use, and transit-oriented location of the Property, and therefore would not create adverse impacts related to additional traffic or parking.

GREAT WEIGHT TO THE RECOMMENDATIONS OF OP

20. The Commission must give "great weight" to the recommendation of OP pursuant to § 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 (2018 Repl)) and Subtitle Z § 405.8. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
21. The Commission finds persuasive OP's analysis of the Application in the OP Hearing Report and its recommendation that the Commission approve the Application and therefore concurs in that judgment.
22. The Commission also concludes that the Applicant has fully responded to the comments from DOEE. In addition, the Commission concludes that no additional benefits or amenities are required because the Applicant is consistent with the First-Stage Order and does not request any additional zoning flexibility such that the Commission's review does not involve a re-balancing of the relative value of the public benefits and amenities (such as an increase proffer in environmental benefits) with the degree of development incentives requested and potential adverse effects.

GREAT WEIGHT TO THE RECOMMENDATIONS OF THE ANCS

23. The Commission must give "great weight" to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." (*Wheeler v. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted)).

24. The Commission finds the ANC Report persuasive in its support of the Application, in particular the ANC's support for the change from residential to office use, and recommendation for approval and concurs in that judgement.

DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application for:

- A Second-Stage PUD for Square 566, Lots 862 and 864, in accordance with the First-Stage PUD approved in the First-Stage Order, as modified by Z.C. Order No. 08-34K; and
- Special exception pursuant to Subtitles C § 1500.3(c) and X §§ 303.13 and 901 to permit nightclub, bar, cocktail lounge, and restaurant uses in the Hotel Building's penthouse.

subject to the applicable conditions of the First-Stage Order Z.C. Order No. 08-34K, except as modified and supplemented by the following guidelines, conditions, and standards.

I. SECOND-STAGE PUD PROJECT DEVELOPMENT

A. Project Development

1. The second-stage PUD for the Property shall be developed substantially in accordance with the plans in the record of Z.C. Case No. 08-34L at Exhibit 22A1 through 22A10, as modified by the guidelines, conditions, and standards herein (collectively, the "**Approved Plans**").

2. As shown on the Approved Plans, the Residential Building shall be constructed to the following standards:
    a. A maximum building height of 130 feet;
    b. Approximately 178,627 square feet of GFA devoted to residential use and approximately 7,120 square feet in the penthouse devoted to residential amenity space;

c. Approximately 166 residential units, of which 50 units would be affordable according to the terms set forth in Decision No. B.22 of the First-Stage Order;
d. A design that would achieve the equivalent of LEED Gold under LEEDv.3 for Building Design and Construction; and
e. Approximately 2,000 square feet of roof area to house PV panels.

3. As shown on the Approved Plans, the Hotel Building shall be constructed to the following standards:
    a. A maximum building height of 130 feet;
    b. Approximately 234,837 square feet of GFA devoted to hotel use and approximately 8,945 square feet in the penthouse devoted to a bar/restaurant use;
    c. The penthouse bar/restaurant shall not include any amplification on (or to project sound onto or into) the outdoor rooftop terrace on the roof;
    d. Approximately 221 hotel rooms; and
    e. A design that would achieve the equivalent of LEED Platinum under LEEDv.3 for Building Design and Construction.

4. As shown on the Approved Plans, the Podium shall be constructed to the following standards:
    a. Approximately 20,567 square feet of ground floor retail;
    b. Residential and hotel amenity spaces and an exterior terrace at the second level; and
    c. A lobby for the Residential Building fronting on G Street, a primary lobby for the Hotel Building on F Street, and a north-south connection to provide access to the Hotel Building from G Street.

5. The Applicant shall have flexibility with the design of the PUD as approved in the First-Stage PUD Order, as modified in Z.C. Order No. 08-34E and with the exception of subsection (f), as follows:
    a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
    b. To make refinements to the garage configuration, including layout, parking spaces and other elements, so long as the total number of parking spaces provided meets the number of spaces required by Z.C. Order No. 08-34 (i.e., 1,146 spaces in the below-grade, consolidated parking area);
    c. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of materials;
    d. To vary the location, attributes and general design of the public spaces and streetscapes incorporated in the project to comply with the requirements of and the approval by the DDOT Public Space Division.
    e. To locate retail entrances in accordance with the needs of the retail tenants;
    f. [deleted]; and
    g. To make minor refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural

embellishments and trim, window mullions and spacing, or any other changes to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit or any other applicable approvals

6. The Applicant shall also have the flexibility with the design of the PUD in the following area:
    a. Podium: Flexibility for the use of the terrace above the two-story podium between the Residential and Hotel Buildings to be green roof or usable outdoor terrace space;
    b. Exterior Courtyards and Rooftop: To vary the configuration, layout, and design of the exterior courtyards and rooftops, including the amenities provided, so long as the courtyards and rooftops continue to function in a similar manner proposed and the overall design intent, general locations for landscaping and hardscaping, and quality of materials are maintained;
    c. Retail Square Footage: To increase or decrease the amount of ground floor retail in the Residential and Hotel Buildings, so long as a minimum of 62,687 square feet of retail GFA is provided across the Overall PUD Site;
    d. Retail Uses: To vary the types of uses designated as retail use to include the following use categories (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j)); (v) Medical Care (11-B DCMR § 200.2(p)); and (vi) Arts, Design, and Creation (11-B DCMR § 200.2(e)); and
    e. Number of Residential Units and Hotel Rooms: To provide a range in the approved number of residential dwelling units and hotel rooms of plus or minus ten percent (10%).

B. CONDITIONS FOR THE SECOND-STAGE PUD

The Applicant will comply with the following conditions as it relates to the Residential Building and Hotel Building (whenever compliance is required prior to, on, or during a certain time, the timing of the obligation is noted in **bold and underlined text**):

7. **Prior to the issuance of the Certificate of Occupancy for the Residential Building**, or as otherwise noted below, the Applicant shall implement the following TDM measures:
    a. Designate a Property Transportation Coordinator ("**PTC**") who will be the primary point of contact with DDOT and whose responsibility it will be to coordinate and complete all TMP obligations;
    b. **During the life of the Residential Building**, Provide promotions, services, and policies (via the PTC) that will help minimize vehicle traffic generated by the development, including:
        i. Providing information to residents to discuss public transportation and carpooling/vanpooling options and resources; and
        ii. Cooperating with DDOT if DDOT elects to host a transit fair event on site up to four times per year.
    c. **During the life of the Residential Building**, if multiple PTCs are used for the project, they will coordinate with each other not less the once per quarter.

d. The Parking Management Plan required by the TMP is included on Figures 7A through 7D of the Transportation Statement. (Ex. 21A.)
e. The Loading Management Plan required by the TMP is included on Figures 8A and 8B of the Transportation Statement. (Ex. 21A.) A dock manager will be designated to be staffed in the loading area during peak periods.
f. The Applicant shall submit a letter to DDOT stating the occupancy levels of each block of the Capitol Crossing development (North, Center, and South) and will submit an updated letter annually until all three blocks reach 80% occupancy. At such time that an individual block reaches 80% occupancy, the PMP set forth in the approved TMP will begin for the block(s) at or above 80% occupancy. As additional blocks reach 80% occupancy, those blocks will be included in the PMP. Prior to commencing the PMP, the Applicant and DDOT will agree on reasonable, specific requirements that will be included in the PMP

8. **Prior to the issuance of the Certificate of Occupancy for the Hotel Building**, or as otherwise noted below, the Applicant shall implement the following TDM measures:
    a. Designate a PTC who will be the primary point of contact with DDOT and whose responsibility it will be to coordinate and complete all TMP obligations;
    b. **During the life of the Hotel Building**, provide promotions, services, and policies (via the PTC) that will help minimize vehicle traffic generated by the development, including:
        i. Providing information to hotel employees to discuss public transportation and carpooling/vanpooling options and resources; and
        ii. Cooperating with DDOT if DDOT elects to host a transit fair event on site up to four times per year.
    c. **During the life of the Hotel Building**, if multiple PTCs are used for the project, they will coordinate with each other not less the once per quarter.
    d. The Parking Management Plan required by the TMP is included on Figures 7A through 7D of the Transportation Statement. (Ex. 21A.)
    e. The Loading Management Plan required by the TMP is included on Figures 8A and 8B of the Transportation Statement. (Ex. 21A.) A dock manager will be designated to be staffed in the loading area during peak periods.

9. **The Applicant shall submit with its building permit application for the Residential Building**, a checklist evidencing that the Residential Building has been designed to achieve the equivalent of LEED Gold under LEEDv.3 for Building Design and Construction.

10. **The Applicant shall submit with its building permit application for the Hotel Building**, a checklist evidencing that the Hotel Building has been designed to achieve the equivalent the equivalent of LEED Platinum under LEEDv.3 for Building Design and Construction.

11. **Prior to the issuance of a final certificate of occupancy for the Residential Building**, the Applicant shall install PV panels in an area comprising approximately 2,000 square feet of the Residential Building's roof.

12. **For the life of the Hotel Building**, the restaurant/bar in the penthouse will not permit the use of any amplification device on (or to project sound into or onto) the roof terrace of the Hotel Building.

II. APPLICABLE CONDITIONS OF THE FIRST-STAGE ORDER

The Applicant will honor the following conditions of the First-Stage Order as it relates to the Residential Building and Hotel Building (whenever compliance is required prior to, on, or during a certain time, the timing of the obligation is noted in **bold and underlined text**):

B.13 **During construction of the project**, the Applicant shall abide by the First Source Employment Agreement attached at Exhibit 4J in the record of Z.C. Case No. 08-34, under which the Applicant has agreed to fill 51% of all new jobs resulting from the construction of the project with District residents and to fill 67% of all new apprenticeship positions with District residents.

B.14 **During construction of the project**, the Applicant shall abide by an agreement that provides for Certified Business Enterprises to represent 20% of the developer's equity and development participation in the project and that provides for the Applicant to contract with Certified Business Enterprises for at least 35% of the contract dollar volume of the project.

B.19 **During the life of the project**, the Overall Project shall include a minimum of 62,687 square feet of gross floor area devoted to retail uses generally in the locations shown on the Retail Diagram attached as Sheet 2.4 of the Final First-Stage PUD Plans (Ex. 66, Z.C. Case No. 08-34).

B.22 **For a period of 40 years from the date that the first certificate of occupancy is issued for the residential building**, the Applicant shall provide a minimum of 50 residential units set aside for affordable housing for individuals earning no more than 80% of the Metropolitan Statistical Area median and paying no more than 30% of the family's household income for rent or housing ownership costs. The affordable housing units shall be distributed across the housing mix (e.g., if the market-rate units have a mix of 30% studios, 40% one-bedrooms, and 30% two-bedrooms, the affordable units shall have a similar mix). Except as provided as provided in the land disposition agreement,[9] the affordable housing units shall not be concentrated on any one floor or within a floor of the residential building. Nothing in this condition shall be constructed as requiring the affordable housing to be located on the top three levels of the residential building, have prime views or include bay windows or balconies.

III. SECOND-STAGE PUD VALIDITY

1. No building permit shall be issued for the Podium, Residential Building or Hotel Building until the Applicant has recorded a covenant in the land records of the District of Columbia,

[9] The agreement allows flexibility from this requirement is agreed to in writing by the Deputy Major for Economic Development.

for the benefit of the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the Podium, Residential Building and Hotel Building in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

2. The second-stage PUD for the Podium and Residential Building shall be valid for a period of two years from the effective date of this Order. Within that time, the Applicant shall file a building permit application(s) for the Podium and the Residential Building. The Applicant shall begin construction of the Podium and Residential Building within three years of the effective date of this Order.

3. The second-stage PUD for the Hotel Building shall be valid for a period of two years following issuance of the first Certificate of Occupancy for the Podium or Residential Building. Within that time, the Applicant shall file a building permit application for the Hotel Building. The Applicant shall begin construction of the Hotel Building within three years following issuance of the first Certificate of Occupancy for the Podium or Residential Building.

4. If no Certificate of Occupancy for the Podium or the Residential Building is issued within six years following the effective date of this Order, the approval shall expire, unless otherwise extended by the Zoning Commission.

VOTE (DATE): October 21, 2021

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 08-34L shall become final and effective upon publication in the *D.C. Register*; that is, on _____.