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October 13, 2016

VIA HAND DELIVERY

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

Re: **Zoning Commission Case No. 11-03C**
Certified PUD Covenant

Dear Members of the Commission:

On behalf of the Applicant in the above-referenced case, enclosed please find a copy of the certified PUD Covenant that was recorded with the Recorder of Deeds on October 12, 2016, as Instrument Number 2016105088. The filing of a certified copy of the PUD Covenant is required by Paragraph No. 6 in the PUD Covenant. By copy of this letter, a certified copy of the PUD Covenant is also being sent to the Zoning Administrator, as required.

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

Sincerely,



Shane L. Dettman
Director of Planning Services

Enclosure



2016105088-40

PUD COVENANT
(Southwest Waterfront Parcel 1 – Z.C. Order No. 11-03C)

THIS PUD COVENANT ("Covenant"), made as of this 12th day of October 2016, by the DISTRICT OF COLUMBIA, a municipal corporation (hereinafter referred to as the "District"). The District, solely in its capacity as owner of the property described in Exhibit A, shall be hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, the District is the owner in fee simple of certain real property and improvements located in the District of Columbia known as Record Lot 88 in Square 473, including the portion that is more particularly described in Exhibit A, which portion shall hereinafter be referred to as the "Subject Site"; and

WHEREAS, the District, as the owner, through the Office of the Deputy Mayor for Planning and Economic Development, and Wharf District Master Developer LLC, an affiliate of Hoffman-Struever Waterfront LLC, as the developer, filed an application for a planned unit development ("PUD") on August 17, 2015, for the second-stage review and approval of the project on the Subject Site known as Parcel 1 of the Southwest Waterfront under Chapter 24 of the version of the Zoning Regulations of the District of Columbia in effect at the time (the "1958 Zoning Regulations"); and

WHEREAS, the Zoning Commission for the District of Columbia ("Zoning Commission") approved the Parcel 1 PUD application by Zoning Commission Order No. 11-03C, dated March 14, 2016, and effective on May 13, 2016 ("Parcel 1 PUD Order"), attached hereto as Exhibit B; and

WHEREAS, said Chapter 24 of the 1958 Zoning Regulations and the Parcel 1 PUD Order require that the Declarant enter into this Covenant for the Subject Site assuring that the Declarant's (and its successors and assigns) development and use of the Subject Site is as approved by the

Zoning Commission in the Parcel 1 PUD Order and all modifications, alterations or amendments thereto; and

WHEREAS, on September 6, 2016, the 1958 Zoning Regulations were repealed and replaced by a new set of regulations (the “2016 Zoning Regulations”); and

WHEREAS, Subtitle X § 311.3 of the 2016 Zoning Regulations continues to require this Covenant (all subsequent citations to zoning regulations made herein are to the 2016 Zoning Regulations.).

NOW, THEREFORE, in consideration of the foregoing recitals, which are a material part hereof, the Declarant agrees as follows:

1. Approved PUD/Plans. The terms and conditions of the Parcel 1 PUD Order (as the same may be amended and/or modified from time to time), are incorporated herein by reference and made a part hereof as Exhibit B and shall be considered a part of this Covenant. The Subject Site shall be developed and used in accordance with the plans approved by the Parcel 1 PUD Order, and in accordance with the conditions and restrictions contained in the Parcel 1 PUD Order, subject to such changes thereto as the Zoning Administrator of the District of Columbia may authorize pursuant to Subtitle A § 304.5 or Subtitle X § 311.6, or changes made by the Zoning Commission pursuant to Subtitle Z § 703 or 704. The Declarant covenants that it shall use the Subject Site only in accordance with the terms of the Parcel 1 PUD Order, as the same may be further amended and/or modified from time to time, subject to the terms and conditions contained herein and the provisions of Subtitle X Chapter 3.

2. Additional Time to Construct PUD. If a building permit is not filed for, or if construction of the approved PUD is not commenced, within the time specified in Subtitle Z §§ 702.2 or 702.3, and in the Parcel 1 PUD Order, the Zoning Commission may duly consider an

application for an extension of time for good cause in accordance with and subject to the limitations of Subtitle Z § 705.

3. Default. In the event that a building permit to commence construction of the approved Parcel 1 PUD is not filed within the time specified in Subtitle Z §§ 702.2 or 702.3 and in the Parcel 1 PUD Order, or within any extension of time granted by the Zoning Commission for good cause shown pursuant to Subtitle Z § 705, the benefits granted by the Parcel 1 PUD Order shall terminate pursuant to Subtitle Z § 702.6, and this Covenant shall be deemed null and void.

4. Future Conveyance. The Declarant covenants that if it conveys all or any part of the Subject Site, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns to develop and use the Subject Site or a conveyed portion thereof 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 Subject Site and shall bind the Declarant, its successors and assigns, and shall inure to the benefit of the Declarant, its successors and assigns. Such covenants are not binding upon the Declarant should it no longer have a property interest in the Subject Site. In the event all or part of the Subject Site is sold, the purchaser and its successors and assigns shall be considered a declarant to this Covenant and should the Declarant convey all of its interest in the Subject Site the District shall continue to be deemed a party to the Covenant for the purposes of enforcing all covenants, conditions and restrictions contained herein.

6. Recordation. The Declarant shall record this Covenant, as fully executed by the Declarant and the District, among the Land Records of the District of Columbia, and shall file a certified copy of this Covenant with the Zoning Administrator and the Zoning Commission.

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 Covenant. If the Parcel 1 PUD Order is modified or amended by the Zoning Commission, no formal amendment of this Covenant shall be required, provided that the Declarant, or its successors or assigns, records a notice of modification in the Land Records of the District of Columbia together with a copy of the written order authorizing the modification or amendment. No other amendment of the obligations created by this Covenant is permitted without the written consent of the District and, if determined by the Office of the Attorney General to be necessary, without the prior approval of the Zoning Commission.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the District of Columbia, a municipal corporation, intending to be legally bound, has caused this Covenant to be executed by Brian T. Kenner, its Deputy Mayor for Planning and Economic Development.

DECLARANT:

DISTRICT OF COLUMBIA, a municipal corporation

By:

BTK
Brian T. Kenner
Deputy Mayor for Planning and Economic Development
for the District of Columbia

DISTRICT OF COLUMBIA, ss:

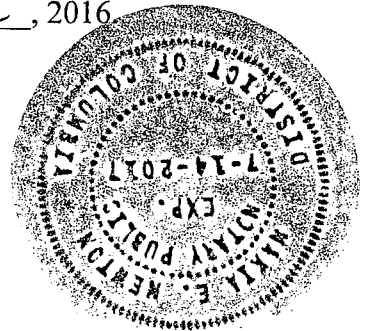
I, Nakia E. Newton, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Brian T. Kenner, as the Deputy Mayor of Planning and Economic Development for the District of Columbia, personally appeared before me and, being personally well known to me, acknowledged said Covenant to be the act and deed of the District of Columbia and that he delivered the same as such.

GIVEN under my hand and seal this 29 day of September, 2016

Nakia E. Newton
Notary Public, D.C.

NAKIA E. NEWTON
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires July 14, 2017

My commission expires: _____



REVIEWED:

By:

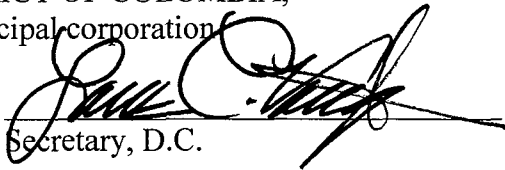
Gregory C. Smith
Office of the General Counsel

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:

DISTRICT OF COLUMBIA,
a municipal corporation

By:

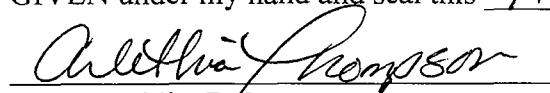

Secretary, D.C.

(Corporate Seal)

DISTRICT OF COLUMBIA, ss:

I, Arletha Thompson, a Notary Public in and for the District of Columbia, do hereby certify that Lauren C. Vaughan, who is personally well known to me as the person named as Secretary of the DISTRICT OF COLUMBIA in the foregoing Covenant, 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 11 day of October, 2016.


Notary Public, D.C.

My commission expires: 09/14/2021



APPROVED:

Matthew Teget 9-26-16
Zoning Division, Department of
Consumer and Regulatory Affairs

APPROVED AS TO LEGAL SUFFICIENCY:

Alan Epstein

70-5-16

04-33C

Assistant Attorney General
Office of the Attorney General
for the District of Columbia

EXHIBIT A

LEGAL DESCRIPTION OF THE SUBJECT SITE

Part 1: Lot 899

Part 2: Lot 900

Part 3: Lot 901

Part 4: Lot 902

Part 5: Lot 925

Part 1
Description Assessment and Taxation Lot 899
Out of Record Lot 88 in Square 473
June 18, 2015

All that certain lot or parcel of land situated, lying and being in the District of Columbia, and being more particularly described as follows:

Being a portion of Record Lot 88 in Square 473 in a subdivision per the plat recorded in the Office of the Surveyor for the District of Columbia in Subdivision Book 208, Page 126, described as follows:

Commencing at the most northerly corner of Record Lot 88 in Square 473 said point also being on the southerly line of Maine Avenue, SW; thence **S 63°32'00" E, 156.27 feet**; thence **S 65°04'50" E, 62.04 feet**; thence departing said southerly line **S 23°44'10" W, 15.00 feet** to the **Point of Beginning**; thence

S 23°44'10" W 37.44 feet; thence

N 81°15'42" W 28.48 feet; thence

S 23°44'10" W 68.51 feet; thence

N 66°15'50" W 14.05 feet; thence

S 23°44'10" W 9.23 feet; thence

N 66°16'49" W 35.09 feet; thence

S 23°44'54" W 46.23 feet; thence

N 66°15'50" W 46.58 feet; thence

N 41°16'05" E 103.65 feet; thence

N 48°43'55" W 9.54 feet; thence

N 41°16'05" E 16.21 feet; thence

S 48°43'55" E 1.43 feet; thence

N 41°16'05" E 25.18 feet; thence

S 48°43'55" E 8.11 feet; thence

N 41°16'05" E 20.88 feet; thence

N 48°44'23" W 4.85 feet; thence

N 23°45'21" E 11.14 feet; thence

S 63°32'00" E 15.36 feet; thence

S 65°04'50" E 62.55 feet to the Point of Beginning.

Containing a computed area of 0.24966 acres or 10,875 square feet.

Having a Lower Limit elevation of 13.00' and an Upper Limit elevation of 29.91' in the datum of the District of Columbia Department of Public Works.

Note: As to the date hereof the above described property is designated on the Records of the Assessor for the District of Columbia for assessment and taxation purposes as Lot numbered Eight Hundred and Ninety-nine (899) in Square numbered Four Hundred Seventy-Three (473).

END OF DESCRIPTION

Part 2
Description Assessment and Taxation Lot 900
Out of Record Lot 88 in Square 473
June 18, 2015

All that certain lot or parcel of land situated, lying and being in the District of Columbia, and being more particularly described as follows:

Being a portion of Record Lot 88 in Square 473 in a subdivision per the plat recorded in the Office of the Surveyor for the District of Columbia in Subdivision Book 208, Page 126, described as follows:

Commencing at the most northerly corner of Record Lot 88 in Square 473 said point also being on the southerly line of Maine Avenue, SW; thence **S 63°32'00" E, 156.27 feet**; thence **S 65°04'50" E, 62.04 feet**; thence departing said southerly line **S 23°44'10" W, 52.44 feet** to the **Point of Beginning**; thence

S 23°44'10" W 105.32 feet; thence

N 66°15'50" W 3.44 feet; thence

S 23°44'10" W 5.10 feet; thence

N 66°15'50" W 30.23 feet; thence

N 23°44'10" E 5.00 feet; thence

S 66°15'50" E 15.00 feet; thence

N 23°44'10" E 5.17 feet; thence

N 66°15'50" W 8.84 feet; thence

N 23°44'10" E 92.88 feet; thence

S 81°15'42" E 28.48 feet to the **Point of Beginning**.

Containing a computed area of 0.06667 acres or 2,904 square feet.

Having a Lower Limit elevation of 13.00' and an Upper Limit elevation of 29.91' in the datum of the District of Columbia Department of Public Works.

Note: As to the date hereof the above described property is designated on the Records of the Assessor for the District of Columbia for assessment and taxation purposes as Lot numbered Nine Hundred (900) in Square numbered Four Hundred Seventy-Three (473).

END OF DESCRIPTION
EXHIBIT A, PAGE 3

Part 3
Description Assessment and Taxation Lot 901
Out of Record Lot 88 in Square 473
June 18, 2015

All that certain lot or parcel of land situated, lying and being in the District of Columbia, and being more particularly described as follows:

Being a portion of Record Lot 88 in Square 473 in a subdivision per the plat recorded in the Office of the Surveyor for the District of Columbia in Subdivision Book 208, Page 126, described as follows:

Commencing at the most northerly corner of Record Lot 88 in Square 473 said point also being on the southerly line of Maine Avenue, SW; thence **S 63°32'00" E, 103.48 feet**; thence departing said southerly line **S 41°16'05" W, 73.73 feet** to the **Point of Beginning**; thence

S 48°43'55" E 11.94 feet; thence

S 41°16'05" W 32.08 feet; thence

N 48°43'55" W 11.94 feet; thence

N 41°16'05" E 8.08 feet; thence

N 48°43'55" W 5.00 feet; thence

N 41°16'05" E 8.88 feet; thence

S 48°43'55" E 5.00 feet; thence

N 41°16'05" E 15.12 feet to the **Point of Beginning**.

Containing a computed area of 0.00980 acres or 427 square feet.

Having a Lower Limit elevation of 13.00' and an Upper Limit elevation of 29.91' in the datum of the District of Columbia Department of Public Works.

Note: As to the date hereof the above described property is designated on the Records of the Assessor for the District of Columbia for assessment and taxation purposes as Lot numbered Nine Hundred and One (901) in Square numbered Four Hundred Seventy-Three (473).

END OF DESCRIPTION

EXHIBIT A, PAGE 4

Part 4
Description Assessment and Taxation Lot 902
Out of Record Lot 88 in Square 473
June 18, 2015

All that certain lot or parcel of land situated, lying and being in the District of Columbia, and being more particularly described as follows:

Being a portion of Record Lot 88 in Square 473 in a subdivision per the plat recorded in the Office of the Surveyor for the District of Columbia in Subdivision Book 208, Page 126, described as follows:

Commencing at the most northerly corner of Record Lot 88 in Square 473 said point also being on the southerly line of Maine Avenue, SW; thence **S63°32'00" E, 103.48 feet**; thence departing said southerly line **S41°16'05" W, 14.19 feet** to the **Point of Beginning**; thence

S 48°43'55" E 5.00 feet; thence

S 63°32'00" E 41.60 feet; thence

S 23°45'21" W 11.14 feet; thence

S 48°44'23" E 4.85 feet; thence

S 41°16'05" W 20.88 feet; thence

N 48°43'55" W 8.11 feet; thence

S 41°16'05" W 25.18 feet; thence

N 48°43'55" W 1.43 feet; thence

S 41°16'05" W 16.21 feet; thence

S 48°43'55" E 9.54 feet; thence

S 41°16'05" W 103.65 feet; thence

S 66°15'50" E 46.58 feet; thence

N 23°44'54" E 46.23 feet; thence

S 66°16'49" E 35.09 feet; thence

N 23°44'10" E 9.23 feet; thence
S 66°15'50" E 14.05 feet; thence
S 23°44'10" W 24.37 feet; thence
S 66°15'50" E 8.84 feet; thence
S 23°44'10" W 5.17 feet; thence
N 66°15'50" W 15.00 feet; thence
S 23°44'10" W 5.00 feet; thence
S 66°15'50" E 30.23 feet; thence
N 23°44'10" E 5.10 feet; thence
S 66°15'50" E 3.44 feet; thence
S 23°44'10" W 22.28 feet; thence
S 66°45'59" W 86.71 feet; thence
N 44°45'50" W 137.80 feet; thence
N 41°16'05" E 51.72 feet; thence
S 48°43'55" E 5.00 feet; thence
N 41°16'05" E 60.00 feet; thence
S 48°43'55" E 5.00 feet; thence
S 41°16'05" W 8.08 feet; thence
S 48°43'55" E 11.94 feet; thence
N 41°16'05" E 32.08 feet; thence
N 48°43'55" W 11.94 feet; thence

S 41°16'05" W 15.12 feet; thence

N 48°43'55" W 5.00 feet; thence

N 41°16'05" E 73.34 feet to the Point of Beginning.

Containing a computed area of 0.41375 acres or 18,023 square feet.

Having a Lower Limit elevation of 13.00' and an Upper Limit elevation of 29.91' in the datum of the District of Columbia Department of Public Works.

Note: As to the date hereof the above described property is designated on the Records of the Assessor for the District of Columbia for assessment and taxation purposes as Lot numbered Nine Hundred and Two (902) in Square numbered Four Hundred Seventy-Three (473).

END OF DESCRIPTION

Part 5
Description Assessment and Taxation Lot 925
Out of Record Lot 88 in Square 473
June 12, 2015

All that certain lot or parcel of land situated, lying and being in the District of Columbia, and being more particularly described as follows:

Being a portion of Record Lot 88 in Square 473 in a subdivision per the plat recorded in the Office of the Surveyor for the District of Columbia in Subdivision Book 208, Page 126, described as follows:

Commencing at the most northerly corner of Record Lot 88 in Square 473 said point also being on the southerly line of Maine Avenue, SW; thence **S 63°32'00" E, 37.41 feet**; thence departing said southerly line **S 41°16'07" E, 25.06 feet** to the **Point of Beginning**; thence

S 48°43'50" E 28.28 feet; thence

S 41°16'10" W 117.07 feet; thence

N 48°51'05" W 5.72 feet; thence

S 41°13'00" W 10.66 feet to the point of curvature of a curve to the right; thence

27.49 feet along the arc of said curve to the right having a radius of 8.99 feet and a chord that bears N 50°59'55" W for 17.96 feet through a central angle of 175°12'52"; thence

N 41°08'55" E 11.41 feet; thence

N 48°49'09" W 4.60 feet; thence

N 41°16'10" E 117.05 feet to the **Point of Beginning**.

Containing a computed area of 0.08331 acres or 3,629 square feet.

Having a Lower Limit elevation of 13.00' and an Unlimited Upper Limit elevation in the datum of the District of Columbia Department of Public Works.

Note: As to the date hereof the above described property is designated on the Records of the Assessor for the District of Columbia for assessment and taxation purposes as Lot numbered Nine Hundred and Twenty-five (925) in Square numbered Four Hundred Seventy-Three (473).

END OF DESCRIPTION

EXHIBIT B

ZONING COMMISSION ORDER NO. 11-03C

[Appended]

EXHIBIT B

GOVERNMENT OF THE DISTRICT OF COLUMBIA Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA ZONING COMMISSION ORDER NO. 11-03C Z.C Case No. 11-03C Wharf District Master Developer, LLC (Second-Stage PUD @ Southwest Waterfront - Parcel 1) March 14, 2016

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on January 21, 2016, to consider an application for a second-stage planned unit development ("PUD") filed by Wharf District Master Developer LLC ("Applicant") on behalf of the District of Columbia, through the Office of the Deputy Mayor for Planning and Economic Development, the current owner of the property. The subject property, consisting of Parcel 1, Market Square, and Market Shed of the Southwest Waterfront redevelopment project is generally bounded by the Washington Channel of the Potomac River and Maine Avenue, between the Maine Avenue Municipal Fish Market on the west and the area to be known as "Blair Alley" on the east. The Commission considered this second-stage PUD application for Parcel 1 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 application for Parcel 1.

FINDINGS OF FACT

The Applications, Parties, and Hearings

1. On August 17, 2015, the Applicant filed an application with the Commission for second-stage review and approval of a PUD for Lots 854 and 856 in Square 473, consisting of approximately 57,856 square feet of land area (the "Property") (Exhibits ["Ex."] 1-3.) The Applicant intends to redevelop the Property consistent with the first-stage PUD Order (Z.C. Order No. 11-03, effective on December 16, 2011).
2. By report dated October 9, 2015, the Office of Planning ("OP") recommended that the application be set down for a public hearing. (Ex. 10.) At its public meeting held on October 19, 2015, the Commission voted to schedule a public hearing on the application.
3. On November 5, 2015, the Applicant submitted its pre-hearing statement, and on December 31, 2015, submitted its supplemental information for the project, along with several architectural drawings to respond to issues raised by the Commission and OP. (Ex. 13-13K, 19-19B18.)

4. A description of the proposed development and the notice of the public hearing for this matter were published in the *D.C. Register* on November 27, 2015. The notice of public hearing was mailed to all property owners within 200 feet of the Property as well as to Advisory Neighborhood Commission (“ANC”) 6D. On January 21, 2016, the Commission held a public hearing to consider the second-stage PUD.
5. The parties to the proceeding were the Applicant and ANC 6D.
6. At the public hearing, the Applicant presented five witnesses in support of its application: Shawn Seaman and Matthew Steenhoek, on behalf of Wharf District Master Developer LLC; Doug Hocking, architect, Kohn Pedersen Fox Associates; Robert Schiesel, Gorove/Slade Associates, transportation consultant; and Shane Dettman, Holland & Knight LLP, land use planner. Based upon their professional experience and qualifications, Mr. Hocking was qualified as an expert in architecture, Mr. Schiesel was qualified as an expert in transportation engineering and planning, and Mr. Dettman was qualified as an expert in land use planning.
7. Matthew Jesick, Development Review Specialist at OP, and Ryan Westrom of the District Department of Transportation (“DDOT”) testified in support of the application with certain comments and conditions.
8. At its December 14, 2015, regularly scheduled meeting, which was duly noticed and at which a quorum was present, ANC 6D voted 7-0-0 to support the application.
9. On January 21, 2016, ANC 6D submitted a report in support of the second-stage PUD. A representative from ANC 6D did not attend the public hearing.
10. At the conclusion of the hearing on this matter the Commission took proposed action to approve the second-stage PUD and requested the Applicant to submit revised architectural drawings that address the Commission’s comments regarding the penthouse setbacks along the west and south facing sides of the building proposed on Parcel 1, additional information regarding the penthouse terrace lighting and acoustic considerations related to the proposed penthouse habitable space, information clarifying the anticipated penthouse terrace furnishings, drawings showing potential locations for retail and building tenant signage, precedent images for the water wall feature proposed along Maine Avenue, and information regarding the Applicant’s efforts in Ward 7 and 8 regarding workforce development. The Applicant submitted the requested information to the Commission on February 4, 2016. (Ex. 27-27C.)
11. To address the Commission’s comments regarding the penthouse setbacks along the west and south, the Applicant submitted two design alternatives. These alternatives were identified as “Alternate 1 Preferred” and “Alternate 2,” in the revised architectural plans included the Applicant’s post-hearing submission (Ex. 27A1-27A6.)
12. The application was referred to the National Capital Planning Commission (“NCPC”) for review for any adverse impacts on the federal interest, as defined in the Federal Elements

of the Comprehensive Plan for the National Capital. By delegated action dated February 11, 2016, NCPC's Executive Director found that the second-stage PUD would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital. (Ex. 28.)

13. The Applicant submitted its final list of proffers and draft conditions on February 11, 2016. (Ex. 36.)
14. The Commission reviewed the Applicant's post-hearing submissions at its February 29, 2016 public meeting. The Commission stated that it did not find either of the Applicant's proposed penthouse design alternatives satisfactory because neither provided a full 1:1 setback of rooftop structures along all exterior walls of the Parcel 1 Building. The Commission stated that the potential building signage locations on the upper level of the building were overly large. Finally, the Commission stated that it believed the design flexibility in the Applicant's proposed draft order was overly broad in several ways, namely the flexibility pertaining to the selection of exterior building materials, the ability to make changes to the interior building components, and the ability to make refinements to aspects of the building exterior in response to other required reviews and processes. The Commission requested that the Applicant submit a revised roof design, smaller potential building signage locations on the upper level of the building, and more limited design flexibility provisions.
15. The Applicant submitted the requested information on March 14, 2016. (Ex. 37-37A5.) Attached to the submission were revised drawing sheets showing a revised rooftop design, building signage locations, and design flexibility requests. The Applicant stated in this submission that it was only seeking the Commission's approval of the location and general dimensions of the two proposed upper-level signage areas on the north and west building façades so that the Applicant can, at a minimum present a basic set of signage parameters as being acceptable to the potential building tenants. The Applicant further stated that it will submit the final upper-level signage for review by the Commission as a minor modification on the Commission's consent calendar.
16. The Commission took final action to approve the second-stage PUD at its March 28, 2016 public meeting.

The Southwest Waterfront Project

17. The Southwest Waterfront redevelopment project is a public-private partnership between the District of Columbia and Hoffman-Struever Waterfront, LLC, which entered into a land disposition agreement (the "LDA") for redevelopment of the PUD Site (the "Southwest Waterfront PUD"). The District of Columbia, as owner of the PUD Site, except for Lots 83 and 814 in Square 473, the Vestry of St. Augustine's Church, the owner of Lots 83 and 814 in Square 473, and Hoffman-Struever Waterfront, LLC, the master developer selected by the District of Columbia to implement the redevelopment project, submitted their application for approval of the first-stage PUD to fulfill the revitalization plan envisioned by the District to reactivate the Southwest Waterfront.

18. Pursuant to Z.C. Order No. 11-03, which took effective on December 16, 2011, the Commission approved the first-stage PUD for the Southwest Waterfront redevelopment project, which is generally bounded by the Washington Channel of the Potomac River and Maine Avenue between 6th and 11th Streets, S.W., and consists of approximately 991,113 square feet of land area (22.75 acres) and approximately 167,393 square feet of piers and docks in the adjacent riparian area (the “PUD Site”). The Commission approved a second-stage PUD application for Phase 1 of the redevelopment project, consisting of Parcels 2, 3, 4, and 11, the Capital Yacht Club, and the public open spaces known as the Wharf, the Transit Pier, the District Pier, the Yacht Club Piazza, the Mews, Jazz Alley, 7th Street Park and Waterfront Park, as well as temporary uses on Parcel 1, pursuant to Z.C. Order Nos. 11-03A(1), 11-03A(2), 11-03A(3), and 11-03A(4) (*effective date* February 15, 2013). In addition, pursuant to Z.C. Order No. 11-03B (*effective date* June 21, 2013), the Commission approved a second-stage PUD for Parcel 5, and, pursuant to Z.C. Order No. 11-03D (*effective date* January 15, 2016), a minor modification to the previously approved Parcel 5 plans.
19. Pursuant to the first-stage PUD approval, the overall redevelopment project will include a maximum landside density of 3.87 floor area ratio (“FAR”), excluding private rights-of-way, and a maximum potential 0.68 FAR of waterside uses. Proposed uses will include up to approximately 1,400 mixed-income and market-rate residential units, with 160,000 square feet of residential gross floor area (“GFA”) set aside for households earning no more than 30% and 60% of the Washington–Arlington–Alexandria, DC–VA–MD–WV Metropolitan Statistical Area Median Income (“AMI”); approximately 925,000 gross square of office uses; a luxury hotel with approximately 278 guest rooms, and two additional hotels with approximately 405 rooms; approximately 300,000 gross square feet of retail/service uses; a minimum of 100,000 gross square feet devoted to cultural activities; and more than ten acres of parks and open space. The riparian area will feature four new public-use piers as well as approximately 114,000 square feet of maritime-related commercial, recreational, and service development.
20. The Commission approved the first, second-stage application for the Southwest Waterfront PUD on February 15, 2013 in Z.C. Order Nos. 11-03A(1), 11-03A(2), 11-03A(3) and 11-03A(4), which proposed the development of six buildings on Parcels 2, 3, 4, and 11. This first phase of the project also encompassed the creation of new public parks and open spaces known as the Wharf, The Transit Pier, the District Pier, the Piazza Mews, the Avenue Mews, the Pier Mews, and Jazz Alley (collectively the “Mews”), the Yacht Club Piazza, the 7th Street Park, and Waterfront Park. At that time, Parcel 1 was also approved for a temporary parking lot/event space.
21. The subject second-stage PUD, which the Applicant initially contemplated as part of a later phase of the Southwest Waterfront PUD, proposes the development of a trophy-class office building containing ground-floor retail/service uses, as well as habitable penthouses uses on Parcel 1 (the “Parcel 1 Building”). It will contain approximately 261,056 total gross square feet, of which approximately 248,565 gross square feet will be devoted to office uses, and approximately 12,491 gross square feet will be devoted to

ground-floor retail/services uses, which could increase by approximately 9,400 gross square feet should the Applicant opt to devote the northern portion of the second floor, identified on the Plans as “Office/Retail,” to retail/service uses rather than office use. The Parcel 1 Building will also contain approximately 10,079 gross square feet of penthouse habitable space devoted to office and/or retail/service uses with adjacent roof terrace, including the potential for a restaurant, bar, or cocktail lounge use. The second-stage PUD also includes the construction of an active, open-air plaza located to the west of the Parcel 1 Building, known as Market Square, which will include a one-story building containing approximately 1,690 gross square feet of retail/service uses.

The Applicant and Development Team

22. The master developer of the overall Southwest Waterfront PUD is Hoffman-Struever Waterfront, LLC doing business as Hoffman-Madison Waterfront, LLC (“Hoffman-Madison”). The Applicant for the second-stage PUD is Wharf District Master Developer LLC, an affiliate of Hoffman-Madison, which is processing this second-stage PUD application on behalf of the Office of Deputy Mayor for Planning and Economic Development. The Applicant’s team includes the District-based Certified Local, Small, and Disadvantaged Business Enterprises of E.R. Bacon Development, Paramount Development and Triden Development, as well as District-based and CBE-certified CityPartners.

Approved Stage 1 PUD Development Parameters

23. Under the first-stage PUD, the Commission approved the development parameters for the overall Southwest Waterfront PUD, as shown on the architectural plans submitted to the record. Overall, the Commission approved a maximum landside density of 3.87 FAR, excluding private rights-of-way, and a combined gross floor area of approximately 3,165,000 square feet. Waterside uses were approved for a maximum potential density of 0.68 FAR, or approximately 114,000 gross square feet (*See* Z.C. Order No. 11-03, Condition Nos. A-1 and A-2 at p. 33).
24. The Commission authorized a maximum building height of 130 feet on Parcel 1, which was rezoned to the C-3-C Zone District. (*Id.*, Condition No. A-3 at p. 33.)
25. With respect to parking facilities for the project, the Commission authorized the construction of one or more below-grade parking structures on two to three levels that are required to provide spaces for approximately 2,100-2,650 vehicles. The overall redevelopment project is also required to provide parking or storage for 1,500-2,200 bicycles onsite, and sufficient loading facilities to accommodate the mix of uses on the PUD site. The precise amount of parking and loading is to be determined in each stage two PUD application. (*Id.*, Condition No. A-4 at p. 33.)

Overview of the Southwest Waterfront PUD

26. The primary objective of the Southwest Waterfront PUD is to reunite the city with the water’s edge and activate it with a mix of uses and year-round activity. This objective will be achieved by integrating the city’s unique urban qualities, such as dynamic parks

and open spaces that are defined by consistent street walls, with aspects that recall the character of the thriving commercial warehouse district and maritime activities that once lined the Washington Channel and connected the upland city streets to the maritime edge.

27. As described during the first-stage PUD, the Southwest Waterfront PUD will provide a mix of uses to ensure an active waterfront throughout the year, day and night. Rather than a collection of individual projects, the overall redevelopment has been designed as a series of “places” that integrate architecture and landscape design to create inviting and memorable public environments. There will be a variety of gathering places to cater to every interest, ranging from actively programmed places to simple promenades and parks for passive enjoyment of the water and its environs.
28. The design of the waterside development has been fully integrated with the landside development, and will include four new public-use piers along the Washington Channel. The District Pier, the largest of the piers, is intended to be the primary waterside entrance to the project and the host for the District’s waterside events. Several new tour boats, tall ships, and maritime vessels, such as water taxis, will be added to the existing recreational maritime activities to provide increased activity and several more options for the public to use the waterfront and engage in water sports and activities. The waterside development will extend to the limits of the Washington Channel’s federal navigational channel.

Parcel 1, Market Square, and Market Shed Proposed Development

Parcel 1

29. Parcel 1 is located at the northwestern end of the PUD Site, consists of approximately 32,744 square feet of land area, and is part of the larger proposed lot of record that will encompass Parcels 1-5. The Applicant proposes to locate multiple buildings on this single lot of record as permitted under 11 DCMR §2517.
30. Consistent with the phased development endorsed by the Commission, the building proposed on Parcel 1, the Parcel 1 Building, will consist of office and retail/service uses. The Parcel 1 Building will have approximately 261,056 gross square feet, of which approximately 248,565 gross square feet will be devoted to office uses, and approximately 12,491 gross square feet will be devoted to retail/services uses. The Parcel 1 Building will also contain approximately 10,079 gross square feet of penthouse habitable space that will be devoted to office and/or retail/service uses, including the potential for a restaurant, bar, or cocktail lounge use.
31. The massing of the Parcel 1 Building will consist of a two-story base with an eight-story office tower above the base, rising to a maximum building height of 130 feet.
32. The office tower is generally arranged in a north-south orientation, angled slightly to form a “V-shape” that opens southward to the Washington Channel. The tower includes a large two-story lobby that runs completely through the building from Maine Avenue to

the Wharf, providing visual connections through to the Washington Channel. Above the second floor along the west façade, the building is set back approximately five feet to break up the massing and scale of the building, and relate to Market Shed and the lower-scaled buildings of the adjacent Fish Market. This setback creates a third-floor terrace that overlooks Market Square and provides views toward the waterfront. The west façade is further articulated by a small court niche that starts at the fifth floor and extends the remaining height of the building.

33. In contrast to the building setback along the west façade of the building, the north façade, along Maine Avenue, S.W., is recessed at the first and second levels creating an upper-level cantilever that breaks up the building massing and emphasizes the main building entrance. A two-story water fall feature is proposed along this façade to animate and add visual interest along the Maine Avenue streetscape. The south façade of the building, facing the Washington Channel, includes an expansive, three-story central atrium that is set back in the center of the tower. At the tenth floor, this portion of the building is further set back an additional 16 feet, creating an outdoor terrace that overlooks the waterfront. Finally, the east façade, along Blair Alley, S.W., has a simple massing and articulation.
34. The retail uses will primarily be located on the ground floor along the west façade, adjacent to Market Square, and on the south façade, facing the Wharf and Washington Channel, and framing the three-story atrium. A dedicated elevator and stair along the west façade will provide general public access to the shared-use parking garage. The Parcel 1 Building's loading facilities and access ramp to the below-grade parking garage are located along the east façade, accessible from Blair Alley, S W. Above the ground floor, the remainder of the Parcel 1 Building will be devoted to office use, with the possible exception of the western portion of the second floor which may contain retail uses.
35. The Parcel 1 Building's penthouse includes both mechanical and habitable space, screened mechanical equipment, and outdoor terrace space. As designed, the penthouse enclosure has variable heights with the habitable space having a maximum height of 16'-0", and the mechanical space and screening having multiple heights of 16'-0" and 18'-6". Based upon the revised architectural plans submitted by the Applicant as part of its post-hearing submission, dated March 14, 2016, the Parcel 1 Building penthouse is setback 1:1 from the edge of the roof along all sides of the building.
36. The Parcel 1 Building penthouse will contain approximately 10,079 gross square feet of penthouse habitable space that will be devoted to office or retail/service uses, as well as an outdoor terrace. Pursuant to § 411.4(c) of the newly adopted penthouse regulations, the Applicant has requested flexibility to devote the penthouse habitable space to a restaurant, bar, and/or cocktail lounge uses.

Market Square

37. As part of the second-stage PUD, the Applicant will construct Market Square, an active, open-air plaza located immediately west of the Parcel 1 Building that will serve as the northern gateway into the renewed Southwest Waterfront neighborhood, the Wharf, and to Market Pier. Market Square is expected to be a primary point of arrival for visitors coming to the waterfront from the National Mall.
38. Market Square will be approximately 26,400 square feet in area.
39. The design of Market Square takes into consideration the heavily trafficked commercial activity of the Fish Market and the waterfront views from Banneker Park. A range of paving materials are proposed within Market Square to distinguish it as a special place in and of itself within the broader Wharf framework, and to help regulate the flow of pedestrians, bicyclists, and vehicles which will all mix together within this active, shared urban space. To ensure safe pedestrian connectivity, dedicated sidewalks are proposed along the edges of Market Square. The sidewalks will have distinct paving and relate to the new signalized crosswalks on Maine Avenue. The east-west shared pedestrian crossing between the Parcel 1 Building and the Fish Market will be distinct from the surrounding shared vehicular surfaces. A different set of paving materials or patterns that is distinguished from the dedicated pedestrian spaces is proposed in the areas where pedestrians, bicycles, and automobiles will intermix. Other traffic calming measures proposed within Market Square include the placement of sturdy planters at crosswalks and the limited use of bollards.

Market Shed

40. As part of the second-stage PUD, the Applicant will construct the Market Shed pavilion, a one-story retail structure consisting of approximately 1,690 gross square feet that will be centrally located within Market Square. Market Shed will measure approximately 18 feet wide by 118 feet in length, and will vary in height from approximately 21 feet at the high points of the roof, to approximately 14 feet at the low point.
41. The Market Shed pavilion has been specifically designed to relate to the other small-scaled pavilions that are set within the landside open spaces, or on new or repurposed waterside piers, throughout the Southwest Waterfront PUD, and to allow views to the waterfront from Banneker Park. Market Shed is designed to accommodate one or two tenants.

The Wharf and Maine Avenue

42. The second-stage PUD will construct approximately 190 linear feet of the Wharf, the pedestrian promenade adjacent to the Washington Channel and running the full length of the PUD Site, that will have the ability to accommodate low-speed, low-volume vehicular access to business fronts, restaurants, elderly and disabled passenger drop off, and valet parking along the water's edge, and the flexibility to be closed periodically for special

events and certain nights and weekends to emphasize and enhance the pedestrian experience while still maintaining emergency access.

43. The portion of the Wharf that will be constructed as part of the second-stage PUD will be consistent in design with other sections of the Wharf that have previously approved by the Commission.
44. As part of the second-stage PUD, approximately 219 linear feet of Maine Avenue, S.W. between Blair Alley, S.W. and Market Square will be reconstructed consistent with the streetscape design that has been previously approved by the Commission.

Parking and Loading Facilities

45. A minimum of 78 parking spaces will be devoted to the office component of the Parcel 1 Building within the shared-use garage located below Parcels 1-5. DDOT expressed no objection to this number of parking spaces based on the Applicant's continued commitment to the Transportation Demand Management ("TDM") program and monitoring plan approved as part of the first-stage PUD, and the TDM measures that are specific to this second-stage PUD. These measures are listed as Condition C.1 of this Order.
46. The required bicycle parking spaces for the Parcel 1 Building will be satisfied within the approximately 120 short-term and 850 long-term bicycle parking spaces that are being provided within the larger shared-use parking garage.
47. Loading facilities are also located off of Blair Alley, near the intersection with Maine Avenue, and will consist of two, 30-foot loading berths and a 250-square-foot loading dock. The Applicant requested flexibility from the loading requirements, as discussed in greater detail elsewhere in this order.
48. The Applicant will implement specific restrictions and guidelines on loading operations at the Parcel 1 Building to ensure coordination of deliveries among the tenants of the Parcel 1 Building, and between Parcel 1 and Parcel 2, as set forth in the transportation technical memorandum submitted into the record. (Ex. 19A.)

Project Benefits and Amenities

49. The Applicant was required by condition C.3 of Z.C. Order No. 11-03 to provide, for each second-stage PUD application, a detailed implementation plan for the public benefits and project amenities enumerated in Exhibit No. 60 and in Conditions Nos. B-3 through B-6 that identifies the benefits and amenities proposed for that particular stage-two application, the benefits and amenities that have already been implemented, the benefits and amenities yet to be implemented, and an overall status update and timetable for implementation. The Applicant provided this plan for this second-stage application. (Ex. 2E). The Commission finds that this second-stage PUD will provide the benefits and amenities as set forth below.

Sustainable (LEED) Development

50. In keeping with the approved first-stage PUD, the overall Southwest Waterfront PUD will be designed to achieve the LEED-ND (v2009) certification at the Gold level or higher, and each new building of the Southwest Waterfront PUD will be designed to achieve LEED-NC (v2009) or LEED-CS (v2009) Silver rating or higher. The Applicant has developed guidelines to ensure that the second-stage PUD has been designed in accordance with LEED-ND (v2009) Gold objectives in order to meet individual certification requirements and to comply with the overall larger framework of LEED-ND (v2009) criteria. The Parcel 1 Building will be designed to achieve a minimum LEED-CS (v2009) Gold rating, which exceeds the first-stage PUD requirement, and will meet the LEED stormwater requirements (*see* Z.C. Order No. 11-03, Condition No. B-7 at p. 36).

Project Association

51. In accordance with the LDA, the Applicant will create and manage a project association for the PUD that will be responsible for maintenance and improvements of the private roadways, alleys, bicycle paths, promenade, sidewalks, piers, parks, and signage, within the PUD Site (the "Project Association"). The Applicant will manage and operate the Project Association during the "developer control period," as defined in the Applicant's Declaration of Covenants with the District of Columbia. The developer control period begins upon the effective date of the Declaration of Covenants and ends five years after issuance, or deemed issuance, of the last certificate of completion for all portions of the Southwest Waterfront PUD, and unit certificates of completion for each residential condominium unit. The Project Association will fund maintenance and programming of the common elements of the Southwest Waterfront PUD through a Common Area Maintenance ("CAM") assessment charge to each development component within the Southwest Waterfront. Additionally, the Project Association will be responsible for programming and staging events within the PUD Site.

Certified Business Enterprises

52. The Applicant has entered into a Certified Business Enterprise ("CBE") Agreement, with the D.C. Department of Small and Local Business Development ("DSLBD") to achieve, at a minimum, a 35% participation by certified business enterprises in the contracted development costs for the design, development, construction, maintenance, and security for the project to be created as a result of the overall Southwest Waterfront PUD.
53. Furthermore, under the LDA, the Applicant has committed that 20% of the retail space throughout the Southwest Waterfront PUD will be set aside for "unique" and/or "local" businesses, which will include CBEs. As defined under the LDA, a "local" business is a retailer that is either a CBE or a retailer headquartered in the District of Columbia. A "unique" business is a retailer owning or operating fewer than eight retail outlets in the aggregate at the time such retailer enters into a retail lease at the PUD Site (inclusive of such retail outlet at the PUD Site). The Applicant will work collaboratively with business

and community organizations throughout the District to identify and, where possible, mentor potential small restaurateurs and retailers to help them lease and successfully operate these retail spaces. The Applicant will also have kiosks along the promenades, and in parks and other public spaces, where even smaller local businesses can try out their retail concepts on a low-risk basis. Those kiosk operators who are successful may have the opportunity to move indoors, into one of the spaces reserved for unique and local business enterprises, thereby growing their business.

First Source Employment Opportunity

54. The Applicant has executed a First Source Employment Agreement with the Department of Employment Services to achieve the goal of utilizing District residents for at least 51% of the new jobs created by the overall Southwest Waterfront PUD. (*See* Exhibit 209 in Z.C. Case No. 11-03A.) Prior to issuance of a building permit for construction of the Parcel 1 Building, the Applicant shall complete the Construction Employment Plan of the First Source Employment Agreement outlining the hiring plan for the project. The Applicant shall meet the First Source Employment Agreement requirement that 20% of new jobs will be filled by Ward 8 residents, and that good faith diligent efforts will be made to hire residents of Southwest Washington. In addition, 30% of apprenticeship opportunities shall be filled by residents residing east of the Anacostia River. The Applicant and the contractor, once selected, shall use best efforts to coordinate apprenticeship opportunities with construction trades organizations, the D.C. Students Construction Trades Foundation, and other training and job placement organizations to maximize participation by District residents in phases of construction of the Southwest Waterfront PUD.

Workforce Intermediary Program

55. As required as part of the first-stage PUD approved benefits and amenities, the Applicant has contributed \$1 million to the District's Workforce Intermediary Program.

Development Incentives

56. Penthouse Setbacks: As part of its initial application, the Applicant had requested relief from the 1:1 penthouse setback requirements of the Zoning Regulations along the west and south façades of the Parcel 1 Building, facing Market Square and the Wharf/ Washington Channel, respectively. In response to comments made by the Commission at the public hearing, the Applicant submitted revised architectural drawings as part of its post-hearing submission that showed fully compliant penthouse setbacks, thus eliminating the need for this area of relief.
57. Habitable Penthouse Use: Pursuant to the newly adopted penthouse regulations, which went into effect on January 8, 2016, buildings and structures within the C-3-C Zone District, such as the Parcel 1 Building, are permitted to have habitable space devoted to any use permitted within the C-3-C Zone District, with the exception of a nightclub, bar, cocktail lounge, or restaurant, which are permitted by special exception. Thus, in addition

to any other use that is permitted as a matter of right in the C-3-C, such as office and retail/service uses, the Applicant requests relief to allow a restaurant, bar, and/or cocktail lounge use within the Parcel 1 Building penthouse. While the Applicant had initially requested relief to also allow a nightclub as a potential use in the Parcel 1 Building habitable penthouse, this particular use was eliminated from the flexibility request in response to Commission comments.

58. Mechanical Penthouse Height: Under the newly adopted penthouse regulations, penthouse mechanical space, penthouse habitable space, and equipment screening are permitted to each have a different height, but individually must be designed to a uniform height. (Z.C. Order No. 14-13, effective January 8, 2016.) The Applicant requested flexibility to allow the Parcel 1 Building's penthouse mechanical space to have two separate heights. The majority of the penthouse mechanical space will have a height of 18'-6", with the remainder having a lower height of 16'-0". The two different heights are a result of the size and function of the mechanical equipment within these areas.
59. Loading Facilities: Pursuant to § 2201.1 of the Zoning Regulations, the Parcel 1 Building generates a loading requirement of three, 30-foot-deep loading berths; one, 20-foot service/delivery space; and three platforms each measuring 100 square feet, 300 square feet total. Relief is requested from the prescribed loading requirement to provide two, 30-foot loading berths and a 250-square-foot loading platform.
60. Parking: The office and retail/service uses within the Parcel 1 Building generate a vehicle parking requirement of approximately 153-166 parking spaces, inclusive of the penthouse habitable space. The Applicant will provide a minimum of 78 vehicle parking spaces in the shared-use garage located below Parcels 1-5, which will be devoted to the office component of the Parcel 1 Building. Employees and retailers of the Parcel 1 Building's retail/service use component will have access to the general use spaces within the shared-use garage. Approximately 11 additional surface parking spaces will be provided in Market Square.

Design Flexibility

61. The Applicant requested flexibility with the design of the second-stage PUD in the following areas:
 - a. The Parcel 1 Building shall provide two 30'-0" loading berths and a 250-square-foot loading platform;
 - b. To vary the location and configuration of the parking spaces devoted to the office component of the Parcel 1 Building within the shared-use garage located below Parcels 1-5;
 - c. To adjust the total amount of office and retail gross floor area by five percent;
 - d. To allow multiple penthouse heights for penthouse mechanical space;

- e. To allow office, retail, restaurant, bar, and/or cocktail lounge uses within the Parcel 1 Building penthouse and on the penthouse terrace consistent with the Plans;
- f. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
- g. To make refinements to exterior building 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;
- h. To vary the retail entrances, façades, and signage in accordance with the needs of the retail tenants and within the potential retail signage zones shown in the supplemental plans filed as part of the Applicant's post-hearing submission;
- i. To permit the selection of either the terra cotta panel, metal panel, or combination terra cotta/metal panel exterior façade system, to vary the depth of the façade panels, and to vary the final color of the panels based on availability at the time of construction without reducing material quality;
- j. To permit the selection of travertine or other similar stone product used on the exterior building façade at the two-story retail level, based on availability at the time of construction without reducing the quality of materials, and provided the final selection is similar in color and texture to what is shown in the approved plans; and
- k. To vary the final selection of the open space paving materials within the color ranges and material types as proposed, based on constructability and availability at the time of construction.

Office of Planning Report

- 62. By report dated January 11, 2016, OP recommended approval of the second-stage PUD, noting that the project is not inconsistent with the first-stage PUD or the Zoning Regulation. In addition, OP stated that the project is not inconsistent with the Comprehensive Plan, including the Generalized Policy Map and Future Land Use Map, and is also consistent with the Development Plan and Anacostia Waterfront Initiative Vision for the Southwest Waterfront. (Ex. 21.)
- 63. OP did not object to the Applicant's request for flexibility from certain areas of the Zoning Regulations, and for certain aspects of the design of the second-stage PUD.

64. Based on the analysis provided in the OP report, the Commission finds the second-stage PUD to be not inconsistent with the Comprehensive Plan, including the Generalized Policy Map and Future Land Use Map.

DDOT Report

65. DDOT submitted a memorandum, dated January 11, 2016, in support of the second-stage PUD, with conditions. (Ex. 20.) DDOT concluded, after an extensive review of the case materials submitted by the Applicant, that any adverse impacts of the second-stage PUD can be mitigated based on: (i) the TDM mitigation measures proffered in the second-stage PUD for Phase 1 of the Southwest Waterfront PUD (Z.C. Order No. 11-03A(1), (2), (3), and (4)); and (ii) implementation of the additional TDM measures specific to this second-stage PUD that are listed in the Applicant's transportation technical memorandum. (Ex. 19A.)
66. DDOT also recommended that the Applicant supplement its TDM measures to include placement of electronic message boards in both the Parcel 1 Building and Market Shed, which provide real-time information on nearby transit services. The Applicant agreed to this recommendation.
67. Based on the TDM measures included in Z.C. Case No. 11-03A that will govern the entirety of the Southwest Waterfront PUD, the additional TDM commitments made by the Applicant that are specific to this second-stage PUD, and the additional TDM commitment recommended by DDOT, to which the Applicant has agreed, the Commission finds that any potential adverse transportation impacts that may arise can be detected, monitored, and addressed quickly and efficiently.

ANC Report

68. On December 14, 2015, ANC 6D voted 7-0-0 to support the second-stage PUD. The report of the ANC was submitted to the case record on January 21, 2016. (Ex. 24.)
69. With respect to the second-stage PUD design, the ANC was very supportive of the overall design of the Parcel 1 Building, especially with respect to its relationship to the Washington Channel.
70. While in support of the second-stage PUD, ANC 6D provided several comments for the Commission's consideration regarding certain aspects of the project that pertain to: (i) acoustic impacts caused by the use of the proposed penthouse habitable space for a nightclub, restaurant, bar, and/or cocktail lounge uses; (ii) signage and lighting; (iii) the impact of the Parcel 1 Building on migratory birds; (iv) the types of paving within Market Square; (v) the Applicant's request for flexibility to change building materials, (vi) the programming of Market Shed; and (vii) site circulation and pedestrian safety.
71. Noting that it shared some of the same comments as the ANC, particularly those relating to potential noise impacts caused by certain uses within the penthouse, and in particular a

nightclub; signage and lighting; and the requested flexibility to change building materials, the Commission requested the Applicant to supplement the case record with additional information on these items, which was provided by the Applicant as part of its post-hearing submission.

72. The Commission accords great weight to the views of the ANC and finds that the Applicant has responded appropriately to the ANC's comments.

Metropolitan Police Department

73. On January 20, 2016, the Metropolitan Police Department, First District ("MPD"), submitted comments on the second-stage PUD. (Ex. 22.) MPD's letter contained recommendations regarding general safety and security of the PUD Site, including, among other things, providing adequate lighting along streets, alleys, and bicycle paths, utilizing FOB keys to control access to buildings, and provision of onsite security. MPD stated that it was in support of a restaurant use, but was not in support of a nightclub or bar.
74. At the public hearing, the Applicant confirmed it would be implementing security systems and procedures, as necessary, to ensure a safe environment throughout the Southwest Waterfront PUD. In addition, as previously noted, the Applicant has withdrawn its initial request for flexibility to allow a nightclub use in the Parcel 1 Building penthouse. Therefore, based on the information contained in the record and the testimony provided at the public hearing, the Commission finds that the Applicant has adequately addressed MPD's comments. With respect to MPD's comment on restaurant and bar uses, the Commission finds both uses to be acceptable and appropriate considering the mixed-use, entertainment type environment sought for the Southwest Waterfront, and that the potential impacts of both uses are likely to be similar, since restaurants oftentimes include a bar and bars often serve food, and able to be addressed in much the same manner.

Commission of Fine Arts

75. At its June 18, 2015, meeting, the U.S. Commission of Fine Arts ("CFA") reviewed and granted concept approval to the Parcel 1 Building. (Ex. 2F.)

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 of the Zoning Regulations, 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. The Commission may also approve uses that are permitted as special exceptions that would otherwise require approval by the District of Columbia Board of Zoning Adjustment.
3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments, which will offer a project with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. Both the Overall PUD Site and the Property meet the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The second-stage PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the PUD guidelines, the parameters of the first-stage PUD, and the authority vested in the Commission to grant deviations therefrom. The office and retail/service uses proposed as part of the second-stage PUD are appropriate for the Property, as well as the Overall PUD Site. The impacts of the second-stage PUD on the surrounding area are not unacceptable. Accordingly, the second-stage PUD should be approved.
6. This stage-two PUD is substantially in accordance with the elements, guidelines, and conditions of the first-stage PUD, and thus, should be granted second-stage PUD approval. Pursuant to § 2408.6, if the Commission finds the second-stage PUD application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage PUD approval, the Commission shall approve the second-stage PUD, including any guidelines, conditions, and standards that are necessary to carry out the Commission's decision. As set forth above, the Commission so finds.
7. The second-stage PUD can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
8. The Applicant's requests for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan, and the requests for flexibility for certain design aspects of the second-stage PUD are appropriate. Moreover, the project benefits and amenities are reasonable trade-offs for the requested development flexibility.
9. Approval of the second-stage PUD is appropriate because the proposed development is not inconsistent with the Comprehensive Plan for the National Capital. In addition, the proposed development will promote the orderly development of the Property, and Overall PUD Site, in conformity with the entirety of the Zone Plan, as embodied in the Zoning Regulations and Map of the District of Columbia.

10. 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 recommendations. The Commission carefully considered the OP reports and its oral testimony at the hearing. As explained in this decision, the Commission finds OP's recommendation to grant the application persuasive.
11. The Commission is required under § 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)) to give great weight to the issues and concerns raised in the written report of the affected ANC. The Commission has carefully considered the ANC 6D's recommendation for approval, and finds that the Applicant has successfully addressed all of the comments in ANC 6D's report.
12. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for approval of the second-stage PUD for Parcel 1 of the Southwest Waterfront redevelopment project, subject to the guidelines, conditions, and standards set forth below.

A. Project Development

1. The second-stage PUD shall be developed with a mixed-use building containing office and retail/service uses, in accordance with the architectural plans submitted by the Applicant dated January 1, 2016, and marked as Exhibits 19B1-19B18 in the case record, as updated/revised by the Applicant as part of its post-hearing submission, dated March 14, 2016, marked as Exhibits 37A1-37A5 (collectively, the "Plans"), and as modified by the guidelines, conditions, and standards herein.
2. The maximum height of the Parcel 1 Building shall be 130 feet, with approximately 261,056 square feet of gross floor area.
3. Consistent with the Plans, the Applicant shall provide a minimum of 78 parking spaces in the shared-use garage located below Parcels 1-5 that are devoted to the office component of the Parcel 1 Building.
4. This second-stage PUD shall also provide the improvements to Maine Avenue and the Wharf adjacent to Parcel 1 and Market Square as shown on Sheets 2.1, 2.2, and 2.6 of the Plans. (Ex. 19B13-19B14.) To the extent any of these improvements are located within public space, the Applicant shall obtain approval by DDOT, and/or other District agencies as necessary, prior to construction of the improvements.

5. The Applicant shall have flexibility with the design of the second-stage PUD in the following areas:
- a. The Parcel 1 Building shall provide two 30'-0" loading berths and a 250-square-foot loading platform;
 - b. To vary the location and configuration of the parking spaces devoted to the office component of the Parcel 1 Building within the shared-use garage located below Parcels 1-5;
 - c. To adjust the total amount of office and retail gross floor area by five percent;
 - d. To allow multiple penthouse heights for penthouse mechanical space;
 - e. To allow office, retail, restaurant, bar, and/or cocktail lounge uses within the Parcel 1 Building penthouse and on the penthouse terrace consistent with the Plans;
 - f. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - g. To make refinements to exterior building 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;
 - h. To vary the retail entrances, façades, and signage in accordance with the needs of the retail tenants and within the potential retail signage zones shown in the supplemental plans filed as part of the Applicant's post-hearing submission;
 - i. To permit the selection of either the terra cotta panel, metal panel, or combination terra cotta/metal panel exterior façade system, to vary the depth of the façade panels, and to vary the final color of the panels based on availability at the time of construction without reducing material quality;
 - j. To permit the selection of travertine or other similar stone product used on the exterior building façade at the two-story retail level, based on availability at the time of construction without reducing the quality of materials, and provided the final selection is similar in color and texture to what is shown in the approved plans; and

- k. To vary the final selection of the open space paving materials within the color ranges and material types as proposed, based on constructability and availability at the time of construction.
6. The Applicant shall submit the final upper-level signage design for review by the Commission as a minor modification on the Commission's consent calendar.

B. Public Benefits

1. **Prior to the issuance of a certificate of occupancy**, the Applicant shall demonstrate that the Parcel 1 Building has been designed to achieve a LEED-CS (core and shell) Gold rating, generally consistent with the score sheet submitted as Sheet 1.4O of the portion of the Plans dated January 1, 2016. (Ex. 19B12.)
2. **Prior to issuance of a certificate of occupancy**, the Applicant shall establish the Project Association for the Southwest Waterfront PUD that will be responsible for maintenance and improvements of the private roadways, alleys, bicycle paths, promenade, sidewalks, piers, parks, and signage within the PUD Site. Additionally, the Project Association will be responsible for programming and staging events within the PUD Site. The Project Association will fund maintenance and programming elements of the common elements of the Southwest Waterfront PUD through a Common Area Maintenance ("CAM") assessment charge to each development component within the Southwest Waterfront PUD. The Applicant shall create, manage and operate the Project Association during the "developer control period," which begins on the effective date of the Declaration of Covenants between the District of Columbia and the Applicant and ends five years after issuance, or deemed issuance, of the last certificate of completion for all portions of the Southwest Waterfront PUD, and unit certificates of completion for each residential condominium unit.
3. **During construction of the PUD**, the Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services to achieve the goal of utilizing District residents for at least 51% of the new jobs created by the Southwest Waterfront PUD. Prior to issuance of a building permit for the construction of the Parcel 1 Building, the Applicant shall complete the Construction Employment Plan of the First Source Employment Agreement outlining the hiring plan for the project. The Applicant and the contractor, once selected, shall use best efforts to coordinate apprenticeship opportunities with construction trades organizations, the D.C. Students Construction Trades Foundation, and other training and job placement organizations to maximize participation by District residents in the training and apprenticeship opportunities in the Southwest Waterfront PUD.
4. **During the life of the project**, in accordance with the LDA, the Applicant shall abide by the executed CBE Agreement with the Department of Small and Local

Business Development to achieve, at a minimum, 35% participation by certified business enterprises in the contracted development costs for the design, development, construction, maintenance, and security for the project to be created as a result of the Southwest Waterfront PUD. (Z.C. Case No. 11-03, Ex. No. 4-J.) The Applicant shall comply with the LDA requirement to lease 20% of the retail space throughout the Wharf to “unique” and/or “local” businesses, which will include CBEs.

C. Transportation Mitigation

1. *For the life of the Project*, the Applicant shall abide by the Transportation Demand Management (TDM) program and monitoring plan approved as part of the first-stage PUD, and the following TDM measures that are specific to this second-stage PUD:
 - a. A member of the Wharf property management group will be a point of contact and will be responsible for coordinating, implementing, and monitoring the TDM strategies. This would include the development and distribution of information regarding transit facilities and services, bicycle facilities and linkages, and car-sharing.
 - b. The Applicant will post all TDM commitments to allow the public to see what commitments have been promised.
 - c. To encourage public transit utilization by both Metrorail and Metrobus, the Applicant will make information available within the office lobby related to local transportation alternatives. The marketing program should also utilize existing resources such as www.goDCgo.com, which provides transportation information and options for getting around the District.
 - d. The Applicant will install an electronic message board in both the Parcel I Building and Market Shed, which provide real-time information on nearby transit services.
2. *For the life of the Project*, consistent with the Plans, the Applicant shall provide two, 30-foot loading berths and a 250-square-foot loading platform, and, to accommodate the expected loading demand of the Parcel I Building and mitigate any potential impacts that may result from the loading flexibility granted by the Commission, the Applicant shall implement the following specific restrictions and guidance regarding loading operations at the Parcel I Building loading dock:
 - a. A representative of the Operations Manager will supervise deliveries to the loading dock to minimize conflicts, especially when large trucks are maneuvering down the alley in two-way traffic;

- b. Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including, but not limited to, 20 DCMR - Chapter 9, Section 900 ("Engine Idling"), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document;
- c. Maneuvering of delivery trucks will be limited, as necessary, during peak periods when traffic volumes are highest or at times that would coincide with trash collection to avoid and/or minimize potential conflicts; and
- d. High-turnover retail and restaurant delivery trucks will be allowed limited use of the loading dock during times of high retail and restaurant traffic in The Wharf.

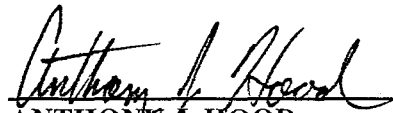
D. Miscellaneous

- 1. No building permit shall be issued for the second-stage PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division, DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
- 2. The second-stage PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 11-03C. Within such time, an application must be filed for a building permit for the construction of the project as specified in 11 DCMR § 2409.1. Construction of the project must commence within three years of the effective date of Z.C. Order No. 11-03C.
- 3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("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 and 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 also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On January 21, 2016, upon the motion of Vice Chairperson Cohen, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the application at the conclusion of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On March 28, 2016, upon the motion of Commissioner Turnbull, as seconded by Chairman Hood, the Zoning Commission **ADOPTED** this Order by the Zoning Commission at its public meeting on March 28, 2016, by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt; Marcie I. Cohen to adopt by absentee ballot).

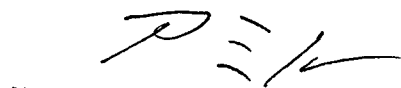
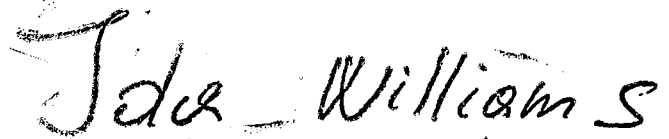
In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on May 13, 2016.


ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION


SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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RECORDING FEES	\$25.00
SURCHARGE	\$6.50


THIS IS TO CERTIFY THAT THIS IS A TRUE COPY

OCT 12 2016 Recorder of Deeds, D.C.