



2018109025-57

PUD COVENANT

(Southwest Waterfront / Parcel 6 & 7 – Z.C. Order No. 11-03J(3))

THIS PUD COVENANT (“Covenant”), made as of this 31st day of October 2018, 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 89 in Square 473 (the “Record Lot”), which is generally bounded by the Washington Channel of the Potomac River and Maine Avenue, between 7th Street on the west and 6th Street on the east, all in Southwest Washington, as is more particularly described in Exhibit A; and

WHEREAS, the District, as the owner of the Record Lot, through the Office of the Deputy Mayor for Planning and Economic Development, and Wharf Phase 3 REIT Leaseholder, LLC, an affiliate of Hoffman-Madison Waterfront LLC, as the developer, filed an application for review and approval of a modification to a first-stage Planned Unit Development (“PUD”) and approval of a second-stage PUD on May 12, 2017 (the “Application”), for Phase 2 of the Southwest Waterfront Redevelopment Project (the “Phase 2 PUD”), under Subtitle X, Chapter 3 of the 2016 Zoning Regulations (Title 11 DCMR); and

WHEREAS, the Zoning Commission for the District of Columbia (the “Commission”) divided the Application into three discreet segments corresponding to specific development parcels and adjacent buildings, structures, and spaces. The first such segment encompasses specific development plans for the land within the Phase 2

2-11-18

PUD known as Parcel 10, overall plan elements for the Phase 2 PUD, and certain adjacent buildings, structures, and spaces (the “Parcel 10 PUD”); the second segment encompassed specific development plans for the land within the Phase 2 PUD known as Parcel 8 and Parcel 9, as well as certain adjacent buildings, structures, and spaces (the “Parcel 8/9 PUD”); and the third segment encompassed specific development plans for the land within the Phase 2 PUD known as Parcel 6 and Parcel 7, as well as certain adjacent buildings, structures, and spaces (the “Parcel 6/7 PUD”); and

WHEREAS, the Commission approved the Parcel 10 PUD by Z.C. Order No. 11-03J(1), dated December 7, 2017 (sic) ¹, and effective on April 13, 2018 (the “Parcel 10 PUD Order”); and

WHEREAS, the Commission approved the Parcel 8/9 PUD by Z.C. Order No. 11-03J(2), dated December 7, 2018, and effective on April 13, 2018 (the “Parcel 8/9 PUD Order”); and

WHEREAS, the Commission approved the Parcel 6/7 PUD by Z.C. Order No. 11-03J(3), dated December 7, 2018, and effective on April 13, 2018 (the “Parcel 6/7 PUD Order”), attached hereto as Exhibit B; and

WHEREAS, the Commission limited the applicability of the Parcel 6/7 PUD Order to the area delineated on the approved Parcel 6/7 PUD drawings, as more particularly described in Exhibit C (the “Parcel 6/7 PUD Site”); and

WHEREAS, the Commission approved certain overall plan elements for the Phase 2 PUD that are applicable to all three segments of the Application by Z.C. Order

¹ The date shown on the first page of the Parcel 10 Order, which reflects the date upon which the Zoning Commission took final action to approve the Parcel 10 PUD, should be “2017” rather than “2018.” As stated in Finding of Fact 34 of the Parcel 10 Order, the Zoning Commission took final action to approve the Parcel 10 PUD on December 7, 2017.

No. 11-03J(1), which includes overall plan elements that are applicable to the Parcel 6/7 PUD Site and that are incorporated into the Parcel 6/7 PUD Order; and

WHEREAS, the development requirements for the Parcel 6/7 PUD Site and all conditions of approval pertaining thereto as stated in the Parcel 6/7 PUD Order are not binding upon any portion of the property described in Exhibit A that is not also described in Exhibit C; and

WHEREAS, Z.C. Orders Nos. 11-03J(1) and 11-03J(2) approve plans, and contain conditions that are specific to the Parcel 10 PUD and Parcel 8/9 PUD, respectively, and similar covenants have or will be filed and recorded as required by the 2016 Zoning Regulations and those particular orders. Nothing in this covenant shall be deemed to relieve the Declarant or its successors and assigns from complying with the plans approved under those orders, or with the declarations made in the related covenants; and

WHEREAS, Subtitle X, Chapter 3 of the 2016 Zoning Regulations, and Condition D.1 of the Parcel 6/7 PUD Order require the Declarant to enter into this Covenant for the Parcel 6/7 PUD Site assuring that the Declarant's (and its successors and assigns) development and use of the Parcel 6/7 PUD Site are as approved by the Commission pursuant to the Parcel 6/7 PUD Order, including all modifications, alterations or amendments thereto.

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

1. Approved Plans, Terms and Conditions. The Parcel 6/7 PUD Site shall be developed and used in accordance with the plans and drawings approved under the Parcel 6/7 PUD Order, including the overall design elements that are applicable to the Parcel 6/7

PUD Site and that were incorporated into the Parcel 6/7 PUD Order; and in accordance with the conditions and restrictions contained in the Parcel 6/7 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 changes made by the Zoning Commission pursuant to Subtitle Z §§ 703 or 704. The Declarant covenants that it shall use the Parcel 6/7 PUD Site only in accordance with the terms of the Parcel 6/7 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 of Title 11 DCMR.

2. Additional Time to Construct Parcel 6/7 PUD. Notwithstanding Subtitle Z §§ 702.2 or 702.3, the validity of the Parcel 6/7 PUD Order, and the time period requirements for filing a building permit application and commencement of construction for the Parcel 6/7 PUD shall be as prescribed in Condition D.2 of the Parcel 6/7 PUD Order. If a building permit application is not filed or if construction does not commence in accordance with the aforementioned condition within the Parcel 6/7 PUD Order, the 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 application to construct the Parcel 6/7 PUD is not filed within the time specified in Condition D.2 of the Parcel 6/7 PUD Order, or within any extension of time granted by the Commission for good cause shown pursuant to Subtitle Z § 705, the benefits granted under the Parcel 6/7 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 any conveyance of all or any part of the Parcel 6/7 PUD Site takes place, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns to develop and use the Parcel 6/7 PUD Site, or a conveyed portion thereof, in accordance with the terms and conditions of this Covenant, and the grantee, its successors and assigns shall be considered a declarant to this covenant. Such covenants are not binding upon the Declarant should it no longer have a property interest in the Parcel 6/7 PUD Site. Should the Declarant convey all of its interest in the Parcel 6/7 PUD 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.

5. Covenants to Run with the Land. The covenants and restrictions contained herein shall be deemed real covenants running with the Parcel 6/7 PUD Site and shall bind the Declarant, its successors and assigns, and shall inure to the benefit of the Declarant, its successors and assigns.

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

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

8. Rescission/Alteration of this Covenant. If the Parcel 6/7 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, record 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.

9. Limits of Covenant Against Parcel 6/7 PUD Site. As noted in the Ninth Recital above, the development requirements for the Parcel 6/7 PUD Site, and all conditions of approval pertaining thereto, as stated in the Parcel 6/7 PUD Order and incorporated into this Covenant (the “Parcel 6/7 PUD Site Requirements”) are limited to, and enforceable against, only the real property within the Parcel 6/7 PUD Site, as described in Exhibit C. Upon the filing of one or more Assessment & Taxation (“A&T”) lots within the Parcel 6/7 PUD Site, the remainder of the real property described in Exhibits A that is not within the Parcel 6/7 PUD Site shall be automatically released from the Parcel 6/7 PUD Site Requirements without the requirement of filing any amendment to this Covenant among the Land Records of the District of Columbia.

[SIGNATURES 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: Susan Longstreet
~~Brian T. Kenner~~ Susan Longstreet
Deputy Mayor for Planning and Economic Development
for the District of Columbia (per office order 7018-12)

DISTRICT OF COLUMBIA, ss:

I, NAKIA E. NEWTON, a Notary Public in and for the jurisdiction aforesaid,
do hereby certify that ~~Brian T. Kenner~~ Susan Longstreet, 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 19 day of October, 2018.

Nakia E. Newton
Notary Public, D.C.



NAKIA E. NEWTON
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires July 14, 2022

My commission expires: _____

REVIEWED:

By: Susana Longstreet
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: *[Signature]*
Secretary of the District of Columbia

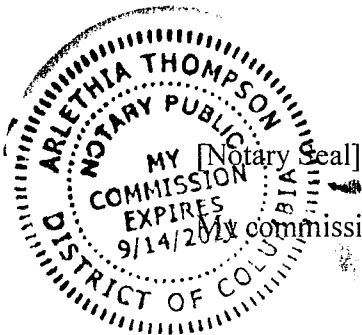
[CORPORATE SEAL]

DISTRICT OF COLUMBIA, ss:

I, *Arlethia 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 29 day of October, 2018.

Arlethia Thompson
Notary Public, D.C.



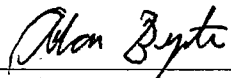
My commission expires: 09/14/2021

APPROVED:

Matthew Le Gort 10-17-18

Zoning Division, Department of
Consumer and Regulatory Affairs

APPROVED AS TO LEGAL SUFFICIENCY:

 10-22-18

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

EXHIBIT A

LEGAL DESCRIPTION OF THE RECORD LOT

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

All of Lot 89 in Square 473 as recorded in the District of Columbia Office of the Surveyor at Book 208, Page 126.

EXHIBIT B

ZONING COMMISSION ORDER No. 11-03J(3)

[Appended]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 11-03J(3)

Z.C Case No. 11-03J

Wharf Phase 3 REIT Leaseholder LLC

(Second-Stage PUD and Modification of Significance to First-Stage PUD @ Southwest Waterfront, Phase 2 – Parcel 6 and 7, Water Building 1, The Oculus, and Adjacent Spaces)

December 7, 2018

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held public hearings on November 2, November 6, and November 9, 2017, to consider an application for a second-stage planned unit development (“PUD”) and a modification of significance to a first-stage PUD (together, the “Application”) filed by Wharf Phase 3 REIT Leaseholder, LLC (“Applicant”) on behalf of the District of Columbia Office of the Deputy Mayor for Planning and Economic Development (“DMPED”). The Application consists of Phase 2 of the Southwest Waterfront (“Wharf”) redevelopment project (“Phase 2 PUD”) which is located on Lots 878, 881, 887, 888, and 921 of Square 473. The Commission approved the first-stage PUD application for the Wharf project pursuant to Z.C. Order No. 11-03 (*dated* October 17, 2011, *effective* December 16, 2011) (“first-stage PUD”). The Phase 2 PUD includes the primary landside buildings and structures located on Parcels 6-10, two below-grade parking structures, three waterside buildings known as Water Buildings (“WB”) 1 and 2¹, and the completion of the Wharf Marina. The Phase 2 PUD also includes various landside and waterside accessory structures and kiosks, public areas and open spaces, and improvements to public and private streets and alleys. The Commission considered the Application in accordance with the first-stage PUD and Subtitle X, Chapter 3 and Subtitle Z of the 2016 Zoning Regulations of the District of Columbia (“ZR16”), Title 11 of the District of Columbia Municipal Regulations (“DCMR”).² Due to the number of buildings and other development components contained in the Phase 2 PUD, and the breadth of information contained in the case record, the Commission divided the Phase 2 PUD into three segments that generally correspond to the organization of the proposed plans submitted by the Applicant, as follows: (i) Phase 2 PUD master plan elements, Parcel 10, Water Building 3, M Street Landing, The Terrace, and Wharf Marina; (ii) Parcels 8 and 9, Water Building 2, The Grove, and Marina Way; and (iii) Parcels 6 and 7, The Oculus, and Water Building 1. Each of the aforementioned segments were considered by the Commission at separate hearings, which were conducted in accordance with the contested case provisions of

¹ Originally, the Phase 2 PUD application proposed three water buildings but the project design changed during negotiations with various opposition parties and ultimately Water Building 3 was eliminated from the overall project.

² Pursuant to 11-A DCMR § 102.3(a), the Southwest Waterfront redevelopment project is a vested project under the 1958 Zoning Regulations as to permitted development standards and use permissions. However, with respect to procedural requirements, the Application was processed by the Commission and the Office of Zoning in accordance with the procedural requirements of ZR16. See Notice of Intent at Exhibit 2G and Notice of Public Hearing at Exhibit 17.

Subtitle Z, Chapter 4 of ZR16. Upon a motion made by the Applicant, the Commission granted a request to deliberate and vote on each segment separately, and issue separate orders accordingly. For the reasons stated below, the Commission hereby **APPROVES** this segment of the Application for Parcel 6, Parcel 7, Water Building 1, The Oculus, and Adjacent Spaces (“Parcel 6/7 PUD”).

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On May 12, 2017, the Applicant filed the Application with the Commission for review and approval of a second-stage PUD and a modification of significance to an approved first-stage PUD (Z.C. Order No. 11-03) for the Phase 2 PUD. (Exhibit [“Ex”] 1-2). The Phase 2 PUD is located on Lots 878, 881, 887, 888, and 921 of Square 473 (“Property”), and consists of the primary landside buildings and structures located on Parcels 6-10 of the Wharf project, two below-grade parking structures, two waterside buildings known as WB 1 and 2, and the completion of the Wharf Marina. The Phase 2 PUD also includes various landside and waterside accessory structures and kiosks, public areas and open spaces, and improvements to public and private streets and alleys. The Applicant intends to redevelop the Property generally consistent with the development parameters of the first-stage PUD Order as they relate to building height, number of stories, and density. As part of the Application, the Applicant is requesting to modify the first-stage PUD to permit a hotel use on Parcel 8.

2. By report dated July 14, 2017, the Office of Planning (“OP”) recommended that the Application be set down for a public hearing. (Ex. 10.) As part of its report, OP recommended that the Applicant amend the Application to include a request for first-stage PUD modification for the layout of the piers, docks, and water buildings in Wharf Marina. At its public meeting held on July 24, 2017, the Commission voted to schedule a public hearing on the Application. At that same meeting, the Commission divided the Phase 2 PUD into three segments that generally correspond to the organization of the proposed plans submitted by the Applicant due to the number of buildings and other development components contained in the Phase 2 PUD and the breadth of information contained in the case record. Each of the aforementioned segments were considered by the Commission at separate hearings, as follows:

Hearing Date	Topics
November 2, 2017	Overall Plan Elements/Volume C (Master Plan, Parcel 10, Water Building 3 ³ , M Street Landing, The Terrace, and Wharf Marina)
November 6, 2017	Volume B (Parcel 8, Parcel 9, Water Building 2, The Grove, and Marina Way)
November 9, 2017	Volume A (Parcel 6, Parcel 7, Water Building 1, and The Oculus)

³ WB 3 was discussed at the November 2nd hearing but ultimately removed from the overall project.

3. On August 4, 2017, the Applicant submitted a prehearing statement, which responded to issues raised by the Commission and OP at the setdown meeting. (Ex. 12, 13.) As part of its prehearing statement, the Applicant amended the Application to include the layout of the piers, docks, and water buildings in Wharf Marina in its request to modify the first-stage PUD. On October 4, 2017, the Applicant submitted its Comprehensive Transportation Review (“CTR”) (Ex. 20). On October 13, 2017, the Applicant submitted a supplemental prehearing statement, which included a full set of revised architectural plans and drawings (“Plans and Drawings”) and additional responses to issues raised by the Commission and OP at the setdown meeting. (Ex. 21.)
4. A description of the Phase 2 PUD and the notice of public hearing for the Application were published in the *D.C. Register* on September 1, 2017. The notice of public hearing was mailed to all property owners within 200 feet of the Property, based upon a listing of property owners obtained from the District of Columbia Office of Tax and Revenue (“OTR”) at the time of issuing the Notice of Intent for the Application, as well as to Advisory Neighborhood Commission (“ANC”) 6D.
5. At its October 16, 2017, regularly scheduled meeting, which was duly noticed and at which a quorum was present, ANC 6D voted 5-0-0 to oppose the Application for a variety of reasons, which are set forth in the ANC’s report dated October 26, 2017. (Ex. 32.) As described in this Order, the Applicant submitted additional information to the record based on further negotiations with the ANC, and more specifically the ANC’s Negotiation Team which was authorized by the full ANC to negotiate on behalf of, and represent the official position of, the ANC with respect to the Phase 2 PUD (“ANC Agreement”). (Ex. 38.)⁴ Based upon the conditions set forth in the ANC Agreement, at the public hearing held on November 2, 2017, ANC Chairman Andy Litsky testified that the ANC Negotiation Team, on behalf of the full ANC, formally supports the Application. (Ex. 49.)
6. On October 18, 2017, the Gangplank Slipholders Association (“GPSA”) submitted a request for party status in opposition to the Application. (Ex. 23.) GPSA’s party status request noted that it supported the project with reservations about excessive light and noise, construction debris, public foot and vehicular traffic, long-term community sustainability, safe and secure access during construction, and liveboard access to existing parking and loading areas. (Ex. 23, p. 2.)
7. On October 19, 2017, the Tiber Island Condominium (“Tiber Island Condo”) submitted a request for party status in opposition to the Application. (Ex. 25.) Tiber Island Condo’s party status request also stated that it supported the project with reservations about excessive light and noise, construction debris, public foot and vehicular traffic, long-term community sustainability, safe and secure access during construction, and the removal of

⁴ At its October 16, 2017, public meeting, ANC 6D voted to authorize the ANC 6D Negotiation Team to continue to meet with the Applicant and other parties to discuss their issues and attempt to work toward effective solutions to any outstanding issues. The ANC Negotiation Team is comprised of Commissioner Ronald Collins (6D03), Commissioner Gail Fast (6D01), and Commissioner Andy Litsky, Chairman (6D04).

existing Zone 6 parking areas and associated loading areas currently used by its residents. (Ex. 25, p. 2.) At the public hearing on November 2, 2017, Mr. Richard Brown, President of the Tiber Island Condominium, testified that Tiber Island Condo was actually in support of the Phase 2 PUD, but that they wanted to flag a concern about parking and traffic along 6th Street and M Place, S.W., as some of their townhouses face those streets. (Transcript [“Tr.”] November 2, 2017, p. 156.)

8. On October 19, 2017, 525 Water, a Condominium Unit Owners Association (“525 Water”) submitted a request for party status in support of the Application. (Ex. 24.)
9. On October 19, 2017, Tiber Island Cooperative Homes, Inc. (“Tiber Island Co-Op”) submitted a request for party status in support of the Application. (Ex. 26.)
10. The Applicant did not object to any of the requests submitted for party status either in advance of the public hearing pursuant to 11-Z DCMR § 404.9, or at the public hearing. At the beginning of the public hearing on November 2, 2017, the Commission granted all four requests for party status.
11. In addition to the parties in support, the Commission received letters in support of the Application from the Riverside Baptist Church, the International Spy Museum, the Disabled American Veterans, the Edgewater Condominium Association, Waterfront Village, and the Waterfront Gateway Neighborhood Association. (Ex. 37, 51, 53, 59, 61, 62.) In addition to the parties in opposition, the Commission received letters in opposition to the Application from MANNA and Ms. Judy Yang, a resident of 525 Water Street, S.W., the condominium building located on Parcel 11 within the PUD Site, and also received a variety of emails and letters from individuals expressing their concerns neither in support of or in opposition to the Application (Ex. 41, 31, 22, 60, 63, 64, 66, 69.)
12. The Commission received comments on the Application from the following District agencies: D.C. Public Library, Fire and Emergency Medical Service (“FEMS”), Metropolitan Police Department (“MPD”), Department of Employment Services (“DOES”), and Court Services and Offender Supervision Agency (“CSOSA”) (Ex. 79, 80, 81, 85, 87, 86.)
13. On November 2, 6, and 9, 2017, the Commission held public hearings to consider the second-stage PUD and modification to the first-stage PUD. The focus of the hearing on November 2nd was the Parcel 6/7 PUD. The parties to the Application were the Applicant, ANC 6D, GPSA, Tiber Island Condo, 525 Water, and Tiber Island Co-Op.

November 2nd Public Hearing

14. At the public hearing on November 2, 2017, the Applicant presented nine witnesses in support of the Application: Shawn Seaman and Matthew Steenhoek, on behalf of Wharf Phase 3 REIT Leaseholder, LLC/PN Hoffman; Hilary Bertsch, Perkins Eastman DC, PLLC; Robert Schiesel, Gorove/Slade Associates, Inc.; Morris Adjmi, Morris Adjmi Architects; Hiroshi Jacobs, STUDIOS Architecture; Nate Trevethan, Michael Van

Valkenburgh Associates; Paul Josey, Wolf Josey Landscape Architects; and Jessica McIntyre, Moffatt & Nichol. Based upon their professional experience and qualifications, Ms. Bertsch, Mr. Adjmi, and Mr. Jacobs were recognized as experts in architecture; Messrs. Trevethan and Josey as experts in landscape architecture; Mr. Schiesel as an expert in transportation engineering and planning; and Ms. McIntyre as an expert in marina design and engineering.

15. Matthew Jesick, Development Review Specialist at OP testified in support of the Application, and specifically the Parcel 10 PUD, with certain comments and conditions. Aaron Zimmerman and Jamie Henson, Transportation Planners at the District Department of Transportation (“DDOT”) testified in support of the Application, subject to conditions recommended by DDOT and agreed to by the Applicant.
16. Willie Beale, Paula Van Lare, and Michael Brown testified in support of the Application Michael Nobel, Ed Lazere, Gary Blumenthal, William Shickler, and Chris Otten testified in opposition to the Application.

November 6th Public Hearing

17. At the public hearing on November 6, 2017, the Applicant presented eight witnesses in support of the Application: Shawn Seaman and Matthew Steenhoek, on behalf of Wharf Phase 3 REIT Leaseholder, LLC/PN Hoffman; Elinor Bacon, Wharf Phase 3 REIT Leaseholder LLC / E.R. Bacon Development; Christian Bailey, ODA; Jay Bargmann, Rafael Vinoly Architects PC; Paul Josey, Wolf Josey Landscape Architects; Sital Patel, S9 Architecture; and Shane Dettman, Holland & Knight LLP. Based upon their professional experience and qualifications, Mr. Bailey, Mr. Bargmann and Mr. Patel were recognized as experts in architecture; Mr. Dettman was recognized as an expert in zoning and land use planning; and Mr. Josey having previously been recognized as an expert in landscape architecture at the November 2nd public hearing.
18. Matthew Jesick, Development Review Specialist at OP, testified in support of the Application, and specifically Parcel 8/9 PUD, with certain comments and conditions.
19. Dida El-Sourady and John McLaughlin testified in opposition to the Application.

November 9th Public Hearing

20. At the public hearing on November 9, 2017, the Applicant presented seven witnesses in support of the Application: Shawn Seaman and Matthew Steenhoek, on behalf of Wharf Phase 3 REIT Leaseholder, LLC/PN Hoffman; Elinor Bacon, E.R. Bacon Development; William Sharples, SHoP Architects PC; Matthias Hollwich, Hollwich Kushner; Faye Harwell, Rhodeside & Harwell; and Shane Dettman, Holland & Knight LLP. Based upon their professional experience and qualifications, Mr. Sharples and Mr. Hollwich were recognized as experts in architecture; Ms. Harwell was recognized as an expert in landscape architecture; and Mr. Dettman was previously recognized as an expert in zoning and land use planning.

21. Matthew Jesick, Development Review Specialist at OP, testified in support of the Application, and specifically the Parcel 6/7 PUD, with certain comments and conditions. Aaron Zimmerman, Transportation Planner at DDOT, also testified in support of the Application.
22. Steve Lanning testified in opposition to the Application.
23. At the conclusion of the November 9th public hearing, the Commission requested the Applicant to file its post-hearing submission and rebuttal on November 22, 2017. The Commission also requested GPSA to submit the results of its vote on the revised Letter Agreement that it was negotiating with the Applicant by November 30, 2017. The Commission scheduled a special public meeting for December 7, 2017, to consider final action; and the Commission requested that the Applicant respond, as needed, to GPSA's November 30th submission by noon on December 7th.

Post-hearing Filings, Motions, Actions

24. On November 16, 2017, the Applicant filed a motion requesting the Commission to separate its deliberation and decision on the Application into three separate actions, consistent with the Commission's decision and issuance of orders for the second-stage PUD application for Parcels 2, 3, 4 and 11 of the Wharf project (Z.C. Order Nos. 11-03A(1), 11-03A(2), 11-03A(3), and 11-03A(4).) (Ex. 76.) In its motion the Applicant stated that separating the deliberation and decision on the Application into three separate actions is also consistent with the Commission's decision to hold multiple hearings on the Phase 2 PUD due to the number of buildings and other development components, and the breadth of information contained in the case record.
25. On November 20, 2017, ANC 6D submitted a response in opposition to the Applicant's motion noting that the request to separate the deliberation and decision seemed unnecessary and could inadvertently result in all contested issues not being fully resolved because of case deliberations occurring piecemeal as opposed to simultaneous for the entire application. (Ex. 77.)
26. On November 20, 2017, OP filed a motion to reopen the record to allow comments from both the DC Public Library and the DC Fire and Emergency Medical Service Department received after the public hearings into the record. (Ex. 78.)
27. On November 22, 2017, the Applicant filed its rebuttal testimony and its post-hearing submission refuting various aspects of the contested issues that were raised by the parties in the three public hearings. (Ex. 82.)
28. On November 22, 2017, the Applicant filed a motion to extend the deadline for submission of draft findings of fact and conclusions of law from November 27th until November 29th after the Commission was scheduled to consider the Applicant's motion

to separate its deliberation and decision on the Application into three separate actions. (Ex. 84.)

29. On November 27, 2017, the Commission granted the Applicant's motion to separate its deliberation and decision on the Application into three separate actions after the Applicant's counsel explained that allowing three orders would avoid a situation where the entire project was delayed in the event of a party appealing one building or component of the project. The Commission also granted the motion to extend the deadline for submission of draft findings of fact and conclusions of law to November 29th.
30. On November 29, 2017, the Applicant filed its draft findings of fact and conclusions of law for the Parcel 6/7 PUD. (Ex. 89.) On December 1, 2017, the Applicant filed revised draft findings of fact and conclusions of law for the Parcel 6/7 PUD to include additional transportation mitigation measures that were previously recommended by OP and accepted by the Applicant, but inadvertently omitted from the Applicant's initial submission. (Ex. 93A3.)
31. On November 30, 2017, GPSA submitted a statement on the status of negotiations with the Applicant on the revised Letter Agreement ("GPSA Status"), as well as proposed findings of fact and conclusions of law. (Ex. 91, 92.) On December 4, 2017, the Applicant submitted a response to the GPSA Status ("Status Response"). (Ex. 91, 94.)
32. On December 5, 2017, OP submitted a post-hearing memorandum containing responses to the Applicant's post-hearing submission. Specifically, Exhibit 82T contained a labeling error where the word "enclosure" appears on Sheets 2.24 and 2.25 of the plans, and revisions to the minor design flexibility language to appear in the final orders for Parcel 6/7 and Parcel 8/9 were suggested. (Ex. 95.) On December 6, 2018, the Applicant filed a motion to reopen the record to submit a response to OP's post-hearing memorandum. (Ex. 96.) The Applicant's motion was granted and the Applicant submitted Exhibit 96A to correct the labeling error and accepted OP's suggested revisions to the minor design flexibility language.
33. On December 7, 2017, GPSA submitted a motion to reopen the record to submit a second statement on the status of negotiations with the Applicant on the revised Letter Agreement ("GPSA Second Status"), to which the Applicant submitted a response on that same day. (Ex. 97A, 98.)
34. At a special public meeting held on December 7, 2017, the Commission took final action to approve the Phase 2 PUD, by a vote of 5-0-0. During the meeting, the Applicant confirmed that its intent is to provide continuity of amenities/services to the liveaboard population during construction in a fenced, access-controlled location along the water's edge within the confines of security for the marina as shown in Modified Option B. (Ex. 94B, Attachment 2 "Transition Plan", Sheets 5-8 of the Construction Sequencing Plan.) The Commission's final approval was conditioned on the amendment of Modified Option

B, as necessary, to document the parties' final agreement on the exact location of interim liveboard amenities/services during construction.

The Applicant and Development Team

35. The master developer of the overall Southwest Waterfront redevelopment project is Hoffman-Struever Waterfront, LLC, doing business as Hoffman-Madison Waterfront, LLC ("Hoffman-Madison"). The Applicant for the Phase 2 PUD is Wharf Phase 3 REIT Leaseholder, LLC, an affiliate of Hoffman-Madison, which is processing the 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.

The Southwest Waterfront Redevelopment Project

36. 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 ("LDA") for redevelopment of the Southwest Waterfront, 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").
37. The primary objective of the Southwest Waterfront redevelopment project 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.

Overview of the Southwest Waterfront PUD

38. 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.
39. 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.

Previous PUD Approvals

40. Pursuant to Z.C. Order No. 11-03, the Commission approved the first-stage PUD for the Southwest Waterfront redevelopment project.
41. Since approving the first-stage PUD, the Commission has approved a second-stage PUD application for Parcels 2, 3, 4, and 11, the Capital Yacht Club, and the public open spaces known as the Wharf, Transit Pier, District Pier, Yacht Club Piazza, the Mews, Jazz Alley, 7th Street Park and Waterfront Park, as well as temporary uses on Parcel 1 (Z.C. Order Nos. 11-03A(1), 11-03A(2), 11-03A(3), and 11-03A(4).) The Commission has also approved second-stage PUDs for Parcel 5 (Z.C. Order No. 11-03B); Parcel 1, Market Shed, and Market Square (Z.C. Order No. 11-03C); 7th Street Recreation Pier (Z.C. Order No. 11-03E); and Pier 4, which also included a first-stage PUD modification (Z.C. Order No. 11-03F). The Commission has also approved minor modifications or modifications of consequence to previously approved plans for Parcel 5 (Z.C. Order Nos. 11-03D and 11-03I), Parcel 3A (Z.C. Order No. 11-03G), and Parcel 4 (Z.C. Order No. 11-03H).

Approved First-Stage PUD Development Parameters

42. As part of the first-stage PUD, the Commission approved the overall parameters for the redevelopment of the PUD Site. The first-stage PUD authorizes a maximum landside density of 3.87 FAR, excluding private rights-of-way, and a maximum waterside density of 0.68 FAR. (See Z.C. Order No. 11-03, Condition Nos. A-1 and A-2. Development parameters pertaining to building height, parking, and loading were also included in the first-stage PUD.)
43. The first-stage PUD divides the landside portion of the PUD Site into 11 primary building parcels, a number of smaller landside and waterside structures, four major plazas, one large park, a waterfront promenade/shared space, and public and private piers. The waterside development includes club buildings for the marinas, buildings on existing Piers 3 and 4, and other minor waterside buildings and facilities. The approved parks also include smaller retail structures and pavilions.
44. Regarding building heights, the Commission approved a maximum height of 130 feet for Parcels 1-9, with the exception of Parcel 5, which the Commission approved at a maximum height of 110 feet. The Commission approved maximum building heights for Parcels 10 and 11 at 60 feet and 45 feet, respectively. Finally, the Commission approved a maximum building height of 45 feet on Pier 4.

45. With respect to parking facilities, the Commission approved the construction of one or more below grade parking structures that would provide approximately 2,100-2,650 parking spaces on two to three levels. The Commission required the Applicant to provide parking or storage for approximately 1,500-2,200 bicycles and sufficient loading facilities to accommodate the mix of uses on the PUD Site. Pursuant to Z.C. Order No. 11-03, the precise amount of parking and loading facilities required for each second-stage PUD application shall be specified by the Commission in each second-stage order.
46. As part of the first-stage PUD approval, the Commission approved the phased redevelopment of the PUD Site, with the last second-stage PUD application required to be filed no later than December 31, 2024.

The Phase 2 PUD

47. The landside portion of the Phase 2 PUD is located on Record Lot 89 of Square 473, and includes Assessment & Taxation (“A&T”) Lots 878, 881, and 921, which collectively comprise approximately 322,738 square feet of land area. The waterside portion of the Phase 2 PUD includes A&T Lots 887 and 888, which collectively comprise approximately 666,683 square feet of riparian area.
48. The landside portion of the Phase 2 PUD includes primary buildings on Parcels 6/7 (“Parcel 6/7 Building”), Parcel 8 (“Parcel 8 Building”), Parcel 9 (“Parcel 9 Building”), and Parcel 10 (“Parcel 10, Building”). The landside portion of the Phase 2 PUD also includes two new below-grade parking garages, and several new open spaces and thoroughfares such as M Street Landing, The Grove, The Terrace, The Oculus, Maine Avenue, the Wharf, Marina Way, and the Mews.
49. The waterside portion of the Phase 2 PUD includes two new water buildings, Water Building 1 and Water Building 2. In addition, the waterside portion of the Phase 2 PUD includes construction of the remaining portions of Wharf Marina, as well as the construction of a number of kiosks along the Wharf.
50. In addition to requesting second-stage PUD approval for the landside and waterside components noted above, the Phase 2 PUD also includes a modification to the first-stage PUD to permit a hotel use on Parcel 8 and to accommodate changes that have been made to the configuration of the piers, docks, and water buildings within Wharf Marina.

First-Stage PUD Modification

51. Pursuant to the first-stage PUD, the mix of uses approved for Parcel 8 includes either residential or office use above ground-floor retail. As described below, the proposed Parcel 8 Building includes residential and hotel uses above ground-floor retail. As such, the Applicant is requesting to modify the first-stage PUD to add hotel (lodging) as an approved use on Parcel 8.

52. In response to a recommendation by OP at setdown, the Applicant amended the Application to include the proposed layout and configuration of piers, docks, and water buildings in Wharf Marina. Since approval of the first-stage PUD, the Applicant has had to make adjustments to the design of Wharf Marina in response to requirements of the United States Army Corps of Engineers (“USACE”), which must issue a permit for the Applicant to carry out the waterside component of the Southwest Waterfront PUD, previously approved changes to the use on Pier 4, and the plan for transitioning GPSA liveboard vessels.

The Parcel 6/7 PUD

Landside Development

Parcel 6/7 Building

53. As shown in the portion of the Plans and Drawings found at Exhibits 21AA1-21AA3, as amended by Exhibit 82U, the Parcel 6/7 Building will contain approximately 505,516 square feet of gross floor area (“GFA”), of which approximately 34,069 GFA will be devoted to retail and service uses and approximately 471,447 GFA will be devoted to office uses. The maximum height of the Parcel 6/7 Building is 130 feet, not including the penthouse. The maximum height of the penthouse is 20 feet.
54. The Parcel 6/7 Building’s general massing and program is composed of two office towers connected by a “belt-level” at the second floor. The office towers rise above a ground floor retail, lobby, and service level that is divided into four sections by a north-south pedestrian thoroughfare connecting Maine Avenue and the Wharf and an east-west service thoroughfare connecting 7th Street Park and The Grove. The thoroughfares intersect below an open air portion of the second-floor belt-level that connects the office towers below an open space called “The Oculus.”
55. The ground floor of the Parcel 6/7 Building contains substantial retail space that will provide active retail frontages on all four sides of the building, as well as along the thoroughfares that pass through the ground floor. Two lobby areas that serve the upper-level office uses are also located on the ground floor. The ground floor will also include an access ramp to below-grade parking and a loading area along the private alley between Parcels 7 and 8. A second loading area will be located along the portion of the east-west service thoroughfare between 7th Street Park and the north-south thoroughfare.
56. The second-floor of the Parcel 6/7 Building is a belt-level that contains office space and will connect the two office towers that rise above. The form of the second level relates to the form of the ground and upper levels of the building, albeit much more pronounced, which creates generous outdoor terraces, lends further definition to the active ground-floor level, and establishes a unique massing for the office towers. On floors 3-10 of the Parcel 6/7 Building, the two office towers extend beyond the envelope of the second floor belt-level.

57. The penthouse of the Parcel 6/7 Building will contain habitable office space, mechanical space, and screen walls enclosing mechanical equipment, all of which will be provided as a single enclosure as required under the Zoning Regulations. Approximately 21,000 square feet of penthouse roof area is planned to be reserved for solar panels. While not required, the solar panels will be setback from the edge of the penthouse roof a distance at least equal to their highest point above the penthouse roof and screened. The combined height of the penthouse and solar panels will satisfy all applicable setback requirements, as will all guardrails, as measured from the edge of the roof upon which the penthouse is located. The penthouse is surrounded by an outdoor terrace and green roof.
58. The exterior materials of the Parcel 6/7 Building primarily consist of glass façade that is accented with various other wood, stone, and metal materials. At the ground-floor, a glass storefront system will maximize views into the active retail spaces and be accented with a palette of metal panel, stone, and masonry materials and paving. The upper-level office floors will primarily be clad in a glass façade and accented with wood and metal panel materials that complement the materials used on the ground floor. The outdoor terraces will also be paved with wood and pavers. Finally, the penthouse will be primarily clad in glass and metal panel. The penthouse terrace will be paved with pavers and wood planks.
59. As discussed below, in its hearing report OP recommended specific conditions related to the design, materials, and lighting of The Oculus soffit and the glass façade of the office towers. As a way to balance OP's goal of ensuring that these characteristic elements of the Parcel 6/7 Building are maintained while providing a reasonable degree of flexibility to accommodate refinements to these elements that may be required during design development and fabrication, the Applicant has included OP's recommended conditions into its list of requested flexibility in a manner that will preserve the aesthetic intent of the building.

Waterside Development

Water Building 1

60. As shown in the portion of the Plans and Drawings found at Exhibits 21AA3-21AA5, as amended by Exhibits 82V-82W, WB1 will contain approximately 11,886 GFA, of which approximately 11,033 GFA will be devoted to retail and service uses, and approximately 853 GFA will be devoted to maritime services uses. The maximum height of WB1 is approximately 34 feet, not including the penthouse. The maximum height of the penthouse is approximately 12 feet.
61. WB1 is located along the waterside of the Wharf and adjacent to the Parcel 6/7 Building. The design of the building takes cues from the design of the Wharf promenade and bulkhead that extends the length of the Southwest Waterfront redevelopment project. WB1 will be constructed on piers/piles adjacent to the Wharf; and therefore will not protrude into the pedestrian zone of the Wharf.

62. The WB1 site extends out from the bulkhead and reads as an extended pier band/extension of the Wharf. The extended pier band is split into two and lifted up to create the general volume of space within which the building program will be located. To support the roof, an angular system of trusses is utilized along the outer edge of the bands which unifies the upper and lower pier bands. The interior space of the building is established using a simple glass façade that is recessed from the outer edges of the pier bands and trusses.
63. WB1 contains two floors of retail and service and maritime service uses, as well as a penthouse level. The first floor contains both retail and service and maritime service uses, and the second floor contains only retail and service uses. At the roof level, WB1 contains a large outdoor terrace that will be used for retail and service purposes. WB1 also contains a modest penthouse that will provide restrooms and storage space to support the roof level terrace, as well as required penthouse mechanical space and elevator access. The penthouse will meet all required setbacks, as will all guardrails.
64. The primary exterior materials of WB1 including the penthouse, will consist of painted steel, framed-glass wall system, and metal panel.

Open Spaces and Thoroughfares

The Wharf and Maine Avenue

65. As part of the Parcel 6/7 PUD, a remaining portion of the Wharf will be constructed. Consistent with the first-stage PUD, and with the portions of the Wharf that have already been constructed, the Wharf will continue to be, first and foremost, a pedestrian environment adjacent to the Washington Channel, that also can operate to allow for low-speed, low-volume vehicular access to business fronts, restaurants, elderly and disabled passenger drop off, and valet parking along the water's edge. The Wharf will be a flexible environment that can be closed periodically for special events and certain nights and weekends to emphasize and enhance the pedestrian experience while still maintaining emergency access.
66. As shown in the portion of the Plans and Drawings found at Exhibit 21AA5, the portion of the Wharf that will be constructed as part of the Parcel 6/7 PUD will be generally consistent in design with other sections of the Wharf that have previously been approved by the Commission.
67. As part of the Parcel 6/7 PUD, a remaining portion of Maine Avenue, S.W. will be reconstructed in a manner that is generally consistent with the streetscape design that has been previously approved by the Commission, with the exception that the buildings along Maine Avenue included in the Parcel 6/7 PUD have been set back an additional five feet to provide even greater sidewalk width, compared to those included in Phase 1 of the Southwest Waterfront PUD.

68. As described in the first-stage PUD, Maine Avenue along the length of the Southwest Waterfront redevelopment project is envisioned to be an urban, tree-lined boulevard that provides generous pedestrian circulation space; accommodates multiple modes of transportation; provides safe and convenient loading and curbside management; and incorporates LID strategies that contribute to stormwater management. In addition, the proposed improvements along Maine Avenue include the continued motorcoach loading and unloading operation that currently exists which, as discussed below, will be operated, managed, and monitored in accordance with the ANC Agreement. (Ex. 38.)
69. As shown in the portion of the Plans and Drawings found at Exhibit 21AA6, similar to the Wharf, Maine Avenue has been designed to incorporate a Low Impact Development (“LID”) planting zone that collects stormwater from the sidewalk and contributes to the sites overall stormwater management plan. Additionally, the surface of the bicycle lane is a permeable surface that helps reduce runoff, and help provide water to the critical root zone of the street trees along Maine Avenue. Permeable cobbles are placed between planting areas to provide for additional stormwater capture and treatment as well as locations for café seating. Finally, two rows of newly planted trees are proposed with continuous soil trenches to provide tree canopy cover, and significant efforts will be made to preserve existing “heritage trees.”

The Mews

70. As shown in the portion of the Plans and Drawings found at Exhibit 21AB8, the interstitial spaces between and within the buildings on Parcels 6, 7, and 8 are designed as private mews streets or alleys. These connectors will not only provide primary entrances for access to parking and loading/service areas, but are also intended to be low-speed, curbside pedestrian-dominated environments that support unique retail, restaurants, and entertainment opportunities.
71. The mews streets that are oriented perpendicular to Maine Avenue and provide a small scale street grid within the PUD Site, increase site porosity, and provide an enhanced number of viewsheds from Maine Avenue to the Washington Channel. These smaller visual connections combined with the enhanced views from the primary open spaces of the Southwest Waterfront PUD will provide unprecedented linkages between the Washington Channel and the Southwest neighborhood.
72. The mews streets that are parallel to the Washington Channel and run through Parcels 6, 7, and 8 provide additional options for circulation and exploration through the PUD Site, and provide shelter and protection from the elements.
73. The mews streets are designed to be flexible in nature so as to facilitate vehicular access and loading, and at other times be primarily pedestrian in nature and filled with café tables and spill-over retail and entertainment. Loading areas and vehicular/bicycle parking garage entries are primarily provided off of the mews streets; however, these private rights-of-way have also been carefully designed to provide required vehicular circulation while minimizing impacts on the pedestrian experience.

Parking and Loading Facilities

74. Pursuant to the approved first-stage PUD, the Southwest Waterfront redevelopment project “shall include one or more below-grade parking structure(s) on two or three levels providing parking spaces for approximately 2,100-2,650 vehicles. The project shall also include parking or storage for 1,500-2,200 bicycles on-site.” (See Z.C. Order No. 11-03, Condition A.4.)
75. Phase 1 of the Southwest Waterfront PUD, currently includes a single below-grade parking garage below Parcels 1-5 that contains approximately 1,483 vehicle parking spaces (“Garage 1”). Phase 1 also contains parking and storage for approximately 1,192 bicycles located at grade and within Garage 1.
76. As shown in Exhibit 21A2, Sheets 1.19-1.20, the Applicant will construct two additional below-grade parking garages (“Garage 2” and “Garage 3”). Each garage will contain two levels, with the footprint of the second level in both garages being significantly smaller due to the presence of the Metrorail green line. Collectively, the garages will contain approximately 844 vehicle parking spaces, for a total of approximately 2,327 vehicle parking spaces within the full Southwest Waterfront PUD. In addition, approximately 610 long-term bicycle parking spaces and approximately 130 short-term bicycle parking spaces will be provided at grade and within Garages 2 and 3 (Ex. 21A2, Sheets 1.19-1.20, 1.24.)
77. Garage 2 will be located below Parcels 6-8, and will be accessible via ramps located along the east side of the Parcel 7 Building and the east side of the Parcel 8 Building. (Ex. 21A2, Sheet 1.25.) Garage 3 will be located below Parcels 9 and 10 and M Street Landing, and will be accessible from a ramp located in the podium level of the Parcel 10 Building along Water Street, S.W. Residents of the Parcel 9 Building will also be able to access Garage 3 using two vehicle lifts within the ground floor of the Parcel 9 Building. Parking spaces within Garages 2 and 3 will be used by the occupants, residents, and visitors of the primary buildings within the Phase 2 PUD, and will also include general use public parking. Parking for marina uses will also be available in Garages 2 and 3.
78. Loading facilities for the buildings located on Parcels 6-10 will be located within each building. (Ex. 21A2, Sheet 1.25.) Loading facilities have been carefully located along mews streets and private streets or alleys to minimize impact on the pedestrian environment while providing adequate space for managed on-site loading and service needs. Consistent with the approved first-stage PUD, due to access constraints the loading facilities for the Parcel 10 Building are located along Water Street, S.W., a private street within the boundary of the Southwest Waterfront PUD. Truck size and loading hours will be carefully managed on-site to facilitate the operational and programmatic needs of the individual buildings through a comprehensive loading and curbside management plan that is tailored to the expected loading demand for the Phase 2 PUD and coordinated with all other transportation aspects of the Southwest Waterfront redevelopment project.

79. Bicycle racks will be distributed throughout the Phase 2 PUD for convenient access, with a primary focus on locations adjacent to the dedicated bicycle facility on Maine Avenue, S.W. (Ex. 21A2, Sheet 1.24.) This approach to bike parking is intended to encourage visitors to park bicycles on the perimeter of the PUD Site and experience the PUD Site as a pedestrian, but does not preclude full access and available bicycle parking within the PUD Site. Similar to Phase 1, in addition to the bicycle parking and storage located within Garages 2 and 3, additional bicycle parking and amenities will be located at grade throughout the Phase 2 PUD. These facilities are designed as high-quality street furniture, will be incorporated into the surrounding urban design, and will contribute to the project's sense of place. Furthermore, the Applicant is funding the installation of a new Capital Bikeshare station within M Street Landing and Waterfront Park, which is in addition to the two Capital Bikeshare stations the Applicant has already installed or relocated as part of Phase 1 of the Southwest Waterfront PUD. (Ex. 21A2, Sheet 1.24.)
80. The Applicant will implement the Transportation Demand Management ("TDM") Plan and the TDM Performance Monitoring Plan that were prepared for the Phase 2 PUD. (Ex. 67B, 67C.) The TDM Plan and TDM Performance Monitoring Plan incorporate, and update where necessary, all of the TDM strategies, conditions, and monitoring requirements that were approved as part of the first-stage PUD, and previous second-stage PUD approvals. Further, the TDM Plan and TDM Performance Monitoring Plan were developed in coordination with DDOT which, as discussed below, has no objection to the Phase 2 PUD.
81. The Applicant will implement specific restrictions and guidelines on loading operations to offset any potential impacts from the loading activities of the Phase 2 PUD, as set forth in the Loading Management Plan ("LMP") included at Page 38 of the Comprehensive Transportation Review ("CTR") Report. (Ex. 20A.)

Zoning Flexibility

82. The Applicant requests flexibility to adjust the number of loading berths, loading platforms, and service delivery spaces provided for all of the buildings included in the Phase 2 PUD. Because the first stage application was approved prior to repeal of the 1958 version of the Zoning Regulations ("ZR58") on September 6, 2016, the entire PUD is considered a vested project pursuant to 11-A DCMR § 102, and therefore is subject to the area and use requirements of ZR58.
83. Pursuant to § 2201.1 of ZR58, the Applicant is required to provide one loading berth at 55 feet deep, 11 loading berths at 30 feet deep, six service delivery spaces, 11 loading platforms at 100 square feet, and one loading platform at 200 square feet for the Phase 2 PUD. The Applicant proposes to provide nine loading berths at 30 feet deep, five service delivery spaces, 11 loading platforms at 100 square feet, and one loading platform at 200 square feet, thus necessitating flexibility from § 2201.1. The Commission hereby approves this area of zoning flexibility for the reasons stated below.

84. The Commission finds that not providing the one required 55-foot deep loading berth will not result in any adverse impacts. Under ZR58, certain buildings are required to provide one or more 55-foot loading berths; however, under the ZR16 there is no requirement to provide a 55-foot loading berth. Rather, ZR16 simply requires all loading berths to have a minimum depth of 30 feet. This change is primarily because deliveries by large trucks have become increasingly rare for many land uses in the District. Property owners are more commonly relying on smaller trucks and delivery vans, which are easier to maneuver within the city's system of streets and alleys. In addition, designing for large vehicle loading berths requires wider roads and curb cuts, and larger turning radii at intersections and entrances to alleys, all of which have negative impacts on the pedestrian environment, bicycle travel, and traffic congestion.
85. The Commission concludes that the Applicant has addressed these considerations by developing a coordinated overall loading plan for the Phase 2 PUD based on the overall mix of uses and anticipated site-wide pedestrian, bicycle, and vehicular circulation. This approach has allowed the Applicant to eliminate redundancies and increase efficiency with respect to circulation and maneuverability. The Applicant worked closely with DDOT on preparing an effective loading management plan that is tailored to the expected loading demand for the Phase 2 PUD and coordinated with all other transportation aspects of the Southwest Waterfront redevelopment project. Therefore, the Commission finds that flexibility from the loading requirements of § 2201.1 of ZR58 is appropriate in this case.
86. The Applicant requests flexibility from the requirements of § 2517 of ZR58 to allow the construction of two or more principal buildings or structures on a single subdivided lot that is located within 25 feet of a residential zone district. The Commission notes that it has previously granted this flexibility for Phase 1 of the Southwest Waterfront PUD, and finds that granting this same flexibility for the Phase 2 PUD is necessary and appropriate. The landside portion of the Phase 2 PUD is comprised of a single lot of record, within which several tax lots will be created for each of the proposed primary buildings and structures. Each of the proposed primary buildings and structures is consistent with the development and use parameters established under the first-stage PUD, and with the development standards and use permissions under ZR58, as applicable.

Design Flexibility

87. The Applicant requests the following areas of design flexibility for the Parcel 6/7 PUD:
- a. To vary the location and design of interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration or appearance of the building;
 - b. To make refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, venting, window mullions and spacing, and any other

changes that otherwise do not significantly alter the exterior design to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit or other applicable approvals. Such refinements shall not substantially change the exterior configuration, appearance, proportions, or general design intent of the building;

- c. To vary the final selection of exterior building materials within the color ranges of the material types shown in the Exhibit 82, Sheet 2.13 and 21AA3, Sheets 1.32-1.33 based on availability at the time of construction. Any such variations shall not reduce the overall quality of materials, nor substantially change the exterior appearance, proportions, or general design intent of the building;
- d. Notwithstanding the flexibility granted in items b and c above, the Oculus of the Parcel 6/7 Building shall be constructed in a manner that is: (i) similar in character with the precedents shown in Exhibit 21AA3, Sheet 1.37 (Oculus Soffit Cladding), including a faceted surface with three dimensional relief; (ii) consistent with the aesthetic intent of the ceiling panels shown in Exhibit 21AA3, Sheet 1.33 (Parcel 6+7: Retail Material Palette), including the gold-bronze color; (iii) consistent with an integrated lighting solution consistent with the intent shown in Exhibit 21AA3, Sheet 1.33 (Parcel 6+7: Retail Material Palette);
- e. Notwithstanding the flexibility granted in items b and c above, the façade of the office portion of the Parcel 6/7 Building shall be constructed in accordance with the plans shown in Exhibit 21A with the following design flexibility: (i) glass panels shall tilt outward in a manner that is consistent with the intent of that shown in Exhibit 21AA3, Sheet 1.41; and (ii) the corners of the building shall be maintained and consist of curved glass expression as shown in Exhibit 21AA3, Sheet 1.41. Minor variations to the radius of the corner shall be permitted provided the exterior configuration, appearance, proportions, and general design intent of the building is maintained;
- f. To vary the final selection of landscaping materials utilized based on availability at the time of construction;
- g. To vary the final design of retail frontages, including the location and design of entrances, show windows, signage, and size of retail units, in accordance with the needs of the retail tenants. Retail signage shall be located within the potential retail signage zones shown in the Exhibit 21AA2, Sheets 1.14, 1.15, and 2.17;
- h. To vary the design and location of upper-level building signage located above the first-story within the limits of the potential tenant signage zones shown in Exhibit 21AA2, Sheets 1.14, 1.15, and 2.17, and in accordance with the District of Columbia sign regulations in effect at the time of permitting;
- i. To vary the garage layout and the number, location, and arrangement of vehicle and bicycle parking spaces provided the number of spaces, for both vehicles and

bicycles, is not reduced by more than five percent of the number shown on Exhibit 21A2, Sheets 1.19-1.20, 1.24, and the total number of vehicle and bicycle parking spaces provided is consistent with that which is required under Z.C. Order No. 11-03; and

- j. To vary the sequencing and timing of construction of Wharf Marina, including associated bulkhead, piers, docks, fueling station(s), and other related buildings and structures, as shown in Exhibit 94B, Attachment 2, Construction Sequencing Plan, Sheets 1-11.

Public Benefits and Amenities

88. As noted in the first-stage PUD approval, the Commission finds that the overall Southwest Waterfront PUD will provide an exceptional number and level of public benefits and project amenities including, but not limited to: (i) the creation of a new mixed-income, mixed-use community that reactivates the Southwest Waterfront; (ii) substantial affordable, workforce, and market-rate housing opportunities; (iii) multi-modal transportation improvements; (iv) environmental benefits including vastly improved storm water management; and (v) improvements to the Maine Avenue Fish Market and connections to Banneker Overlook and 10th Street, S.W. (*See* Z.C. Case No. 11-03, Ex. 60; Z.C. Order No. 11-03, pp. 13-16.)
89. Pursuant to Z.C. Order No. 11-03, Condition C(3), the Applicant was required to provide a detailed implementation plan for the public benefits and project amenities with each second-stage PUD application. The implementation plans are required to identify the benefits and amenities proposed for the particular second-stage PUD application, the benefits and amenities already implemented, and the benefits and amenities yet to be implemented. In fulfillment of this requirement, the Applicant submitted a Public Benefits and Amenities Implementation Chart. (Ex. 2E.) The Commission has reviewed the information provided and finds that it satisfies the condition of the first-stage PUD.

Office of Planning Report

90. By report dated October 27, 2017, OP stated that it “can recommend approval of the application,” once certain items are resolved and subject to certain conditions (“OP Report”). (Ex. 33, p. 1.) Despite the outstanding issues, OP noted that the “proposed first stage modifications are not inconsistent with the Comprehensive Plan and with those changes, the proposed second stage application is not inconsistent with the first stage PUD approval, the Comprehensive Plan, or the Zoning Regulations.” OP stated that it “strongly supports the current overall site plan and building design.” (Ex. 33, pp. 1-2.)
91. In addition, the OP Report states that the project would further a number of the Comprehensive Plan’s Guiding Principles and major policies from the Land Use, Transportation, Economic Development, and Urban Design Citywide Elements, and the Lower Anacostia Waterfront/Near Southwest Area Element. OP found that the application was not inconsistent with the Comprehensive Plan’s Generalized Policy Map

or the Future Land Use Map, and that it was consistent with the Development Plan & Anacostia Waterfront Initiative Vision for the Southwest Waterfront (“SWW Plan”). (Ex. 33, p. 17.) A complete listing of relevant policies and excerpts from the Comprehensive Plan were provided in Attachment 1 of the OP Report.

92. OP recommended the following conditions with respect to the Parcel 6/7 Building and The Oculus:
- a. The Oculus soffit shall be constructed as shown in Exhibit 21A, including:
 - i. Faceted surface with three-dimensional relief similar to the precedents indicated in Volume A, Sheet 1.37, Oculus Soffit Cladding;
 - ii. Perforated aluminum panels with a color similar to the gold/bronze tone indicated in Volume A, Sheet 1.33, the Material Palette; and
 - iii. Pinpoint lighting, as shown in Volume A, Sheet 1.33, the Material Palette; and
 - b. The “Office Façade” portion of the façade shall be constructed as shown in Exhibit 21A, including:
 - i. Glass shall tilt in as shown in the section drawing on the right side of Sheet 1.41 in Volume A;
 - ii. At the base of each tilted glass pane, the minimum dimension from the face of the glass to the edge of the mullion shall be 12 inches, as shown on the detail drawing supplied to OP and attached to this report at Exhibit 2; and
 - iii. At the rounded corners of the buildings the glass shall be curved, as shown in Volume A, Sheet. 1.41, in the rendering. (Ex. 33, p. 2.)
93. As stated above, as a way to balance OP’s goal of ensuring that characteristic elements of the Parcel 6/7 Building such as the Oculus soffit and the design of the office façade are maintained while providing a reasonable degree of flexibility to accommodate refinements to these elements that may be required during design development and fabrication, the Applicant has included OP’s recommended conditions into its list of requested flexibility in a manner that will preserve the aesthetic intent of the building. The Commission finds this to be a reasonable approach to accommodating OP’s proposed conditions regarding the Parcel 6/7 Building.
94. In its report, OP also requested that the Applicant respond to, or provide further information, regarding the following items as they relate to the Application:
- a. Refine the proposed types of tenant signage;

- b. Obtain written confirmation from DHCD as to whether the penthouse on WB1 would require a contribution to the Housing Production Trust Fund;
 - c. Refine the flexibility language regarding exterior building designs;
 - d. Provide additional information on project phasing, interim uses, and proposed timelines;
 - e. Clarify the design details of WB1, including the materials for the piers or piles and the top of the penthouse roof; and
 - f. Ensure that any interim use is set back a minimum of 60 feet from the bulkhead line to correspond to other buildings' setbacks and maintain views and accessibility down the Wharf. (Ex. 33, pp. 16-17.)
95. On November 6, 2017, the Applicant submitted responses to each of the outstanding items listed above and identified in the OP Report, as well as summarized its responses at the hearing held on that same day. The Commission finds the Applicant's responses to be satisfactory. (Ex. 55.)
96. As it relates to the Application, OP did not object to the areas of zoning flexibility requested by the Applicant. (Ex. 33, p. 18.) OP provided several comments and recommended changes to the Applicant's requested language for non-zoning/minor design flexibility, which the Applicant addressed in the form of a final list of requested flexibility that was included in its post-hearing submission. (Ex. 82X.)
97. With respect to public benefits and amenities, the OP Report states that (i) the benefits proffered with the Phase 2 PUD are consistent with the first-stage PUD approval; (ii) the benefits approved in the first-stage PUD apply to the Phase 2 PUD; and (iii) the benefits remain commensurate with the amount of flexibility gained through the PUD, including the relatively minor additional flexibility requested through the Phase 2 PUD. (Ex. 33, p. 23.)
98. The Applicant agreed to include a condition requiring a minimum of 60 feet from the bulkhead for interim uses constructed.
99. Based on the analysis provided in the OP Report, and the Applicant's responses thereto, the Commission finds the first-stage PUD modification to be consistent with the overall intent of the Commission's approval of the original first-stage PUD, and further finds the second-stage PUD to be not inconsistent with the Comprehensive Plan, including the Generalized Policy Map and Future Land Use Map, and consistent with the Zoning Regulations and development parameters of the first-stage PUD.

DDOT Report

100. DDOT submitted a report dated October 23, 2017, noting that it had no objection to the Application so long as the Applicant implements the following mitigation measures: (Ex. 27.)
 - a. Expand the existing TDM Performance Monitoring Plan that was approved as part of the first-stage PUD; (Ex. 67C.)
 - b. Implement the proposed TDM plan for the life of the project, unless otherwise noted; (Ex. 67B.)
 - c. Implement the proposed LMP for the life of the project (included in Exhibit 20A);
 - d. Fund and construct a new traffic signal at the intersection of Maine Avenue and Marina Way, S.W.; and
 - e. Fund and construct dual southbound left turn lanes on 9th Street at Maine Avenue, S.W. and any necessary changes to the traffic signal equipment.
101. DDOT also stated no objection to approval of the Application with the additional conditions listed at Exhibit 27, pages 4-5 to adequately mitigate site-generated traffic.
102. With respect to loading, DDOT expressed no objection to the Applicant's request for loading flexibility, so long as the Applicant implements the LMP included in Exhibit 20A.
103. At the public hearing on November 2, 2017, Mr. Robert Schiesel, the Applicant's expert in transportation engineering and planning, testified that the Applicant was in general agreement with the additional mitigation measures and conditions contained in the DDOT report, and that the Applicant and DDOT were still discussing specific details regarding the scope and implementation timeline of some of the mitigation measures.
104. On November 9, 2017, the Applicant submitted its response to the DDOT report, as well as its final TDM Plan and TDM Performance Monitoring Plan which incorporate the additional TDM elements requested by DDOT. (Ex. 67A, 67B, 67C.) In addition, in its response to DDOT's report, the Applicant committed to implementing the following additional traffic and pedestrian mitigation measures:
 - a. Fund and construct the removal of the channelized southbound right-turn lane on 6th Street, S.W., subject to DDOT approval, to improve pedestrian safety and accessibility along this critical walking path from the Waterfront Metrorail Station to the Wharf. The scope of this mitigation measure shall be limited only to the northwest corner of the intersection and include moving the traffic signal pole, increasing the curb radius on the corner, constructing new curb ramps, striping new crosswalks to connect with the new curb ramps, and restoring the former

channelized lane to a combination of sidewalk and green space, subject to DDOT public space review;

- b. Fund and construct a new traffic signal at the intersection of Maine Avenue and Marina Way, S.W.;
- c. Fund and construct dual southbound left turn lanes on 9th Street at Maine Avenue, S.W. and any necessary changes to the traffic signal equipment;
- d. Stripe the missing crosswalk across the southern leg of the intersection of 6th Street and Maine Avenue, S.W.;
- e. Upgrade the curb ramps on the northwest corner of the intersection of 7th Street and Maine Avenue, S.W., as identified in the CTR, if not already completed by others; and
- f. Stripe a crosswalk and construct curb ramps on M Place S.W. (i.e., the curved portion of 6th Street, S.W.) to create a safe pedestrian crossing from the sidewalk connecting the Titanic Memorial to Parcel 11.

- 105. At the public hearing on November 9, 2017, DDOT acknowledged the Applicant's submission of the final TDM Plan and TDM Performance Monitoring Plan, and confirmed that these documents are consistent with the discussions and agreements established with the Applicant, and reiterated that it had no objection to the Application.
- 106. Based on the analysis included in the DDOT report, including implementation of DDOT's stated conditions, TDM measures, and the Loading Management Plan, the Commission finds that any potential adverse transportation impacts that may arise out of the Phase 2 PUD can be detected, monitored, and addressed quickly and efficiently.

U.S. Commission of Fine Arts

- 107. At its public meeting held on July 27, 2017, the U.S. Commission of Fine Arts ("CFA") reviewed and granted concept approval for WB2, WB3, the Parcel 9 Building, the Parcel 10 Building, M Street Landing, The Terrace, Marina Way, as well as extensions of the Phase 1 designs for the Maine Avenue streetscape and the Wharf. (Ex. 21B.)
- 108. At its public meeting held on September 29, 2017, CFA reviewed and granted concept approval for the Parcel 6/7 Building, the Parcel 8 Building, The Grove, as well as extensions of the Phase 1 designs for the Maine Avenue streetscape and the Wharf. (Ex. 21B.)
- 109. At its public meeting held on October 27, 2017, CFA reviewed and granted concept approval for WB1, and revised designs for M Street Landing, The Grove, and The Terrace. (Ex. 48.)

ANC Report

110. At its October 16, 2017, regularly scheduled meeting, which was duly noticed and at which a quorum was present, ANC 6D voted 5-0-0 to oppose the Application due to outstanding issues related to transportation, construction management, the interests of the GPSA, the design and use of The Terrace, accommodation of non-profit boating associations, availability of public restrooms, and paving along the Wharf. The ANC submitted a report documenting its vote on October 26, 2017. (Ex. 32.) In its report, the ANC raised particular concerns regarding the need to restrict motorcoaches from accessing, loading, parking, or circulating through Waterfront Park, or along private segments of Water Street, S.W. and M Place, S.W.
111. Following the ANC's public meeting, the Applicant worked with the ANC Negotiation Team, which was authorized by the full ANC to negotiate on behalf of, and represent the official position of, the ANC with respect to the Phase 2 PUD, to resolve the issues stated in the ANC report. The outcome of those discussions, and the conditions agreed upon by the Applicant and the ANC, are set forth in the ANC Agreement submitted on November 2, 2017. (Ex. 38.) At the public hearing on November 2, 2017, ANC 6D Chairman Andy Litsky testified that ANC 6D formally supported the Application, subject to the conditions set forth in Exhibit 38.
112. Regarding motorcoaches, as part of the ANC Agreement the Applicant has committed to prohibit full-sized motorcoach buses (as defined in 24 DCMR § 3599.1 as a motor vehicle with a seating capacity of more than 25 passengers, exclusive of the driver, that is used for the transportation of passengers) from accessing, parking, loading, or circulating through Waterfront Park, or along the private segments of Water Street, S.W. and M Place, S.W., as shown in the diagram included in Exhibit 38AG. Further the Applicant has committed to install signage (subject to applicable permit requirements), or utilize other methods as reasonably necessary and allowable, to notify the operators/drivers of motorcoach buses of the traffic restriction. The Commission notes that in connection with these efforts, DDOT has added 6th Street, S.W. to the DDOT Truck and Bus Through Routes and Restrictions Map. The Commission finds that the Applicant's commitments appropriately address the ANC's concerns regarding motorcoaches accessing, parking, loading, or circulating through Waterfront Park, or along the private segments of Water Street, S.W. and M Place, S.W.
113. As part of its post-hearing submission, the Applicant addressed two outstanding questions raised by the ANC at the November 2nd and 6th hearings related to café/restaurant seating along the Wharf and the use and programming of the Terrace.
114. Regarding seating along the Wharf, the Applicant provided specific details regarding the general cross-section of the Wharf, consisting of a 20-foot café zone, a 20-foot mixed vehicular/pedestrian zone, and a 20-foot pedestrian only zone. The Applicant also described the extent of café/restaurant seating along the Wharf, as depicted in the Site Furnishings: Seating diagram contained in the Plans and Drawings at Exhibit 21A3, Sheet 2.5. Consistent with the Applicant's testimony, the post-hearing submission states

that within the café zone the Applicant will incorporate a visual or tactile measure at the edge of the seating area to prevent seating from encroaching into the pedestrian circulation area. The Commission finds this information adequately addresses the questions raised at the public hearing regarding pedestrian circulation along the Wharf relative to the placement of café seating.

115. Further, the Commission finds that the information provided by the Applicant in its post-hearing submission clearly shows that once the area of the Terrace, which was previously occupied by the Maine Lobsterman Memorial, became part of the PUD Site and Waterfront Park it was always envisioned to be partially hardscaped and used for café seating.
116. The Applicant also provided information regarding the proposed design and use of The Terrace, which is a portion of Waterfront Park that will be reconstructed as part of the Phase 2 PUD. At the November 2nd hearing, the ANC stated that it supported the design of The Terrace; however, it did not support the notion that The Terrace should be used for special events since this area is within Waterfront Park, which was provided as a community amenity as part of the first-stage PUD.
117. Furthermore, the information provided by the Applicant demonstrates that at least a portion of Waterfront Park has always been contemplated for occasional events. The Commission further finds the proposed design and use of The Terrace to be consistent with the first-stage PUD, and does not see that occasional events will in any way remove this area from the larger Waterfront Park amenity, nor make it any less accessible for general public use and enjoyment.

525 Water Street Condominium

118. In its written request for party status in support of the Application, 525 Water expressed concerns related to the design of the Parcel 10 Building, and specifically the proximity of the Parcel 10 Building cantilever over Water Street to the condominium building on Parcel 11 and the location of the building's loading facilities and parking garage access along Water Street, S.W. 525 Water also expressed concerns over the ability of the motorcoach pick-up/drop-off area along Maine Avenue to accommodate expected demand, the potential for motorcoaches and tour buses to park within residential areas, accommodation of ride sharing services pick-up and drop-off, signage, and Wharf paving.
119. In response to 525 Water's concerns regarding the Parcel 10 Building cantilever, the Applicant revised the Parcel 10 Building plans by substantially reducing the extent to which the building cantilevered over Water Street, thereby substantially increasing the distance between the Parcel 10 and Parcel 11 Buildings. (Ex. 82J1-82J3.)
120. On November 9, 2017, the Applicant provided Mr. Brad Neilley, authorized representative of 525 Water, information regarding the access constraints that require location of the Parcel 10 Building parking and loading facilities on Water Street, S.W.,

and reviewed the design revisions made to the Parcel 10 Building cantilever over Water Street, S.W.

121. At the public hearing on November 9, 2017, 525 Water testified that it had a better understanding of the limitations of moving the Parcel 10 Building parking and loading access to a different location. Further, 525 Water testified in support of the revised design of the Parcel 10 Building, as well as the rest of the Phase 2 PUD.
122. Regarding the location of the Parcel 10 Building parking and loading access, the Commission finds the location of these facilities to be consistent with the approved first-stage PUD, which involved a thorough transportation analysis conducted by the Applicant. The Commission further finds that based upon the updated CTR prepared by the Applicant for the Phase 2 PUD, Water Street, S.W. will provide sufficient access and maneuverability to maintain safe circulation and maneuverability along Water Street, S.W.
123. Regarding the Parcel 10 Building cantilever over Water Street, SW, the Commission finds that the revised Parcel 10 Building plans (Exhibits 82J-82J3) successfully address the concerns expressed by the Commission, and those of 525 Water and the ANC. The revised design significantly increases the distance between the Parcel 10 and 11 Buildings, and maintains the visual openness of Water Street, S.W. from Maine Avenue, S.W. towards the waterfront.
124. As to those other issues raised by 525 Water regarding the motorcoach pick-up/drop-off area along Maine Avenue, motorcoach and tour buses parking within residential areas, accommodation of ride sharing services, signage, and Wharf paving, the Commission finds that these issues are adequately addressed and resolved through the Applicant's responses to the ANC Report, and the conditions imposed upon the Applicant through the ANC Agreement, which are incorporated as conditions to this Order.

Tiber Island Cooperative Homes

125. In its written request for party status in support of the Application, Tiber Island Co-Op expressed concerns regarding construction-related impacts such as traffic disruption and noise. It also expressed post-construction concerns regarding traffic, parking, noise, emissions, and the potential for motorcoaches and tour buses to park in residential areas.
126. At the public hearing on November 2, 2017, Tiber Island Co-Op testified in support of the Application. As part of its testimony, Tiber Island Co-Op stated that its main concern is the long-term management of buses, and requested a commitment that 6th and Water Streets, S.W. will remain off-limits to these types of vehicles.
127. Tiber Island Co-Op did not attend the public hearings held on November 6 and 9, 2017.
128. The Commission finds that many of the construction-related and post-construction concerns expressed by Tiber Island Co-Op will be adequately addressed and mitigated by

the conditions imposed upon the Applicant under the ANC Agreement, and specifically those conditions included in the Construction Management Plan and Timeline, Motorcoach Loading and Curbside Management Plan, and the Motorcoach Operations Flow Plan included as part of the ANC Agreement. (Ex. 38AA, 38AH, 38A1.)

129. Regarding traffic and parking, as stated above the Commission finds that based on the analysis included in the DDOT report, including implementation of DDOT's stated conditions, TDM measures, and the Loading Management Plan, any potential adverse transportation impacts that may arise out of the Phase 2 PUD can be detected, monitored, and addressed quickly and efficiently.
130. Regarding noise, the Commission finds that the uses established as part of the Parcel 6/7 PUD are generally consistent with those approved within the first-stage PUD, and are also consistent with the public-oriented activities of the Wharf and other open spaces. Thus, noises generated by the Parcel 6/7 PUD will be comparable to those that already exist within the PUD Site. The Commission further finds that the overall site plan of the Southwest Waterfront PUD is specifically designed such that the major open spaces and lower-scale development are located at the east end of the PUD Site to provide a buffer from the existing residential neighborhood, with the larger entertainment-type uses located toward the west end of the PUD Site. In addition, the Commission finds that the Applicant, and any other resident, business, and retail or service operator within the PUD Site, both during and after construction, will be required to comply with the requirements of the existing D.C. Noise Control Act. Based on these factors, the Commission finds that any noise-related impacts caused by the Parcel 6/7 PUD will be mitigated.

Gangplank Slipholders Association

131. In its written request for party status, GPSA stated that it supported the project with reservations regarding excessive light and noise, construction debris, public foot and vehicular traffic, long-term community sustainability, safe and secure access during construction, and liveaboard access to existing parking and loading areas. (Ex. 23, p. 2.)
132. At the November 2, 2017 public hearing, GPSA testified that it had concerns including safety, noise, ingress and egress, continuity of services and facilities, and parking and loading during construction. GPSA also expressed post-construction concerns regarding sustainability of the existing liveaboards, affordability of slip and liveaboard fees, and continuity of services.
133. GPSA did not provide any direct testimony at the public hearing held on November 6, 2017.
134. At the November 9, 2017, public hearing, GPSA reiterated its primary concerns regarding affordability, accessibility, livability, and sustainability of the existing liveaboards. Laura Cox, a resident of the Gangplank Marina also provided testimony regarding her concern over displacement and housing affordability. These issues, and the

Commission's findings on these issues, are contained in the companion Zoning Commission order for the Parcel 10 PUD. (*See* Z.C. Order No. 11-03J(1).)

Tiber Island Condominium

135. In its written request for party status in opposition to the Application, which also express support for the project, Tiber Island Condo expressed reservations regarding excessive light and noise, construction debris, public foot and vehicular traffic, long-term community sustainability, safe and secure access during construction, and the removal of existing Zone 6 reserved parking areas and associated loading areas currently used by its residents. (Ex. 25, p. 2.)
136. At the public hearing on November 2, 2017, Tiber Island Condo testified that it was actually in support of the Phase 2 PUD, but wanted to flag a concern about parking and traffic along 6th Street and M Place, S.W., as some of their townhouses face those streets. (11/02/17 Tr., p. 156.)
137. Tiber Island Condo did not attend the public hearings held on November 6 and 9, 2017.
138. As previously stated, the Commission finds that many of the construction-related and post-construction concerns expressed by Tiber Island Condo will be adequately addressed and mitigated by the conditions imposed upon the Applicant under the ANC Agreement.
139. Regarding traffic and parking, the Commission notes that there is nothing in the record for this case, and to the best of its knowledge in any of the case records for prior approvals for the Southwest Waterfront PUD, that any existing Zone 6 reserved parking has been permanently removed from public streets surrounding the PUD Site. Notwithstanding, the Commission finds that the Applicant's commitment contained in the ANC Agreement that it will not request DDOT or any other District agency to provide Residential Parking Permits ("RPP") to residents in any buildings constructed in the Phase 2 PUD, and that it will place information about RPP ineligibility in any rental or sales documents, will adequately mitigate any potential for adverse impacts to Zone 6 parking areas. Further, the Commission reiterates its finding that based on the analysis included in the DDOT report, including implementation of DDOT's stated conditions, TDM measures, and the Loading Management Plan any potential adverse transportation impacts that may arise out of the Phase 2 PUD can be detected, monitored, and addressed quickly and efficiently.

Other Contested Issues

140. In addition to the issues raised by the parties and the ANC, several non-party individuals and organizations testified at the public hearings on November 2nd, 6th, and 9th in opposition to the Application. Representatives from the D.C. Fiscal Policy Institute, UNITE HERE Local 25 ("UHL"), the DC/Baltimore Building Trades Organizing Committee, and the Laborers International Union of North America ("LIUNA") all testified that the Wharf project has failed to create quality jobs or other benefits for

District residents, noting that while there are requirements for the Applicant to hire District residents there are no requirements for ensuring those jobs come with good wages and benefits. (Ex. 45, 50, 44, 71.) These organizations also claimed in their testimony that the Wharf project, and specifically the requested first-stage PUD modification, is inconsistent with the Comprehensive Plan, including, among others, ED 4.2.7 – Living Wage Jobs, and stated that the project cannot be lawfully approved if found to be inconsistent with the Comprehensive Plan.

141. Mr. Chris Otten, representing DC for Reasonable Development: SW Planning and Safety Group (“DC4RD”), also testified in opposition to the Application at the November 2nd hearing. (Ex. 43.) The issues raised by DC4RD were unsubstantiated generalized grievances, not specific to any particular portion of the Parcel 6/7 PUD or Phase 2 PUD, relating to environmental impacts and flooding, impacts to local public facilities, impacts to emergency response times, lack of affordable housing, gentrification, displacement, destabilization of property values, and funding of project-related infrastructure costs. Further, DC4RD included in its written testimony a listing of several Comprehensive Plan policies that are applicable to the project, though not making any claim that the project is inconsistent with these policies. Similar comments to those raised by DC4RD were also raised at the November 2nd hearing by Mr. William Shickler, and in several comments submitted to the record by individuals. (Ex. 46, 60, 64, 66, 69.)
142. The Commission points this out, not to shift the burden of proof from the Applicant, but to state that this or any other Applicant is not obligated to respond to such assertions. For a party or witness to raise issue for which a response is required, the party or witness must have some factual basis for the claim and draw a nexus between the claimed deficiency and the current application. None of the parties or witnesses did so with respect to these issues.
143. Nevertheless, at the hearing on November 9th, and in its post-hearing submission, the Applicant provided detailed rebuttal to each of the issues described above.
144. Regarding the issue of consistency with the Comprehensive Plan, as stated in the provisions of the Zoning Regulations governing PUD applications, “[t]he first-stage application involves a general review of the site’s suitability as a PUD and any related map amendment,...and the compatibility of the proposed development with the Comprehensive Plan...” (emphasis added) (11-X DCMR § 302.2). Further, these same provisions state “[i]f the Zoning Commission finds the application to be in accordance with the intent and purpose of...the first-stage approval, the Zoning Commission shall grant approval to the second-stage application,...” (emphasis added). As such, as required under the Zoning Regulations the Commission finds that it has already determined that the Southwest Waterfront PUD is not inconsistent with the Comprehensive Plan as part of its review and approval of the first-stage PUD (Z.C. Order No. 11-03). In addition, the Commission further finds that based upon the OP Report, the Applicant’s initial application statement, and the rebuttal testimony provided by Shane Dettman, the Applicant’s expert in zoning and land use, the requested first-stage PUD modification to

allow a hotel use on Parcel 8 is also not inconsistent with the approved first-stage PUD. (Ex. 2.)

145. Notwithstanding the fact that the Commission has already determined the entire Southwest Waterfront PUD to be not inconsistent with the Comprehensive Plan, out of an abundance of caution, the Applicant provided an extensive analysis of the project's consistency with the Comprehensive Plan policies cited by DC4RD and other opposing organizations. (Ex. 82.) Based upon this additional information, the Commission reconfirms its prior finding in the first-stage PUD that the Parcel 6/7 PUD and Phase 2 PUD and not inconsistent with the Comprehensive Plan, including those policies specifically referred to in the testimony provided by DC4RD and the other organizations referred to above.
146. Specifically, as to the issue concerning jobs, wages, and benefits, the Commission as part of its First Stage approval recognized the PUD's Training and Employment Opportunities as a public benefit of the PUD, and there is nothing in the testimony presented to cause the Commission to revisit the finding. (Z.C. Order No. 11-03, p. 13.) Similarly, as noted by UHL and LIUNA, the Commission does not have the power to mandate the Applicant to sign a project labor agreement ("PLA") for the project or dictate anything about labor organizing at the project, and cannot disapprove the project if the Applicant does not wish to enter into any kind of labor-related agreement including a PLA or labor peace agreement ("LPA"). Further, the Commission does not have any authority to dictate wages for any particular job, or what benefits are provided. These are issues that reside with the D.C. Council and/or other District agencies. Rather, the Commission is required to ensure that the project is not inconsistent with the Comprehensive Plan, including the Economic Development Element policy ED 4.2.7: Living Wage Jobs cited by UHL, LIUNA, and others. Based upon the testimony provided by Elinor Bacon and Mr. Dettman, the Commission finds the project to be not inconsistent with this particular policy. As it relates to the Commission's review, the focus of this policy is on attracting "living wage jobs that provide employment opportunities for unskilled and semi-skilled workers." Approval of the Parcel 6/7 PUD, and overall Phase 2 PUD, will do exactly that through the numerous job opportunities created both during and after construction. Through the Applicant's extensive hiring and workforce development efforts, District residents will be afforded ample access to take advantage of these opportunities. These efforts are reflected in the comments submitted to the record by the D.C. Department of Employment Services ("DOES") and the Court Services and Offender Supervision Agency ("CSOSA"). (Ex. 87, 86.)
147. At the public hearing on November 2, 2017, DC4RD made several unsubstantiated claims that the Wharf project will cause displacement, gentrification, and destabilize property values in the surrounding area, and that the Phase 2 PUD will only make things worse. DC4RD did not submit any information or analysis to substantiate these generalized claims. In contrast, in direct response to a question by the Commission, the Applicant testified that the project has not, and will not directly displace any existing residents within the PUD Site. Further, as part of its post-hearing submission the Applicant provided specific information in support of a finding that the project will not

cause displacement, gentrification, or destabilize property values due to the significant affordable housing, District resident hiring, and workforce development programs that are required under the first-stage PUD, and the numerous programs offered by the District to help control increases in property values and assist homeowners and renters to remain where they live. Based on this information, the Commission finds there is no evidence to support DC4RD generalized claim that the project will cause displacement, gentrification, and destabilize property values in the surrounding area.

148. At the public hearing held on November 2, 2017, Mr. William Shickler testified that “an actual real environmental impact study has not been conducted” for the project at both the District and federal levels. This same claim was made by DC4RD and a number of persons who have submitted comments to the record. Further, these persons and organizations claim that the project will cause adverse flooding impacts and that the first-floor of the building within the project will flood and cause additional impacts on the community.
149. At the public hearing on November 9th, Mr. Dettman testified that the potential environmental impacts of the entire Southwest Waterfront PUD have been exhaustively analyzed at both the District and federal levels, as has the potential for the project to cause adverse flooding impact. The Applicant supplemented Mr. Dettman’s testimony regarding environmental impacts and flooding as part of its post-hearing submission which included copies of the District and federal environmental impact analyses for the project. Further, the Applicant’s post-hearing submission included information from the first-stage PUD approval where the Commission specifically found that the project would create numerous environmental benefits and amenities, and that the project was fully consistent with the Comprehensive Plan policies contained within the Environmental Protection Element. (*See* Z.C. Order No. 11-03, Findings of Fact Nos. 50(e), 72.) As required by § 2403.3 of ZR58, based upon the information provided by the Applicant the Commission finds that the any environmental impacts caused by the project will be favorable, capable of being mitigated, or acceptable given the quality of public benefits provided.
150. Regarding impacts to local public facilities, DC4RD claims that the capacity of community facilities such as local schools, libraries, recreation centers, senior centers, fire/police stations and associated emergency response time, hospitals, and refuse removal “will be burdened by the new residents being brought into the community by these PUD and project approvals.” (Ex. 43.) In response, as part of its post-hearing submission the Applicant provided detailed information regarding the capacity of existing public schools, libraries, recreation centers, and fire stations in the surrounding area, including information on recent and proposed expansions and modernizations of these facilities. The Applicant also provided information regarding the District’s ongoing focus on emergency response times. Based on this information, the Applicant states that the project will not have an adverse impact on local public facilities. In addition to the information submitted by the Applicant related to local public facilities, several District agencies submitted comments to the record that relate to DC4RD’s claims regarding impacts to local public facilities and emergency response times, all of which express no

objection. These agencies include: D.C. Public Library, D.C. Fire and Emergency Management Service (“FEMS”), and the D.C. Municipal Police Department (“MPD”). (Ex. 79, 80, 81, 85.) Based upon the information submitted by the Applicant, and the comments submitted by relevant District agencies, the Commission finds that the project will not have an adverse impact on local public facilities and emergency response times.

151. Regarding infrastructure costs, DC4RD claims that the costs of public infrastructure upgrades that have, and will be completed to support the project have been borne by District residents. In rebuttal, the Applicant provided information in its post-hearing submission demonstrating that the public infrastructure upgrades required or related to the project will not be borne by District residents, but rather are funded through Tax Increment Financing (“TIF”) and Payment in Lieu of Taxes (“PILOT”) bond funding approved by the D.C. Council specifically for the redevelopment of the Southwest Waterfront (“Southwest TIF/PILOT”), and which can only be used to construct the publicly owned infrastructure located within or adjacent to the area of the project. The information provided by the Applicant clearly states that the upfront public funding provided through the Southwest TIF/PILOT solely for public infrastructure upgrades and improvements will be fully repaid through increases in property and sales taxes that would otherwise not be generated without the Wharf project, without increasing the tax burden on District residents in general. In addition, the information states that to further protect the District and District residents, the D.C. Council also established the Southwest Waterfront Special Assessment District, under which a special assessment would be placed on designated properties within the project should there be any shortfall in expected tax revenues needed to meet the obligation for the Southwest TIF/PILOT. The Commission finds that the Applicant has adequately addressed this issue.

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 and approve the Parcel 6/7 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, FAR, lot occupancy, parking and loading, or for yards and 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. The PUD Site meets the minimum area requirements of 11 DCMR § 2401.1.

4. Development of the Parcel 6/7 PUD in accordance with the plans approved by this Order, carries out the purposes of Chapter 24 of the 1958 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.
5. The Parcel 6/7 PUD, as approved by the Commission, complies with the applicable height, bulk and density standards of the PUD guidelines; the approved development parameters of the first-stage PUD; and the authority vested in the Commission to grant deviations therefrom.
6. The Parcel 6/7 PUD is substantially in accordance with the elements, guidelines, and conditions of the first-stage PUD, as modified by this Order; and therefore, should be approved. Pursuant to 11 DCMR § 2408.6, if the Commission finds the Parcel 6/7 PUD 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 Parcel 6/7 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 Parcel 6/7 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 zoning flexibility from those standards, requirements, and limitations of ZR58 that are specifically prescribed in this Order, are consistent with the Comprehensive Plan, and the flexibility requested for certain design aspects of the Parcel 6/7 PUD are appropriate. Moreover, the project benefits and amenities approved as part of the first-stage PUD are reasonable trade-offs for the requested flexibility.
9. Ordinarily, the Zoning Commission's approval of a second stage PUD remains valid for two years, during which time an application for a building permit to construct the PUD must be filed. Construction must be within three years of the order's effective date. The Applicant has requested two vesting periods, the first for the garages 2 and 3, and the second for the remainder of the Phase 2 PUD. That second period will be triggered when Certificates of Occupancy are issued for the garages. Given the scale of this project, the uncertainties inherent in its development, and the fact that this application could have been filed as late as 2024, the Commission finds the proposed staggered vesting to be appropriate.
10. Approval of the Parcel 6/7 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 PUD Site in conformity with the entirety of the Zone Plan, as embodied in the Zoning Regulations and Map of the District of Columbia.
11. 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 (2001)), to give great weight to OP recommendations. The Commission carefully

considered the OP reports and its oral testimony at the public hearing. As explained in this decision, the Commission finds OP's recommendation to grant the Application persuasive, and is satisfied that the flexibility requested by the Applicant regarding the design, materials, and lighting of The Oculus soffit and the glass façade of the office towers preserves OP's goal of ensuring that these characteristic elements of the Parcel 6/7 Building are maintained while providing the Applicant a reasonable degree of flexibility to accommodate refinements to these elements that may be required during design development and fabrication.

12. 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. Although the ANC originally voted to oppose the Application the Commission notes that the ANC later testified that most of its issues and concerns were resolved through the ANC Agreement and the Applicant's agreement to the conditions contained therein. (Ex. 38). The ANC raised issues at the November 2nd and 6th hearings related to café/restaurant seating along the Wharf and allowing special events programming in the Terrace area. Although such oral testimony is not entitled to great weight unless subsequently ratified in writing by an ANC, the Commission had already responded to these concerns by noting that the Applicant's incorporation of a visual or tactile measure at the edge of the seating area will prevent the seating from encroaching into the pedestrian circulation area. Further the Commission found that the proposed design and use of the Terrace to be consistent with the first-stage PUD, and that occasional events will not in any way remove this area from the larger Waterfront Park amenity, nor make it any less accessible for general public use and enjoyment.
13. The Application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2- 1401 et seq. (2007 Repl.).

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 Parcel 6/7 PUD within the Southwest Waterfront redevelopment project, subject to the guidelines, conditions and standards set forth below.

A. Project Development

1. The Parcel 6/7 PUD shall be developed in accordance with the plans and drawings submitted by the Applicant on October 13, 2017, as marked as Exhibits 21AA1-21AA8 in the case record, as modified by the plans and drawings submitted on November 22, 2017 (Exhibits 82U-82W) and by Ex. 94B, Attachment 2, Construction Sequencing Plan, Sheet 11 (Wharf Final Plan), as further modified by the guidelines, conditions and standards herein.

2. Any interim improvements constructed on the landside portion of the Phase II PUD shall be set back a minimum of 60 feet from the bulkhead line to match existing and proposed buildings, and to maintain views along the Wharf.
3. The Applicant shall have flexibility with the design of the Parcel 6/7 PUD in the following areas:
 - a. To vary the location and design of interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration or appearance of the building;
 - b. To make refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, venting, window mullions and spacing, and any other changes that otherwise do not significantly alter the exterior design to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit or other applicable approvals. Such refinements shall not substantially change the exterior configuration, appearance, proportions, or general design intent of the building;
 - c. To vary the final selection of exterior building materials within the color ranges of the material types shown in Exhibit 82W, Sheet 2.13 and Exhibit 21AA3, Sheets 1.32-1.33 based on availability at the time of construction. Any such variations shall not reduce the overall quality of materials, nor substantially change the exterior appearance, proportions, or general design intent of the building;
 - d. Notwithstanding the flexibility granted in items b and c above, the Oculus of the Parcel 6/7 Building shall be constructed in a manner that is: (i) similar in character with the precedents shown in Exhibit 21AA3, Sheet 1.37 (Oculus Soffit Cladding), including a faceted surface with three dimensional relief; (ii) consistent with the aesthetic intent of the ceiling panels shown in Exhibit 21AA3, Sheet 1.33 (Parcel 6 and 7: Retail Material Palette), including the gold-bronze color; (iii) consistent with an integrated lighting solution consistent with the intent shown in Exhibit 21AA3, Sheet 1.33 (Parcel 6 and 7: Retail Material Palette);
 - e. Notwithstanding the flexibility granted in items b and c above, the façade of the office portion of the Parcel 6/7 Building shall be constructed in accordance with the plans shown in Exhibit 21AA1-21AA8 with the following design flexibility: (i) glass panels shall tilt outward in a manner that is consistent with the intent of that shown in Exhibit 21AA3, Sheet 1.41; (ii) the corners of the building shall be maintained and consist of curved glass expression as shown in Exhibit 21AA3, Sheet 1.41. Minor

variations to the radius of the corner shall be permitted provided the exterior configuration, appearance, proportions, and general design intent of the building is maintained;

- f. To vary the final selection of landscaping materials utilized based on availability at the time of construction;
- g. To vary the final design of retail frontages, including the location and design of entrances, show windows, signage, and size of retail units, in accordance with the needs of the retail tenants. Retail signage shall be located within the potential retail signage zones shown in Exhibit 21AA2, Sheets 1.14 and 1.15 and Exhibit 21AA5, Sheet 2.17;
- h. To vary the design and location of upper-level building signage located above the first-story within the limits of the potential tenant signage zones shown in Exhibit 21AA2, Sheets 1.14 and 1.15 and Exhibit 21AA5, Sheet 2.17, and in accordance with the District of Columbia sign regulations in effect at the time of permitting;
- i. To vary the garage layout and the number, location, and arrangement of vehicle and bicycle parking spaces provided the number of spaces, for both vehicles and bicycles, is not reduced by more than five percent of the number shown on Exhibit 21A2, Sheets 1.19-1.20 and 1.24, and the total number of vehicle and bicycle parking spaces provided is consistent with that which is required under Z.C. Order No. 11-03; and
- j. To vary the sequencing and timing of construction of Wharf Marina, including associated bulkhead, piers, docks, fueling station(s), and other related buildings and structures, as shown in Exhibit 94B, Attachment 2, Construction Sequencing Plan, Sheets 1-11.

B. Public Benefits

- 1. 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.

2. *During construction of the Southwest Waterfront 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 construction of the Parcel 6/7 PUD, 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 overall Southwest Waterfront PUD.
3. *During the life of the project*, 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 overall Southwest Waterfront PUD. (Z.C. Case No. 11-03, Ex. 4J) 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 TDM Plan and the TDM Performance Monitoring Plan contained in the case record as Exhibits 67B and 67C, respectively.
2. *For the life of the Project*, the Applicant shall comply with the LMP set forth in the Applicant’s CTR as follows: (Ex. 20A.)
 - a. A loading dock manager will be designated by the building management for each building. The dock manager will coordinate with vendors and tenants to schedule deliveries and will be on duty during delivery hours.
 - b. All tenants will be required to schedule deliveries that utilize the loading docks – defined here as any loading operation conducted using a truck 20 feet in length or larger.
 - c. Truck traffic will be prohibited from standing or parking on Maine Avenue with the exception of designated loading/unloading zones. Vehicles that are not accommodated in the on-site loading dock will need to park in an accepted large vehicle lot like the ones listed in the DDOT

document entitled "Important Information for Charter Bus and Motorcoach Operators."

- d. A representative of the Operations Manager will supervise all deliveries to the loading area. This loading manager will monitor vehicle, bicycle, and pedestrian traffic on the internal streets during loading ingress and egress and direct truck movements to minimize conflicts.
 - e. Delivery trucks will not be permitted to maneuver during peak periods when traffic volumes are highest or at times that would conflict with trash collection. Peak periods are defined as weekdays (excluding holidays) from 7:00 a.m.-9:00 a.m. and 4:00 p.m.-6:00 p.m.
 - f. 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 DCMR 20 – Chapter 9, § 900 (Engine Idling), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System.
3. The Applicant shall fund and construct the removal of the channelized southbound right-turn lane on 6th Street S.W., subject to DDOT approval, to improve pedestrian safety and accessibility along this critical walking path from the Waterfront Metrorail Station to the Wharf. The scope of this mitigation measure shall be limited only to the northwest corner of the intersection and include moving the traffic signal pole, increasing the curb radius on the corner, constructing new curb ramps, striping new crosswalks to connect with the new curb ramps, and restoring the former channelized lane to a combination of sidewalk and green space, subject to DDOT public space review.
 4. The Applicant shall fund and construct the following improvements in the vicinity of the PUD Site, subject to DDOT approval:
 - a. Fund and construct a new traffic signal at the intersection of Maine Avenue and Marina Way, S.W.;
 - b. Fund and construct dual southbound left turn lanes on 9th Street at Maine Avenue, S.W. and any necessary changes to the traffic signal equipment;
 - c. Stripe the missing crosswalk across the southern leg of the intersection of 6th Street and Maine Avenue, S.W.;
 - d. Upgrade the curb ramps on the northwest corner of the intersection of 7th Street and Maine Avenue, S.W., as identified in the CTR, if not already completed by others; and

- e. Stripe a crosswalk and construct curb ramps, subject to DDOT approval, on M Place, S.W. (i.e., the curved portion of 6th Street, S.W.) to create a safe pedestrian crossing from the sidewalk connecting the Titanic Memorial to Parcel 11.

D. Miscellaneous

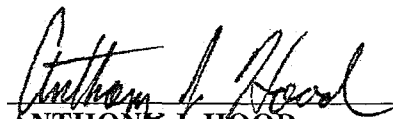
1. No building permit shall be issued for the Parcel 6/7 PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division, DCRA. Such 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 validity of the Commission's final approval shall be valid for a period of two years from the effective date of this Order. Within such time, an application for a building permit must be filed for construction of Garages 2 and 3 ("Garages"), as shown in Exhibit 21A2, Sheets 1.19 and 1.20. Construction of the Garages shall begin within three years of the effective date of this Order. Within two years of completion of the Garages, as demonstrated by the issuance of certificates of occupancy, the Applicant shall apply for a building permit for construction of the remainder of the Phase 2 PUD. The Applicant shall commence construction of the Phase 2 PUD within three years of the completion of the Garages.
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. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On December 7, 2017, upon the motion of Commissioner Shapiro, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the Application at its public meeting by a vote of **5-0-0**.


In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on April 13, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

EXHIBIT C

LEGAL DESCRIPTION OF THE PARCEL 6/7 PUD SITE

Being a portion of Record Lot 88 and Lot 89 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 westerly corner of Record Lot 89 in Square 473 said point also being on the southerly line of Maine Avenue, thence S 45°14'10" W, 20.00 feet to the Point of Beginning; thence

S 44°45'50" E 285.00 feet; thence

S 45°14'10" W 241.69 feet; thence

N 44°45'50" W 287.00 feet; thence

N 45°14'10" E 241.69 feet; thence

S 44°45'50" E 2.00 feet to the Point of Beginning.

Containing a computed area of 1.59240 acres or 69,365 square feet.

Doc #: 2018109025 Fees: \$31.50
10/31/2018 01:07 PM Pages: 57
Filed and Recorded in Official Records of
WASH DC RECORDER OF DEEDS IDA WILLIAMS

RECORDING FEES
SURCHARGE

\$25.00
\$6.50


THIS IS TO CERTIFY THAT THIS IS A TRUE COPY


Ida Williams

Recorder of Deeds, D.C.

NOV 01 2018