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5430950	Submitted to ODAI	Notices, Opinions	Zoning Commission Corrected Order No. 13-14(1): Vision McMillan Partners, LLC and Office of the Deputy Mayor for Planning and Economic Development	4/24/2015 Vol 62/17	4/15/2015 11:29:57
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5412229	Confirmed	Notices, Opinions	Board of Zoning Adjustment - Order No's. (18735 - NH Street Partners Holdings LLC - ANC 2A) & (18737 - Chadbourne & Parke, LLP - ANC 2A)	4/17/2015 Vol 62/16	4/14/2015 17:16:47
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5430368	Submitted to ODAI	Notices, Opinions	Zoning Commission Notice of Filing: Case No. 15-10	4/24/2015 Vol 62/17	4/14/2015 15:59:34
5429883	Submitted to ODAI	Notices, Opinions	Zoning Commission Order No. 03-12R/03-13R: Capper/Carrollsborg Venture, LLC and the D.C. Housing Authority	4/24/2015 Vol 62/17	4/14/2015 13:47:25

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**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION CORRECTED<sup>1</sup> ORDER NO. 13-14(1)**

**Z.C. Case No. 13-14**

**Vision McMillan Partners, LLC and  
Office of the Deputy Mayor for Planning and Economic Development  
(First-Stage PUD, Consolidated PUD, and Related Map Amendment  
@ Square 3128, Lot 800 - McMillan Reservoir Slow Sand Filtration Site)  
November 10, 2014**

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held public hearings on May 1, May 5, May 8, May 13, and May 27, 2014, to consider an application for a first-stage and consolidated planned unit developments ("PUD") and related map amendment ("Application") filed by Vision McMillan Partners, LLC and the District of Columbia, the current owner of the property, through the Office of the Deputy Mayor for Planning and Economic Development ("DMPED"), (together the "Applicant"). The Application is for a major redevelopment project at the McMillan Reservoir Slow Sand Filtration Site, located at 2501 First Street, N.W., Washington, D.C. (Square 3128, Lot 800) in Washington, D.C. (the "PUD Site"). The PUD Site is bounded by North Capitol Street to the east, Michigan Avenue to the north, First Street to the west, and Channing Street to the south, all in the northwest quadrant of Washington, D.C.

**FINDINGS OF FACT**

**The Application, Parties, and Hearings**

1. On November 22, 2013, the Applicant filed an application with the Commission for first-stage and consolidated review of PUDs and a related map amendment to zone the northern portion of the PUD Site to the C-3-C Zone District for a depth of 277 feet, as measured from the center of the curb at Michigan Avenue, N.W., and the remainder of the PUD Site to the CR Zone District. The first-stage PUD seeks approval of the master plan for the PUD Site, while the consolidated PUD requests approval of five of the seven development parcels. The PUD Site contains approximately 1,075,356 square feet (24.69 acres) of land area and is presently unzoned. On December 2, 2013, notice of the filing was published in the *D.C. Register* and was mailed to Advisory Neighborhood Commissions ("ANC") 5E, 5A, and 1B.
2. The PUD Site is divided into seven distinct Parcels. Parcel 1 is located at the north portion of the PUD Site, and will be improved with a healthcare facility with ground-floor retail (the "Healthcare Facility") and a park above a preserved water filtration cell ("Cell 14"). Parcel 4, fronting on North Capitol Street at the center of the PUD Site will

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<sup>1</sup>This is a corrected version of the Zoning Commission Order (the "Order") previously published in the April 17, 2015 edition of the *D.C. Register*. The Order was corrected to make the following changes: (1) revise Finding of Fact ("FF") No. 94(a) to reflect changes to the proffers made by the Applicant through its filing dated August 25, 2014 (Exhibits 849, 849C); (2) revise references in FF Nos. 94(c) and 94(d) from the "project association" to the "Partnership, as defined by Finding of Fact No. 75"; (3) indicate that the Partnership, as defined by Finding of Fact No. 75, is the recipient of the Funds in FF No. 94(e); and (3) amend FF No. 94(f) to reflect changes to the proffers made by the Applicant in response to a comment from the Office of the Attorney General.

be developed with a mixed-use, multi-family residential building with a ground floor-grocery store ("Multi-Family/Grocery Building"). Approximately 146 individual row dwellings are proposed for Parcel 5 (the "Rowhouses"). The south one-third of the PUD Site, known as Parcel 6, will be developed as an eight acre park ("Park") including a 6.2 acre green space, a community center building, and the South Service Court comprised of historic structures to be retained and restored. Lastly, the North Service Court, also known as Parcel 7 and located immediately south of Parcel 1, will be comprised of retained and restored historic resources. Future second-stage applications will include a mixed-use, multi-unit residential building on Parcel 2 with ground-floor retail, and a mixed-use commercial building on Parcel 3 with healthcare uses and ground-floor retail.

3. The PUD Site is part of the larger McMillan Reservoir and Filtration complex, a 92-acre facility comprised of a reservoir, the slow sand filtration facility, and a pumping station, all of which were constructed at the turn of the twentieth century by the U.S. Army Corps of Engineers. The entire complex is listed as an individual landmark in the D.C. Inventory of Historic Sites and as a Historic District in the National Register of Historic Places.
4. The Applicant's development team is comprised of Trammell Crow Company, EYA, and JAIR LYNCH Development Partners (collectively "Vision McMillan Partners" or "VMP"). In 2007, the Applicant was selected among five bidders by the National Capital Revitalization Corporation, which was later dissolved and the city, acting through DMPED, assumed control and awarded the right to develop and implement a master plan for the adaptive re-use of the PUD Site in partnership with the District. A Development Management Agreement ("DMA") was signed between DMPED and VMP, with VMP agreeing to perform and provide the following services: General Master Development Planning; Lead Design Process; Lead Community Engagement Process; Lead Regulatory Approval Preparation Process; and to create a Fiscal Impact Analysis and Public Finance Plan. Additionally, under an Exclusive Rights Agreement ("ERA") with the city, the Applicant has the exclusive right to negotiate for the acquisition and development of the vertical components of the PUD Site designated for Developer Uses. As such, the Applicant is required to construct a mix of uses on the PUD Site, including housing, affordable housing, home ownership opportunities, new neighborhood serving retail, and open spaces and parks that respect the historic property.
5. VMP and the District of Columbia will enter into a Land Disposition Agreement ("LDA") setting forth the terms for the transfer of ownership of the development pads for the Healthcare Facility, the Multi-Family/Grocery Building, and the Rowhouses to VMP, and the terms for management and operation of the PUD Site. The LDA process will conclude after final review by the Commission and the Mayor's Agent for Historic Preservation ("Mayor's Agent").

6. By report dated January 17, 2014, the Office of Planning ("OP") recommended that the Application be set down for a hearing. At its public meeting held on January 27, 2014, the Commission voted to schedule a public hearing on the Application. At that same time, the Commission determined to hear the case over multiple sessions given the breadth and scope of the project. On February 10, 2014, the Commission approved the following hearing schedule, with the caveat that transportation would be discussed at every hearing night:

<u>Hearing Date</u>	<u>Topic</u>
May 1, 2014	Stage 1 Master Plan, Open Spaces and Parks, and Community Center (Parcels 6 and 7)
May 5, 2014	Multi-Family/Retail Building (Parcel 4) and Rowhouses (Parcel 5)
May 8, 2014	Healthcare Facility (Parcel 1)
May 13, 2014	Continuation Hearing (if needed)

The Commission established separate deadlines for requests for party status for each segment of the hearing. A fifth and final hearing night was added for May 27, 2014, to receive additional testimony due to a lack of time on previous hearing nights, and to allow for the Applicant to present rebuttal testimony and closing statements.

7. On February 18, 2014, the Applicant submitted a prehearing statement for the first-stage and consolidated PUD and related map amendment, along with updated zoning calculations and site plans. (Exhibits ["Ex."] 17-17H). The Applicant also filed a supplemental statement with additional architectural drawings and information on April 11, 2014. (Ex. 32-32G.)
8. A description of the proposed development and notice of the hearing was published in the *D.C. Register* on March 7, 2014. The public hearing notice was mailed to all property owners within 200 feet of the PUD Site as well as to ANCs 5E, 5A, and 1B.
9. The parties to each segment of the hearing were the Applicant, ANC 5E, the ANC in which the PUD Site is located, and Friends of McMillan Park ("FOMP"). FOMP is a nonprofit organization dedicated to preserving, restoring, and adaptively reusing the PUD Site. On April 17, 21, and 24, 2014, FOMP filed individual requests for party status to appear in opposition to the each of the development parcels scheduled to be reviewed on separate hearing nights. At each of the three hearing nights on May 1, 5, and 8, 2014, the Commission granted party status for FOMP.

10. On April 22, 2014, and May 1 and 5, 2014, the McMillan Coalition for Sustainable Agriculture filed individual requests for party status to appear in opposition to the each of the development parcels scheduled to be reviewed on separate hearing nights. At each of the three hearing nights on May 1, 5, and 8, 2014, the Commission denied the party status request for not meeting the requirements under the Commission's rules. At the May 8<sup>th</sup> hearing night, the Commission re-deliberated at length about whether to grant party status to the McMillan Coalition for Sustainable Agriculture. However, no representative from the Coalition was present at the hearing to answer questions from the Commission, and therefore the Commission denied the party status request.
11. By letter dated May 6, 2014, ANC 5E stated its intent to continue to negotiate with the Applicant to reach an equitable and appropriate Community Benefits Agreement ("CBA") that reflects a compilation of input from the ANC 5E and various civic associations. (Ex. 492.) In its May 6, 2014 letter, ANC 5E requested that the Commission keep the record open until May 21, 2014, to allow the ANC and the Applicant to continue working toward reaching an equitable agreement.
12. At its regularly scheduled, publically noticed meeting on June 17, 2014, with a quorum of 7 of 11 present, ANC 5E voted 4-0-3 to approve the Applicant's proffered community benefits and reaffirmed its continuing support for the PUD before the Commission, the Mayor's Agent, and proceedings before the D.C. Council on LDA.
13. The PUD Site also borders ANC 1B and ANC 5A, and thus their views are also entitled to great weight.<sup>2</sup> At its regularly scheduled, publicly noticed meeting on May 1, 2014, ANC 1B, with a quorum of 9 of 11 present, voted 8-0-1 to defer to and participate in the process established by ANC 5E, the ANC of primary jurisdiction. At the May 13, 2014, hearing night, ANC 1B Commissioner Anderson-Holness testified that the decision to defer to ANC 5E was based on the fact that the PUD Site is within ANC 5E boundaries and that ANC 1B wanted to support its fellow ANC as it supports its community. ANC 5A did not participate in the hearing; however, at its regularly scheduled, duly noticed meeting on January 29, 2014, at which a quorum was present, ANC 5A voted 7-0-0 to support the Application. (Ex. 41.)

*The May 1<sup>st</sup> Hearing Night*

14. At the May 1, 2014, hearing night, the Commission initially considered a motion filed by FOMP to dismiss or postpone the hearing. (Ex. 149.) FOMP asserted that the Commission's proceeding to approve the PUD was premature because the PUD had not yet been reviewed by the Mayor's Agent or the Historic Preservation Review Board ("HPRB"), and because the PUD was not yet subject to the LDA between the District and the Applicant authorizing development of the PUD Site. At the hearing, the Commission

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<sup>2</sup> See *Neighbors United for a Safer Community v. District of Columbia Bd. of Zoning Adjustment*, 647 A.2d 793 (D.C. 1994).

rejected FOMP's motion based on the finding that decisions made by the Mayor's Agent and HPRB are not germane to Commission proceedings, and that the transfer of ownership through the LDA would have no bearing on the Commission's proceeding or decision.

15. At the May 1, 2014, hearing night, the Applicant presented eight witnesses in support of the first-stage master plan, open spaces and parks, and community center (Parcels 6 and 7): Adam Weers, Trammell Crow Company, and Anne Corbett, Project Director for VMP, on behalf of the Applicant; Matthew Bell, Perkins Eastman Architects; Robert Schiesel and Dan VanPelt, Gorove/Slade Associates; Emily Eig, EHT Traceries; Rebecca Manning, George Sexton Associates; Kirk Mettam, Robert Silman Associates; and Steven Sher, Director of Zoning and Land Use Services, Holland & Knight LLP. Based upon their professional experience and qualifications, the Commission recognized Matthew Bell as an expert in architecture; Robert Schiesel and Dan VanPelt as experts in transportation engineering and planning; Emily Eig as an expert in historic preservation; Rebecca Manning as an expert in lighting design; Kirk Mettam as an expert in structural engineering; and Steven Sher as an expert in land use, zoning, and planning. Shiv Newaldass, Project Manager for DMPED, also testified in support of the Application on behalf of DMPED.
16. Maxine Brown-Roberts from OP testified in support of the first-stage master plan, open spaces and parks, and community center, with certain comments and conditions. Jennifer Steingasser and Joel Lawson were also present on behalf of OP. Jonathan Rogers, Anna Chamberlin, and Jamie Henson of the District's Department of Transportation ("DDOT") also testified in support of the first-stage master plan, open spaces and parks, and community center, with certain comments and conditions.
17. At the May 1, 2014, hearing night, the Commission determined that due to lack of time, persons and parties in support of or opposition to the master plan, open spaces and parks, and community center, would be heard at the May 13, 2014, hearing night.

*The May 5<sup>th</sup> Hearing Night*

18. At the May 5, 2014, hearing night, the Applicant presented six witnesses in support of the Multi-Family Grocery Building (Parcel 4) and the Rowhouses (Parcel 5): Aakash Thakkar, EYA, and Jair Lynch, JAIR LYNCH Development Companies, on behalf of the Applicant; Jack McLaurin, Lessard Design; David Jameson, David Jameson Architect; and Jim Voelzke, MV+A. Based upon their professional experience and qualifications, the Commission recognized Jack McLaurin, David Jameson, and Jim Voelzke as experts in architecture. Robert Schiesel from Gorove/Slave also testified in support of the Application with respect to transportation.

19. Maxine Brown-Roberts from OP and Sam Zimbabwe from DDOT testified in support of the Multi-Family Grocery Building on Parcel 4 and the Rowhouses on Parcel 5, with certain comments and conditions. Jennifer Steingasser and Joel Lawson were also present on behalf of OP. C. Dianne Barnes, ANC Commissioner 5E09, testified on behalf of ANC 5E in support of the Application. Several persons also testified in support of the Application.
20. FOMP presented two witnesses to testify in opposition to the Application regarding the Multi-Family Grocery Building and Rowhouses: Anne Sellin and Tony Norman. Based upon her professional experience and qualifications, the Commission recognized Anne Sellin as an expert in historic preservation. Several persons testified in opposition to the Application.

The May 8<sup>th</sup> Hearing Night

21. At the May 8, 2014, hearing night, the Applicant presented three witnesses in support of the Healthcare Facility (Parcel 1): Adam Weers, Trammell Crow Company, on behalf of the Applicant; Shalom Baranes, Shalom Baranes Architects; and Jeffrey Aten, Nelson Byrd Woltz Landscape Architects. Based upon their professional experience and qualifications, the Commission recognized Shalom Baranes as an expert in architecture and Jeff Aten as an expert in landscape architecture. Janice Posey, on behalf of the Higher Education and Healthcare Sector within DMPED testified in support of the Healthcare Facility.
22. Maxine Brown-Roberts and Jennifer Steingasser from OP and Anna Chamberlin from DDOT testified in support of the Healthcare Facility, with certain comments and conditions. Joel Lawson was also present on behalf of OP. Several persons also testified in support of and opposition to the Healthcare Facility.

The May 13<sup>th</sup> Hearing Night

23. At the May 13, 2014, hearing night, Councilmember Kenyan McDuffie from Ward 5 testified in support of the Application. C. Dianne Barnes, ANC 5E, also testified in support of the Application and requested that the Commission keep the record open to allow completion of negotiations between ANC 5E and the Applicant regarding the Applicant's proffered community benefits which, at the time of the hearing, had not yet been finalized. Also testifying in support of the Application were Sylvia M. Pinkey, Chairperson of ANC 5E, and E. Gail Anderson-Holness, Commissioner for ANC 1B. Numerous persons testified in support of and in opposition to the Application.
24. FOMP presented three experts to testify in opposition to the Application: Joe Mehra, MCV Associates, Inc.; Miriam Gusevich, Miriam Gusevich-Miles Studio; and George

Oberlander, Gannett Fleming. Based upon their professional experience and qualifications, the Commission recognized Joe Mehra as an expert in transportation engineering, Miriam Gusevich as an expert in architecture, and George Oberlander as an expert in land use and zoning. FOMP also presented John Salatti as a lay-witness testifying in opposition to the Application.

The May 27<sup>th</sup> Hearing Night

25. At the May 27, 2014, hearing night, the Commission received further testimony in support of and in opposition to the Application. The Applicant also presented rebuttal testimony. The Commission concluded the hearing and closed the record, except for certain limited information. In addition to the testimony presented at the public hearings, the Commission received numerous letters in support of and opposition to the Application.

**Post Hearing Submissions and Actions**

26. The Applicant submitted its post-hearing materials on June 23, 2014. (Ex. 832-832O.) The parties filed responses on July 7, 2014. (Ex. 835.) The Applicant and FOMP submitted proposed findings of fact and conclusions of law also on July 7, 2014. (Ex. 834, 836.)
27. On July 11, 2014, Daniel Wolkoff submitted his testimony. (Ex. 839.)
28. On July 17, 2014, the Stronghold Civic Association submitted comments on the draft CBA. (Ex. 841.) On July 21, the McMillan Advisory Group submitted its comments on the draft CBA. (Ex. 843.) On July 22, 2014, the Bloomingdale Civic Association submitted its comments on the CBA. (Ex. 845.)
29. On July 25, 2014, Chris Niosi and Victoria Langford submitted their testimony. (Ex. 847.)
30. At its regular meeting on September 29, 2014, the Commission took proposed action to approve the first-stage and consolidated PUD and related map amendment with conditions. At its regular public meeting on October 6, 2014, the Commission clarified that it intended to approve both the first-stage, and the consolidated PUD applications. The Commission felt this clarification was necessary because the motion it approved at the September 29, 2014 meeting did not mention the consolidated portion of the PUD.
31. The first-stage and consolidated PUD and related map amendment were referred to the National Capital Planning Commission ("NCPC") on October 7, 2014 for review of any impacts on the federal interest under the Comprehensive Plan.



32. On August 25, 2014, the Applicant responded to the issues raised by the Commission when it took proposed action. (Ex. 848, 849-849G.)
33. On August 25, 2014, NCPC submitted its staff comments to the Commission. (Ex. 850.)
34. On September 15, 2014, the Applicant submitted revised plans in response to NCPC staff's comments. (Ex. 856A1-856A4.) The Applicant also submitted a letter that responded to the comments in the August 25, 2014 NCPC staff's letter. (Ex. 857.)
35. On September 15, 2014, FOMP submitted a response to the Applicant's post-hearing submission dated August 25, 2014. (Ex. 858.)
36. On October 6, 2014, the Applicant submitted its list of proffers and draft conditions pursuant to 11 DCMR § 2403.16. (Ex. 860.)
37. On October 20, 2014, the Applicant submitted its revised final list of proffers and draft conditions pursuant to 11 DCMR § 2403.20. (Ex. 864.) The Applicant also submitted additional viewshed and modeling images and an update on the Applicant's transit commitments. (Ex. 862, 863.)
38. The Commission took final action to approve the Application on November 10, 2014.

#### **The PUD Site and Surrounding Area**

39. The PUD Site is being redeveloped through a public-private partnership between the District of Columbia, as owner of the property, and VMP, as the master planner and developer selected by the District to implement the project. The PUD Site is bounded by North Capitol Street to the east, Michigan Avenue to the north, First Street to the west, and Channing Street to the south, all in the northwest quadrant of Washington, D.C.
40. Historically, the PUD Site was used as a slow sand water filtration plant. It consists of 20 underground cells of sand filter beds on a level platform or "plinth," which is inserted into the rising slope of North Capitol Street. The south end of the PUD Site is situated approximately 16 feet above the north end of the PUD Site; however, as North Capitol Street rises, the plinth remains level so that it sits approximately 10 feet below Michigan Avenue at its northern end.
41. The surface of the PUD Site is generally flat, rectangular in shape, and is made up of a shallow dirt-bed covered with grass and weeds. This plane is punctuated by 2,100 manholes to the filter bed chambers below. Two recessed service corridors containing 20 chimney-like structures, known as the sand storage bins, traverse the PUD Site laterally

with pathways that lead to the underground cells. These lateral corridors, referred to as the "North Service Court" and the "South Service Court," are lined with other elements of the water filtration process, including regulator houses, stationary sand washers, and portals and ramps to the underground chambers of sand filter beds. Overall, the PUD Site is approximately three city blocks long along North Capitol Street and First Street, and one block wide along Channing Street and Michigan Avenue.

42. The PUD Site is situated adjacent to the residential neighborhoods of Bloomingdale to the south and Stronghold to the east, which are characterized by a variety of large Victorian rowhouses and more modest rowhouses, many with front porches. The Glenwood Cemetery and Trinity College are also located to the east across North Capitol Street, adjacent to the residential communities. The Veterans Affairs Medical Center, Washington Hospital Center, and Children's National Medical Center are located across Michigan Avenue to the north and have building heights ranging from 90 to 127.5 feet. To the west across First Street is the functioning reservoir of the McMillan Reservoir and Filtration Complex operated by the U.S. Army Corps of Engineers. Further to the west is Howard University.

### **The PUD Project**

43. The existing PUD Site has approximately 1,075,356 square feet (24.69 acres) of land area and is presently unzoned. In conjunction with its PUD application, the Applicant will amend the Zoning Map to rezone the PUD Site to the C-3-C and CR Zone Districts. The C-3-C Zone District will be located along the northern portion of the PUD Site and will encompass the Healthcare Facility in Parcel 1. The CR Zone District will encompass the remainder of the PUD Site, including Parcels 2 and 3, which will be developed as future second-stage applications; the Multi-Family Grocery Building in Parcel 4; the Rowhouses in Parcel 5; the Park, including the community center and South Service Court in Parcel 6, and the North Service Court as Parcel 7.
44. The overall PUD will include approximately 2,070,753 square feet of gross floor area, or an aggregate floor area ratio ("FAR") of approximately 1.92. Uses on the PUD Site will include (i) the Healthcare Facility with approximately 860,000 square feet of gross floor area devoted to medical office uses and approximately 15,000 square feet of gross floor area devoted to ground floor retail; (ii) the Multi-Family Grocery Building on Parcel 4 comprised of approximately 305,847 square feet of gross floor area, divided into 258,235 square feet of gross floor area devoted to residential units (inclusive of loading areas) and approximately 55,567 square feet of gross floor area devoted to a ground floor grocery store (inclusive of loading areas); (iii) 146 individual Rowhouses, comprised of approximately 350,000 square feet of residential uses; and (iv) the 17,500 square foot community center. In addition, approximately almost 500,000 square feet of land area on the PUD Site is devoted to parks, landscaping, and open areas. This consists of the

healing gardens, the park, the North and South Service Courts, Cell 14, and the Olmsted Walk.

45. Building heights on the PUD Site will range from 26 feet to 115 feet. The project will be an architecturally distinct, vibrant, mixed-use development that provides housing, employment, retail, cultural, and recreation opportunities for District residents. The PUD Site will retain many significant elements of the historic McMillan Slow Sand Filtration Plant and incorporate these elements into the overall design and concept plan. The PUD Site will be open to the public at all times, and will integrate necessary retail amenities, parking, and pedestrian-oriented infrastructure into the existing community.

*The Master Plan*

46. The first-stage PUD Application includes the master plan for the PUD Site. The master plan orients construction on the PUD Site around a new, two-way internal street grid, which will disperse traffic and provide cross-site connectivity. Evarts Street will run laterally across the PUD Site from First Street to North Capitol Street. Quarter Street and Three-Quarters Street will run north-south, in between the North Service Court and the South Service Court. Half Street will be located at the mid-point of the PUD Site, connecting Michigan Avenue down to the South Service Court. The North and South Service Courts will be divided into two-way streets and will similarly be integrated into the proposed grid system. The Service Courts will preserve the historic regulator houses, silos (sand bins), and access bays to the underground sand filtration cells associated with the landmark. The overall development is set back from all edges of the PUD Site, retaining the existing topography of the PUD Site and recreating the elevated hawthorn-lined perimeter walkway originally designed by Frederick Law Olmsted, Jr. This perimeter walkway will be a publicly accessible recreational path set inside and parallel to the public sidewalk.
47. The North and South Service Courts divide the PUD Site into three distinct development blocks. The northern block is comprised solely of Parcel 1, and is bounded by First Street to the west, Michigan Avenue to the north, North Capitol Street to the east, and the historic North Service Court to the south. This northern block will be developed with the Healthcare Facility with ground-floor retail uses, as described in detail below. The Applicant will preserve a substantial amount of open space on the northern block, preserving important sightlines across the PUD Site. The development will retain Cell 14, a 41,414-square-foot filtration cell, and will incorporate a "healing garden" along Michigan Avenue. The reconstruction of the Olmsted Walk along the perimeter of the PUD Site will provide a pedestrian link between the Healthcare Facility to the north and the primary open space at the southern end of the PUD Site. This northern block will be rezoned to the C-3-C Zone District.

48. South of the North Service Court is the central block of the PUD Site, which the Applicant will develop with the Multi-Family Grocery Building containing approximately 281 residential units and a ground-floor grocery store (Parcel 4), and the 146 moderate density Rowhouses (Parcel 5). A future phase of development will also include an approximately 173,000 square foot healthcare facility with retail on the ground floor (Parcel 3) and an approximately 334,950 square foot mixed-use building with retail on the ground floor and residential units above (Parcel 2). This central portion of the PUD Site has a land area of approximately 447,565 square feet and will be bisected by the newly created Evarts Street, N.W., which will run laterally in between the Service Courts, and will be further divided by Three-Quarters Street, Half Street, and Quarter Street, which will run longitudinally between the North and South Service Courts. The proposed zoning for this component of the project is the CR Zone District.
49. The southern block of the PUD Site (Parcel 6), located between Parcel 5 and Channing Street, is the Park and will include the 6.2-acre green space, the community center, and the South Service Court. The southern block will also accommodate a construction and staging area for D.C. Water, as described below.

*The Park, Community Center, and South Service Court (Parcel 6)*

50. The Park comprises the entire southern portion of the PUD Site (Parcel 6), encompassing the 6.2 acre green space, the 17,500 square foot community center, and the South Service Court. The Park's program includes convenient pedestrian, bicycle, and vehicular access, large informal play areas, the Olmsted Walk, terraced seating, an outdoor "sprayground" and playgrounds, natural amphitheater, a stormwater pond that will reference the PUD Site's subterranean natural hydrology, and a "walking museum" that will tell the history of the PUD Site. The Park will also accommodate informal sports and events for District residents. The western portion of the Park will include the reconstructed elevated plinth, which will be preserved with views to the reservoir and city landmarks beyond. A portion of Filtration Cell 28, an underground filter bed, will also be preserved for future use. Hawthorn trees will line both sides of the Olmsted Walk, and a tree grove in a quincunx pattern will be located in the center of the Park, referencing the historic pattern of manholes in the plinth.
51. The community center will house circulation and gallery spaces with exhibits on the history of the PUD Site, a 25-meter swimming pool, a multipurpose community meeting room with a catering kitchen, outdoor gathering spaces, fitness studio, and locker and shower facilities. The building will have a glass façade made of high-performance glazing that will welcome ample daylight into the pool and other public spaces. The building will incorporate a lightweight metal exterior trellis shading system to condition the exterior spaces and shade the building. Reinforced concrete groin vaults will recreate

the experience of the historic below-grade filter beds, while wood boards, likely reclaimed wood from the PUD Site, will envelop the building's entrance vestibule.

52. Parcel 6 will also accommodate a construction and staging area for D.C. Water during their construction of a "Long Term Control Project," a major infrastructure project by D.C. Water to improve stormwater management in the area. As a result, the timing of the District's construction on the Park and community center will be coordinated with D.C. Water. In addition, 21 parking spaces along the South Service Court will be provided for public visitors to the community center.

*Multi-Family Grocery Building (Parcel 4)*

53. The Multi-Family Grocery Building is located in the central portion of the PUD Site along North Capitol Street. Designed by MV+A Architects and David Jameson Architect, Inc., and developed by JAIR LYNCH Development Partners, the mixed-use building will accommodate a grocery store on the ground level and approximately 258,235 square feet of gross floor area devoted to residential uses, comprised of approximately 196 market-rate units and 85 senior-affordable units for seniors earning between 50% and 60% of the area medium income ("AMI") for the Washington Metropolitan Area. The proposed building will be constructed to a maximum height of 77 feet.
54. The residential area of the building is articulated as three simple bars along North Capitol Street, recalling the rhythm of the sand bins and providing open courtyards in the building's interior. This open-ended massing strategy reduces the building's scale as it relates to and is viewed by the existing rowhouses across North Capitol Street. The façade responds to the rhythm of the placement of the historic sand bins and regulator houses with large corresponding frames containing balconies for the residences. Three portals reflect the placement of the three sand bins located in front of the building, while a fourth balcony wraps the building corner, acknowledging the sand bin at the intersection of the North Service Court and Quarter Street. An abstracted plinth containing the retail/grocery program features a canted wall facing the North Service Court, embodying the original Service Court walls on the PUD Site.
55. As described in more detail in the Circulation, Parking, and Loading section below, the Multi-Family Grocery Building will contain an on-site parking garage containing approximately 329 parking spaces for residents and retail patrons. Loading will be accessed from Evarts Street and will include one berth at 40 feet, two berths at 70 feet, three loading platforms at 200 square feet, and two service/delivery spaces at 20 feet.

Rowhouse Development (Parcel 5)

56. Parcel 5 is located in the central portion of the PUD Site and spans its full width. Designed by Lessard Design and developed by EYA, Parcel 5 will be developed with 146 row dwellings, with approximately 350,000 square feet of gross floor area. The dwellings will be constructed in groups of six to eight houses, with one group of 16 back-to-back units, and with maximum building heights of 48 feet (three and four stories). Except for the 16 back-to-back units, the row dwellings will have rear yards and rear garage access from new private alleys, and will have widths of 14 feet, 16 feet, 18 feet, or 20 feet, with gross floor areas of approximately 1,600 to 3,200 square feet. The back-to-back units share a common party wall with two and a half stories of living space and a common parking garage below. The back-to-back units are approximately 22 feet wide and range in size from 2,000 to 2,700 square feet.
57. The Applicant will seek to exempt the rowhouse development from the inclusionary zoning ("IZ") requirements of Chapter 26 of the Zoning Regulations. If the exemption is granted, the Applicant will still have to set aside the minimum amount of gross floor area for affordable units. In the CR Zone District, new housing developments with 10 or more units must set aside eight percent of the gross floor area devoted to residential uses to households earning no more than 80% of the AMI. As initially presented, the Applicant increased the proffered amount of affordable units to 10% of the gross floor area of the Rowhouse development (approximately 35,000 square feet), which equated to 18 units. At the May 5<sup>th</sup> hearing night, the Applicant further increased its proposal by committing to offer nine units to households earning no more than 50% of the AMI. Finally, through negotiations with ANC 5E, the Applicant increased the number of affordable units from 18 to 22 units, or approximately 12.3% of the gross floor area of the Rowhouse development. Nine of the affordable units will continue to be offered to households earning no more than 50% of AMI, with the remaining 13 affordable units offered to households earning no more than 80% of AMI. All of the 16 back-to-back units will be market-rate.
58. The Rowhouse development makes up the single-family residential fabric of the PUD Site and corresponds to the existing residential community of Bloomingdale to the south and Stronghold to the east. The massing of the Rowhouse units provides a transition from the low-rise surrounding community to the larger buildings on the PUD Site and across Michigan Avenue, and is designed so that the individual structures form part of a larger compositional block or terrace. The Rowhouses front pedestrian-friendly streets with large outward facing windows, pedestrian-scaled lighting, landscaping, and street trees.

59. As described in more detail in the Circulation, Parking, and Loading section below, each rowhouse will contain a minimum of one on-site vehicle parking space. No loading is required for the row dwellings, and none is provided.

Healthcare Facility (Parcel 1)

60. The Healthcare Facility is located at the north end of the PUD Site, with frontage on Michigan Avenue, North Capitol Street, and First Street, N.W. Designed by the architectural firm of Shalom Baranes Associates and developed by Trammell Crow Company, with landscape design by Nelson Byrd Woltz Landscape Architects, the Healthcare Facility will be comprised of approximately 860,000 square feet devoted to healthcare uses, and a minimum of 15,000 square feet devoted to ground-floor retail. The Healthcare Facility will rise in two halves and be separated above grade by Half Street. The two halves will be connected at the main floor of the building fronting on the North Service Court. The building will be 115 feet in height, and stepping down to an approximate height of 110 feet at the far east and northeast extensions. The building is set back from North Capitol Street by approximately 150 feet, with the preserved Cell 14 acting as a buffer between the Healthcare Facility and the adjacent residential community. The building will occupy approximately 55% of Parcel 1, with an overall density of 4.08 FAR. The Healthcare Facility will serve the office needs of physicians and medical service providers affiliated with many of the leading healthcare systems in the area including Children's National Medical Center and the Washington Hospital Center.
61. The primary pedestrian entrances to the Healthcare Facility are located from the North Service Court on the southern side of the building at the main floor level. The primary vehicular parking entrance is located at First Street on the east side of the building. Public vehicular access points are also located along Michigan Avenue, oriented toward the adjacent hospitals. A vehicular driveway loop off of Michigan Avenue will provide visitors, particularly patients, with convenient, covered access to the patient lobby spaces, and facilitate the use of high occupancy vehicles, including shuttles to and from nearby Metrorail stations.
62. The Healthcare Facility's main floor will be on its south side, opening onto the historic North Service Court, and will be activated by pedestrian-oriented retail and the primary parking garage entrance for retail patrons. To the north of the building along Michigan Avenue, a terraced medicinal/healing garden will create a welcoming space for patients, visitors, and employees. The Olmsted Walk will connect the Healthcare Facility and its healing gardens with the rest of the PUD Site's public amenities to the south.
63. As described in more detail in the Circulation, Parking, and Loading section below, the Healthcare Facility will contain a four-level underground parking garage containing approximately 1,900 vehicle parking spaces open to the public. Loading facilities will be

located on both sides of Half Street and will include four berths at 30 feet deep and four service/delivery spaces at 20 feet deep.

### **Site Circulation, Parking, and Loading**

64. The Master Plan introduces several new streets within and access points to the PUD Site. The new street system incorporates new internal blocks that connect the VA/Washington Hospital Center to the north to the Bloomingdale neighborhood to the south, and provide multi-modal connectivity and circulation within and throughout the entire PUD Site.
65. East-west connections are achieved by restoring the historic North and South Service Courts as part of the street system, as well as introducing Evarts Street, which will run laterally across the site from First Street to North Capitol Street. The North and South Service Courts will preserve and incorporate all 20 historic silos (sand storage bins) and all four regulator houses into the new design and development. The North Service Court will provide two-way vehicular access, connecting First Street through to North Capitol Street, with sidewalks that are activated by ground-floor retail uses in the Healthcare Facility to the north and in the Multi-Family Grocery Building to the south. Pedestrian access to the grocery store on Parcel 4 will be from the North Service Court. The South Service Court will only provide external vehicular access from First Street, and is designed to be a shared corridor with pedestrian access, open space, street parking, and vehicle zones for convenient drop-off and pick-up for the Park and community center.
66. The PUD will also provide three new north-south streets: Half Street will be located at the mid-point of the PUD Site and will connect from the South Service Court to Michigan Avenue. Quarter Street and Three Quarters Street will run north-south between the North Service Court and the South Service Court. Sidewalks will be located on all of these streets for easy and safe pedestrian access. Bicycle racks will be provided along the sidewalks, in addition to long-term, secure bicycle storage areas within the individual buildings.
67. The PUD involves the introduction of three new traffic lights: two traffic lights will be located on North Capitol Street where it intersects with the North Service Court and Evarts Street, and one new traffic light will be located at the intersection of Michigan Avenue and Half Street. These new lights will help reduce traffic congestion and help move vehicles around the PUD Site at a steady and consistent rate.
68. The PUD Site will serve as a transit hub that accommodates premium transit options, such as the Metrobus, Circulator Bus, and the future D.C. streetcar, and will provide convenient connections to Capital Bikeshare stations, bicycle storage and changing facilities, privately run shuttles to the Brookland Metrorail station, and vehicle parking. Upon completion, the PUD project will create a new, vibrant destination that will



complement the adjacent institutional and residential uses and will be easily accessible from all areas of the city and via all modes of travel.

69. On-street parking will be provided on all of the streets internal to the PUD Site, with some spaces reserved for car-sharing. On-site parking and loading will be located on each of the individual parcels, as described below:

- a. Healthcare Facility: A maximum of 1,900 parking spaces will be provided in the Healthcare Facility in four levels of underground parking. The primary vehicular access is on the east side of the building from the vehicular driveway loop along Michigan Avenue. An additional parking entrance is located from First Street, and is intended primarily for the everyday occupants of the building accessing the main floor level. Direct vehicular access points into the garage are also provided from the North Service Court. All four levels of the garage will be available for use by employees, patients, visitors, and retail patrons, and all of the access points can be used for both entrance and exit;
- b. Loading facilities for the Healthcare Facility will be located on both sides of Half Street in order to keep trucks away from the retail entrances and sidewalks along the North Service Court. Loading facilities include four loading berths at 30 feet deep and four service/delivery spaces at 20 feet deep;
- c. Multi-Family Grocery Building: The Multi-Family Grocery Building on Parcel 4 will include approximately 329 parking spaces on two levels of below-grade parking, plus approximately 100 bicycle parking spaces. The parking garage will be accessed from Evarts Street, separate from the residential and retail entrances;
- d. Loading for the Multi-Family Grocery Building will be located on Evarts Street adjacent to the parking garage entrance and will include one loading berth at 40 feet deep, two loading berths at 70 feet deep, three loading platforms at 200 square feet, and two service/delivery spaces at 20 feet deep. The Applicant revised the design and location of the loading facilities since its initial submission, which located the parking garage entrance on Quarter Street in between the market-rate and senior residential lobbies and had extended the loading facilities across the majority of the south-facing façade of the Multi-Family Grocery Building on Evarts Street. The revised design allows for a more safe and convenient design and operation of the building;
- e. In addition to the relocated loading facilities, the grocery store operator will have a loading management plan, with at minimum the following two elements: (i) an employee of the grocery store will be responsible for scheduling deliveries and working with delivery drivers and companies to ensure that the loading dock is

not over-scheduled. Trucks will not be permitted to queue in public space, and drivers will be made aware of the proper routing of large vehicles to and from the PUD Site; and (ii) deliveries of large vehicles (defined as those that will require backing maneuvers into the loading dock from Evarts Street) will be prohibited during weekday mornings from 7:00 a.m. to 8:30 a.m. Residential use of the loading facilities will primarily include move-ins and move-outs, trash removal, large residential deliveries, and deliveries to support residential operations; and

- f. Rowhouses: The parking requirement for the Rowhouse development on Parcel 5 is one parking space per dwelling unit, for a total requirement of at least 146 parking spaces. However, Parcel 5 will incorporate between 208 and 292 total parking spaces, with each row dwelling containing a private one- or two-car garage accessed by a network of alleys. The two-car garages in the 14-foot and 16-foot units provide back to back (tandem) parking for two cars, and as an option the Applicant will allow homebuyers to remove one of the tandem spaces in favor of a den/study and only one parking space. The 16 back-to-back row dwellings will have a common underground parking garage accessed from Evarts Street. The Zoning Regulations do not require loading facilities for the Rowhouses and none are provided. On-street parking will be available for visitors;
70. Pedestrians will have access to the PUD Site from all four corners, as well as from First Street at the North and South Service Courts and at Evarts Street; North Capitol Street at the North Service Court and Evarts Street; and at Half Street along Michigan Avenue. Numerous interior walkways and paths will provide active and passive pedestrian circulation and sidewalks will be designed to encourage foot traffic and activity on the street. The historic Olmsted Walk, which runs around the perimeter of the PUD Site parallel to, yet often well above, the public sidewalk, will be refurbished. Three sets of the corner concrete stairs will be reconstructed in place and ADA-accessible ramps will be created to provide a contiguous and safe pedestrian experience.
71. Space for at least three new Capital Bikeshare stations will be provided on the PUD Site.

### **Sustainable Development**

72. The master plan for the overall development for the PUD Site will be evaluated for LEED-Neighborhood Development and will be certified at least LEED-Gold or its equivalent. Individual buildings within the PUD Site will be certified at least LEED-Silver or its equivalent. The PUD is consistent with best practices for storm water management, low-impact development, and sustainable design. The project's storm water management will meet the latest storm water regulations that the District recently implemented and will consist of many different types of low impact design techniques, including pervious pavement in sidewalks, roadways, alleys, and parking spaces; bio-

swales; bio-tree pits and inlets; cartridge filters; oil/grit separators; rain gardens; green screens; detention vaults; and cisterns.

73. The PUD Site does not presently have any storm water management facilities connected to it. Redevelopment of the PUD Site will significantly improve water quality, reduce the volume of runoff, and control the release and safe conveyance of all on-site storm water drainage.

#### **Responsibilities of the Applicant and the District**

74. Under the DMA and the ERA agreements between the District and VMP, the two parties will jointly develop the PUD Site. The District will be responsible for the land development, which includes the provision of ready-to-build pad sites serviced by common infrastructure including streets, utilities, and lighting. The District will also be responsible for the provision of public amenities, such as the complete park system, community center, and the historic preservation of the built resources. The Applicant will execute the vertical development on the PUD Site. The first-stage of vertical development will include the Healthcare Facility on Parcel 1; the Multi-Family Grocery Building on Parcel 4; and the 146 Rowhouses on Parcel 5.
75. The Applicant will create a project association or business improvement district, referred to as the McMillan Public Space Partnership ("Partnership"). The Partnership will provide an operating framework to maintain and program the public space within the McMillan redevelopment, including the private roadways, alleys, bicycle paths, historic walks, sidewalks, parks, open space, historic resources, streetscapes, street furniture and fixtures, and signage within the PUD boundaries. The Partnership will be a not-for-profit corporation governed by a board of directors responsible for strategic and financial planning, management, and reporting to the public. As its primary function, the Partnership will maintain and program most, if not all, of the public assets on the PUD Site via an agreement with the District. The assets include the Park and open space, historic resources, public art, and internal streets and their components (e.g., paving, light fixtures, benches). (Ex. 832M.)

#### **CBE and First Source Employment Opportunities**

76. By agreement dated June 23, 2014, the Applicant entered into a First Source Agreement with the D.C. Department of Employment Services ("DOES"). (Ex. 832K.) Among others, the Agreement requires the Applicant to use DOES as the first source to fill all new jobs created as a result of the PUD, and requires that 51% of all new hires on government contracts between \$300,000 and \$5 million shall be District residents. The Applicant is committed to meeting the requirements under the First Source Agreement and to maximize job opportunities for District residents, especially Ward 5 residents.

77. The Applicant has committed \$700,000 toward the establishment of a workforce fund, which will organize and distribute grants and awards to local workforce development and social service organizations to connect District residents seeking jobs at the PUD Site with the training, job preparation, and workforce readiness skills necessary to maximize their job opportunities. These efforts will be undertaken for both the construction jobs generated by redevelopment of the PUD Site and for the permanent positions within the retail and healthcare arenas generated by the tenants that will locate at the PUD Site. As a part of this process, an advisory board will be established, made up of local community stakeholders, workforce development organizations, and representatives from the Applicant and the tenant community, which will provide input and approve grants awarded by the fund. The Construction Employment Plan, included with Exhibit 832K, specifies the specific ways that the Applicant will meet its goals of hiring District residents.
78. In addition, the following Certified Business Enterprises ("CBE") subcontractors have participated or are currently participating in the Applicant's team: EHT Traceries, Perkins Eastman DC, Gorove/Slade Associates, Shalom Baranes Associates, Silman Associates, ECS Capitol Services, WDG Architecture, Symmetra, Green Door Advisors, LLC, and Answer Title. (Ex. 832O.) The final CBE agreement will be negotiated with the District as part of the LDA and executed prior to issuance of any building permits for the project.

### **Public Benefits and Project Amenities**

The Commission finds that the following public benefits and project amenities will be created as a result of the PUD:

#### **Housing and Affordable Housing**

79. The PUD will provide approximately 924,583 square feet of gross floor area devoted to residential uses, or approximately 677 units of new housing in single-family and apartment houses, for both rental and ownership opportunities. The Applicant will set aside a portion of the total square feet of gross floor area devoted to housing on the PUD Site for affordable housing, as follows:
- a. On Parcel 4, a minimum of 67,018 square feet of gross floor area of the total new housing provided, or approximately 85 residential units, will be set aside as senior housing (55 years of age or older) for households earning between 50% and 60% of the AMI. These units will all be located in the southern wing of the building. Due to the financing structure for the development of the senior housing, these units are not subject to the IZ spacing requirements;

- b. On Parcel 5, 22 of the single-family row dwellings will be set aside as affordable housing. Nine of the affordable units will be set aside for households earning no more than 50% of AMI, with the remaining 13 affordable units set aside for households earning no more than 80% of the AMI. The affordable units will be scattered throughout Parcel 5, and all of the 16 back-to-back units will be market-rate;
- c. On Parcel 2, approximately 25 units, or approximately 21,341 square feet of total gross floor area devoted to housing, will be set aside for households earning up to 80% of the AMI. The affordable units located on Parcel 2 will be sufficient to achieve a 20% split of affordable units across the PUD Site;
- d. The Applicant will be requesting the Zoning Administrator to grant an exemption from the Inclusionary Zoning requirements of Chapter 26 pursuant § 2602.3 (f). The provision exempts to “any development financed, subsidized, or funded in whole or in part by the federal or District government and administered by the Department of Housing and Community Development (DHCD), the District of Columbia Housing Finance Agency, or the District of Columbia Housing Authority and that meets the requirements set forth in § 2602.7”;
- e. Subsection 2602.7 provides that:
- The development shall set aside, for low- or moderate-income households, affordable dwelling units (“Exempt Affordable Units”) equal to at least the gross square footage that would have been required pursuant to §§ 2603.1 and 2603.2. The terms “low-income household” and “moderate-income household” shall have the same meaning as given them by the federal or District funding source, or financing or subsidizing entity, and shall hereinafter be referred to collectively as “Targeted Households”;
  - The Exempt Affordable Units shall be reserved for the Targeted Households and sold or rented in accordance with the pricing structure established by the federal or District funding source, or financing or subsidizing entity, for so long as the project exists;
  - The requirements set forth in § 2602.7(a) and (b) shall be stated as declarations within a covenant approved by the District; and
  - The approved covenant shall be recorded in the land records of the District of Columbia prior to the date that the first application for a certificate of occupancy is filed for the project; except that for developments that include one-family dwellings, the covenant shall be recorded before the first purchase agreement or lease is executed;
- f. The Applicant has committed to fully comply with these requirements; and

g. In addition, the affordable housing units will be constructed prior to or concurrently with the market-rate units, except that if the development is phased, the affordable units will be constructed at a pace that is proportional with the construction of the market-rate units.

80. Urban Design, Architecture, and Site Planning: The PUD will be developed substantially in accordance with the master plan prepared by EEK Perkins Eastman Architects dated April 11, 2014 (Ex. 32A1A1-32A1A26 and 32A2A1-32A2A72 [hereinafter Ex."32A"]) and supplemented by drawings submitted on June 23, 2014 (832A1-832A3 [hereinafter "Ex. 832A"]). The Applicant will provide all necessary public infrastructure to support the development, including all project site work; all streets, alleys, sidewalks, and bike paths; historic and commemorative signage throughout the PUD Site to create a walking museum interpreting the preserved structures and views; and all related utilities.

Parks, Open Space, and Landscaping

81. Parks, Open Space, and Landscaping: The PUD will provide almost 500,000 square feet of land area comprised of the Park, the North and South Service Courts, the healing gardens, preserved Cell 14, and the Olmsted Walk. The Olmsted Walk will be Americans with Disabilities Act ("ADA") accessible and include benches along the walk. The Park will include covered seating areas with at least four durable, high-quality picnic tables or similar tables and chairs, an amphitheater adjacent to the community center, a children's playground, a "spray-ground," an outdoor adult fitness area, a pond, and open lawns for casual sports. The Applicant will provide all related streetscape improvements and street furniture, including lighting, benches, trash receptacles, and bicycle racks.

Design Guidelines; Public Art Guidelines

82. The Applicant will implement and follow the Master Plan Design Guidelines prepared by EEK Perkins Eastman Architects (Ex. 17C); and the Cultural DC Public Art Master Plan. (Ex. 17D10).

Historic Preservation

83. The Applicant will retain and rehabilitate the North and South Service Courts, including all 20 sand storage bins, all four regulator houses, at least one sand washer, certain filter bed portals, and extended portions of the service court walls. Cells 14 and a portion of Cell 28 will also be preserved. The Applicant will re-establish the Olmsted Walk around the perimeter of the PUD Site and reconstruct the concrete stairs at the PUD Site's two southern corners and northeast corner that provided access to the walk. The Applicant will seek permission from the U.S. Army Corps of Engineers or other responsible

government agency to obtain the historic McMillan Fountain, formerly located on a portion of the McMillan Reservoir west of First Street, in order to install it on the PUD Site. All work will be consistent with the Secretary of the Interior's standards for the Treatment of Historic Properties, including the Treatment for Rehabilitation.

84. In addition, the PUD incorporates major historic preservation elements into the proposed redevelopment, which are consistent with the historic preservation covenants dedicated on the PUD Site when it was transferred from federal ownership to the District. The Applicant retained EHT Tracerics, Inc. as historic preservation consultant to evaluate the PUD Site to ensure an appropriate and sensitive approach to this engineering landmark. EHT Tracerics prepared an Historic Preservation Report that: (i) provides a guide to the extensive documentation on the historic site; (ii) evaluates the historic significance of the PUD Site; (iii) evaluates the historic integrity of the landmark; (iv) provides recommendations for preservation based on the Secretary of the Interior's Guidelines for the Treatment of Historic Properties; and (v) guides the preservation-related approval processes for the PUD redevelopment project. (Ex. 538A-538C.) As indicated in this report, each of the preserved historic elements will be sensitively integrated into the PUD master plan, and will continue to convey their significance in a new setting of buildings that respect the history of the PUD Site. The overall development will retain significant character-defining features of the landmark sufficient to convey its historic character. Among other preservation-minded measures, the establishment of a 6.2-acre open space at the southern third of the PUD Site will retain the PUD Site's visual expanse from North Capitol Street, westerly to and beyond the Reservoir, as well as offer the opportunity for residents and visitors to observe the PUD Site close in, rather than only from the perimeter as originally designed and as it presently sits.
85. As part of the historic preservation component, the Applicant will retain and incorporate the North and South Service Courts and their sand filtration process structures, including all 20 sand storage bins, all four regulator houses, at least one sand washer, plus many of the filter bed portals and much of the service court walls. Retention and rehabilitation of these iconic features will retain the historic identity of the PUD Site and will create unique, place-making settings for the new community. The Applicant will also retain and preserve for adaptive reuse two underground filter beds: Cell 14, located at the northeast corner of the PUD Site, and Cell 28, located off of the South Service Court. Cell 14 will become, on its surface, a new park permitting views to the cylindrical sand bins from the north, while its underground structure will be reserved for future adaptive reuse to compliment the public and retail activities in that area of the PUD Site. In the interim, Cell 14 will be used by D.C. Water as a stormwater storage tank. Part of Cell 28 will be preserved and will be incorporated into the Park as part of the interpretive program. The vision is a "walking museum" that tells the history of the PUD Site and its significance to the city via a self-guided walking tour of the PUD Site's preserved and restored historic

assets. In total, approximately 1.5 acres of underground cells will be preserved and slated for future use.

86. The unusual topography of the plinth lends itself well to the creation of vast swaths of open space. Pedestrian pathways are positioned throughout the PUD Site, including the elevated perimeter walkway originally designed by Fredrick Law Olmsted, Jr. and three historic corner stairs, which will be reconstructed along the PUD Site's edges. The Applicant will recreate the Olmsted Walk lined with two rows of thornless Hawthorn trees, which are consistent with Olmsted's original design intent. The Applicant will reconstruct three of the original corner stairs, and will construct ADA-compliant ramps to access the pathway. The Hawthorn species is historically accurate, native to America, adapted to urban environments, and has pleasant aesthetic qualities year-around. The path itself will be made of recycled and reclaimed concrete paving to the greatest extent possible, with a steel edge and a sand or DG setting.
87. The PUD has undergone extensive review by the Historic Preservation Office ("HPO") and HPRB through a series of public hearings over 18 months. On April 25, 2013, and September 27, 2013, HPRB reviewed and discussed the master plan and design guidelines for the PUD Site and provided additional recommendations to the Applicant. (Ex. 88, 89.) On October 31, 2013, HPRB found the revised concept designs to "represent an architecturally coordinated and cohesive approach that specifically relates to the character of the PUD Site." HPRB recommended that the project return for final review after approval by the Commission and the Mayor's Agent for Historic Preservation, pursuant to the Historic Preservation Act. (Ex. 91.)

Community Center

88. The District will provide a two-story community center that consists of approximately 17,500 square feet of gross floor area. The community center will include gallery space with exhibits on the history of the PUD Site, a 25-meter swimming pool, a multipurpose community meeting room with a catering kitchen, outdoor gathering space, fitness studio, and locker and shower facilities. This amenity will be open to the public and will provide a user-friendly and convenient space for public gatherings and community events. The multipurpose community meeting room will include moveable partitions to create smaller and larger spaces for flexible gathering and events.

Healthcare Facility

89. The Applicant will devote approximately 860,000 square feet of gross floor area to medical office and related healthcare uses on Parcel 1. A future phase of development will also include an approximately 173,000-square-foot healthcare facility with retail on the ground floor (Parcel 3).



CBE Participation

90. Prior to the issuance of a building permit, the Applicant will execute a CBE Agreement with the D.C. Department of Small and Local Business Development ("DSLBD") 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 PUD. Business opportunities will be posted on the DSLBD website, and the Applicant will give opportunities to CBE businesses for smaller contracts, such as catering, trash collection, and delivery service. The Applicant will continue to work cooperatively with DSLBD and its contractors and with the Business Development Councils and other local community organizations to maximize opportunities for CBE firms throughout the process. The PUD will also include 20% sponsor equity participation by a CBE developer.

Training and Employment Opportunities

91. During construction of the project, the Applicant will abide by the terms of the executed First Source Employment Agreement with the District Department of Employment Services to achieve the goal of utilizing District residents for at least 51% of the new jobs created by the PUD. To the extent permitted by law, first preference for employment opportunities will be given to Wards 1 and 5 residents. The Applicant and its contractor, once selected, will coordinate training, job fairs, and apprenticeship opportunities with construction trade organizations or with healthcare facilities and other organizations to maximize participation by District residents in the training and apprenticeship opportunities in the PUD.

Management and Maintenance of Publicly Accessible Areas

92. Prior to the issuance of the first certificate of occupancy for the Application, the Applicant will establish a project association or business improvement district for the PUD ("Partnership") that will be responsible for the maintenance and improvements of the roadways, alleys, bicycle paths, historic walks, sidewalks, parks, historic resources, streetscapes, street furniture and fixtures, and signage within the PUD boundaries. The Partnership will program and stage events within the PUD for the benefit of the public.

Environmental Benefits

93. The master plan for the overall development for the PUD Site will be evaluated for LEED-Neighborhood Development and will be certified at least LEED-Gold or its equivalent. Individual buildings within the PUD Site will be certified at least LEED-Silver or its equivalent.

*Benefits of Special Value to the Community*

94. The Applicant will provide the following community benefits:
- a. \$1,000,000 as a workforce development fund to be coordinated by the Community Foundation of National Capital Region ("CFNCR"), of which \$300,000 for scholarships will be for community residents to pursue higher education, training, or job-related certification, encouraging "legacy" career paths such as civil engineering, landscape architecture, or on-site jobs in the medical field, with a preference for Wards 1 and 5 residents, to the extent permitted by law. The remaining \$700,000 directed to organizations whose mission includes workforce development, to create true "career paths" for District residents through readiness, training, and placement in on-site or other employment opportunities, and which have a demonstrated track record for successful job placement and retention of District residents;
  - b. \$125,000 to the D.C. Education Fund to be used to improve Science, Technology, Engineering, and Math ("STEM") teacher professional development and instruction, as well as student learning and achievement, particularly at Dunbar High School, McKinley Technical High School, and Langley Educational Campus<sup>3</sup>;
  - c. \$500,000 over a 10-year period to the Partnership, as defined by Finding of Fact No. 75<sup>4</sup>, operating budget to hire high-school age residents and senior residents to provide guided tours of the McMillan site highlighting the preserved historic resources;
  - d. \$750,000 over a 10-year period to the Partnership, as defined by Finding of Fact No. 75<sup>5</sup>, operating budget to create a community market, outdoor cafe, and space for art installations between the South Service Court and South Park, and to activate the South Service Court and existing elements, such as regulator houses for small business incubators, silos as hanging gardens, water features and observation points;

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<sup>3</sup> This finding was corrected to reflect that the Applicant revised its proffer to change the recipient of the contribution to the D.C. Education Fund and to specify the purposes for which the funds are to be used. (Ex. 849C.)

<sup>4</sup> This finding was corrected to reflect that the donation will be made to the Partnership.

<sup>5</sup> See footnote 4.

- e. \$225,000 to the Partnership, as defined by finding of fact 75<sup>6</sup>, to facilitate business start-ups in the project;
- f. \$500,000 to a contractor or otherwise for fabricating, installing, repairing and restoring tree box fence enclosures; planting trees and ground cover plants; and installing certain neighborhood signage in coordination with the Bates, Bloomingdale, Eckington, Edgewood, Hanover Area, and Stronghold Civic Associations<sup>7</sup>;
- g. The Applicant shall use best efforts to provide free WiFi for public use in the community center and park;
- h. \$150,000 to the North Capitol Main Street, Inc., for the storefront improvement program to provide grants for major corridors in ANC 5E boundaries affected by the PUD. The funds shall only be used for storefronts located on North Capitol Street, N.E., and N.W., between Channing Street and New York Avenue; and
- i. The Applicant will provide a total of approximately 97,770 square feet of gross floor area devoted to retail and service uses on the PUD Site. The retail space will include a neighborhood-serving grocery store.

### **Transportation Mitigation Measures**

95. In its review of the project, DDOT identified a number of potential adverse effects of the project related to its transportation impact, and recommended a list of mitigations to minimize the anticipated impacts of the project. (Ex. 38.) DDOT and the Applicant collaborated to develop means to implement DDOT's suggested mitigations. The Applicant submitted a detailed transportation performance plan<sup>8</sup> that lists the mitigations

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<sup>6</sup> See footnote 4.

<sup>7</sup> This finding was corrected to reflect that the Applicant changed the recipient of the contributions and refined the purposes to which the contributions are to be used. (Ex. 861.)

<sup>8</sup> The Transportation Performance Plan includes obligations to (this is a non-exhaustive list):

- Coordinate design of roadway and public space infrastructure;
- Submit to DDOT review of operational and management measures to spread peak hour traffic demand;
- Construct physical improvements to roadway infrastructure (subject to DDOT approval);
- Coordinate with DDOT and other nearby institutions to develop a plan to increase transit capacity to levels sufficient to serve the project ("Transit Implementation Plan");
- Fill any transit demand gaps through private shuttles;
- Comply with a loading management plan for the grocery store;
- Comply with a transportation demand management plan;
- Fund bikesharing docks on the Site; and
- Perform identified traffic monitoring and reporting.

and the threshold events by which the mitigations must be implemented) (“Transportation Performance Plan”). (Ex. 849B.) DDOT evaluated the mitigations and found that they were adequate. (Ex. 851.) This list of mitigations was further refined and expanded by the Applicant in response to comments from the Commission. (Ex. 862.) DDOT again evaluated this enhanced list of mitigations and concluded that they were adequate. (Ex. 866.) The Commission further expanded the list of mitigations when it took final action to approve the applications, by stating that the private shuttle service provision of the plan should be provided at the levels of service provided in the plan without regard to its cost to the Applicant. The Commission finds that the mitigations provided in Condition D.1 of this Order are adequate to mitigate the potential adverse effects of the project related to its transportation impact.

### **Development Incentives and Flexibility**

96. The Applicant requested the following areas of flexibility from the Zoning Regulations:
- a. To provide a range in the number of residential units on Parcel 4 of plus or minus 10% from the number depicted on the plans dated April 11, 2014, and supplemented by drawings submitted on June 23, 2014 (Ex. 32A, 832A);
  - b. From the roof structure set back requirements, consistent with the roof plans submitted as part of the plans dated April 11, 2014, and supplemented drawings submitted on June 23, 2014 (Ex. 32A, 832A);
  - c. From the loading requirements, consistent with the loading diagrams submitted in Ex. 699B, and as modified by Ex. 832A;
  - d. From the rear yard depth requirements, consistent with the plans dated April 11, 2014, and supplemented by drawings submitted on May 13, 2014 (Ex. 32A, 699A);
  - e. The Applicant seeks flexibility under the PUD guidelines from the rear yard requirements for all of the Rowhouses except Buildings 9 and 19. A rear yard depth of 12 feet is required for each group of buildings, but only nine feet are provided for Buildings 1-8, and Buildings 10, 11, 13, and 17. The Applicant seeks a deviation of three feet for those buildings. No rear yards are provided for Buildings 12, 15, and 18;
  - f. Additionally, the Applicant seeks flexibility from the open court width requirements at Building 9 in order to provide a 9.5-foot-wide court where 10 feet is required;

- g. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not substantially change the exterior configuration of the buildings;
- h. To vary the location and configuration of the affordable units on Parcels 2 and 4, so long as the proportion of studio, efficiency, and one-bedroom affordable units to all affordable units do not exceed the proportion of market-rate studio, efficiency, and one-bedroom units to all market-rate units with a mixed-income building on Parcel 2. The affordable units shall be of a size equal to the market-rate units, provided that the affordable units may be the smallest size of each market-rate type and have no luxury-scaled unit counterpart;
- i. To vary the garage layout, the number, location, and arrangement of the parking spaces on each of the parcels, provided that the total number of parking spaces is not reduced below the minimum level required by the Commission;
- j. To vary the layout of the loading facilities on Parcel 1, provided that the dimensions and number of loading facilities are not reduced;
- k. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, location and orientation of the fins, or any other changes to comply with the District of Columbia Construction Code, the recommendations of the D.C. Historic Preservation Review Board or the Mayor's Agent for Historic Preservation, or that are otherwise necessary to obtain a final building permit;
- l. To vary the final design of retail frontages, including locations of doors, design of show windows and size of retail units, to accommodate the needs of specific retail tenants;
- m. To vary the location and size of signs on the buildings, as long as they conform to the sign guidelines for the PUD;
- n. To vary the location, attributes and general design of the public spaces and streetscapes incorporated in the PUD to comply with the requirements of the approval by DDOT's Public Space Division; and

- o. If any retail areas are leased by a restaurant or food service user, flexibility to vary the location and design of the ground-floor components of the building(s) in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any restaurant use.

### **Phasing**

97. The Applicant will undertake construction and delivery of the PUD according to the following timeline, also included as Exhibit 17D2 in the record:
  - Infrastructure construction will start in 2015 and will be delivered throughout 2016 and 2017;
  - Construction of public amenities will start in mid-2016 and will be delivered between mid-2017 and mid-2018;
  - Construction of the Rowhouses will start at the beginning of 2016 and will be delivered throughout 2017 and 2018;
  - Construction of the Healthcare Facility will start at the beginning of 2016 and will be delivered throughout 2017 and 2018;
  - Construction of the Multi-Family/Grocery Building will start in 2016 and will be delivered throughout 2017 and 2018;
  - D.C. Water will control Cell 14 until 2022; and
  - Construction of Parcels 2 and 3 will be part of a future phase of development.

### **Office of Planning Reports**

98. OP submitted separate reports for each segment of the PUD, recommending approval of the project subject to certain conditions. (Ex. 37, 46, 68.) The OP report dated April 21, 2014, affirmed OP's support of the proposed C-3-C and CR Zone Districts for the PUD Site, and stated that the proposed development is consistent with the objectives of the proposed zones. (Ex. 37.) In addition, at the May 8, 2014 hearing night, OP testified to its support of the proposed zone districts. OP stated "the C-3-C zone is appropriate for [Parcel 1] as it allows the [A]pplicant to respond to the adjacency of the hospitals across Michigan Avenue at an appropriate massing and density.... The flexibility to provide for the 130 foot height would also allow the ability to step the building down to a lower height...and to provide an abundance of open space across the site." (Z.C. Transcript ["Tr."], 05/08/2014 at pp. 129-30.) In response to questions from the Commission, OP described how it "did look at the site as a unified project and how the density moved throughout the site and what was required of each of the parcels... We would not be supporting C-3-C across the site or as a matter of right, only as part of this PUD so that that the density could be controlled...." (*Id.*, pp. 135-36.) This analysis was further

corroborated in testimony and a memorandum submitted by the Applicant's expert witness in zoning and land use. (Ex. 832C.)

99. OP's April 21, 2014 report also provided a detailed analysis of the project's consistency with the Comprehensive Plan Future Land Use Map and Generalized Policy Map, and how the PUD meets or furthers many of the elements and policies of the Comprehensive Plan, including the following:
- a. *LU-1.2.1: Reuse of Large Publicly-Owned Sites* and *LU-1.2.7: Protecting Existing Assets on Large Sites* - The PUD supplies new housing and affordable housing, creates new employment opportunities, and provides new public parks and open space. The PUD also preserves, restores, and reuses historic elements;
  - b. *H-1.2.4: Housing Affordability on Publicly Owned Sites* - The PUD includes a mix of housing types and affordability and includes market and affordable units; rental and homeownership units; and single family and multi-family buildings. Units specifically dedicated for seniors, 55 years and older, is also a feature of the development;
  - c. *PROS-1.3.6: Compatibility with Adjacent Development* and *PROS-3.3.1: North-Central Open Space Network* - The Park and open space will enhance the PUD Site and contribute significantly to an integrated system of permanent open spaces and parks, with areas for both passive and active recreation. The restoration of the Olmsted Walk will be a significant asset to the development and the community, and will be compatible to the historic character of the PUD Site. The proposed buildings will not be in conflict with the residential and commercial uses on the PUD Site;
  - d. *UD-2.2.8: Large Site Development* and *UD-2.3.5: Incorporating Existing Assets in Large Site Design* - The largest parcel and the most intense development will be on the northern portion of the PUD Site adjacent to the intense institutional uses. The development on the PUD Site tapers down towards the residential uses along North Capitol Street and the Park is adjacent to the residential uses to the south. Most of the historic structures, significant natural landscapes, and panoramic vistas will be preserved and integrated into the new development. The master plan includes design guidelines to provide direction on building appearance and streetscape, signage and utilities, parking design, landscaping, buffering, protection of historic resources, integration of the development with the surrounding neighborhood, and design principles that promote environmental sustainability;

- e. *HP-2.4.3: Compatible Development* - HPRB has concluded that the proposed development would preserve the historic character of the PUD Site and that new buildings are at a scale that respects the historic elements through design and siting; and
  - f. *MC-2.6.1: Open Space on McMillan Reservoir Sand Filtration Site; MC-2.6.2: Historic Preservation at McMillan Reservoir; and MC-2.6.5: Scale and Mix of New Uses* - The open space on the PUD Site will include areas for passive and active recreational uses, including a community center and "healing gardens," which are designed to provide connectivity to the medical complexes across Michigan Avenue and the Armed Forces Retirement Home property. HPRB and HPO review addressed the cultural significance of the PUD Site, which includes the preservation of the underground cells as well as the above-ground structures with proposals for adaptive reuse. The Applicant will work with Cultural DC to promote public art that is compatible to the PUD Site's historic character. The Applicant requested CR and C-3-C Zone Districts on the PUD Site that would allow the requested range of residential and other uses. (Ex. 37.)
100. OP submitted a supplemental report dated September 15, 2014 that responded to the NCPC submission dated August 25, 2014. (Ex. 854.)
101. OP also submitted a response to the Applicant's post-hearing submission dated August 25, 2014. (Ex. 855.)

### **DDOT Reports**

102. On April 21, 2014, DDOT submitted a report indicating that it conditionally supported the project. (Ex. 38.) DDOT's recommendations and conditions fell into the following three categories: (i) improvements to egress to the south of the PUD Site; (ii) alterations to physical improvements; and (iii) additional TDM measures.
103. The Applicant addressed each of these issues in its oral testimony and in the following post-hearing submissions, prepared by Gorove/Slade and dated June 18, 2014:
- a. Response to DDOT Staff Report & Transportation Commitments Memorandum (Ex. 832E);
  - b. Curbside Management Plan Memorandum (Ex. 832F2); and
  - c. Response to MCV Associates Testimony & Reports Memorandum (Ex. 832F1).



104. DDOT's April 21, 2014 report stated that the Applicant used sound techniques to perform its analysis, and that DDOT agrees with the Applicant's methodology of determining trip distribution and collecting data. (Ex. 38.) At the public hearing, DDOT further expressed support for the PUD. DDOT testified that although FOMP's transportation expert asserted that the PUD would result in additional congestion on North Capitol Street, all of the mitigation measures proposed by DDOT and accepted by the Applicant would fully mitigate the expected traffic impacts. (Z.C. Tr., 05/13/2014 at pp. 196-97.) In addition, DDOT's report stated that much of the potential delay can be mitigated by implementing a coordinated signal system in the vicinity of the PUD Site. (Ex. 38, p. 12.)
105. DDOT's July 8, 2014 report responded to the Applicant's June 18<sup>th</sup> submission. It commented on the changes and updates to the site design, identified areas of disagreement with the Applicant's proposed mitigations, and highlighted remaining areas not addressed by the Applicant's report. (Ex. 837.)
106. DDOT's September 10, 2014 report stated that it had coordinated efforts with the Applicant to assess and mitigate anticipated transportation impacts of the project, and responded to the changes made to the transportation elements of the proposal put forward by the Applicant in its August 25, 2014 submission. (Ex. 851.) The report stated that the Applicant had addressed all of the outstanding issues identified by the Commission, and that "the Applicant's Transportation Performance Plan [Exhibit 849B] includes the comprehensive list of mitigations, developed in close coordination with DDOT, that are necessary to mitigate the projected transportation impacts of the project."
107. DDOT's October 29, 2014 report stated it was responding to the refinements made to the Applicant's transportation-related elements through the Applicant's October 20, 2014 filing. (Ex. 862.) The report stated that "[t]he Applicant coordinated with the Applicant on the refinements in Exhibit 862, and DDOT concurs with the modifications. Through the [Transit]<sup>9</sup> Implementation Plan, the Applicant has provided a firm commitment and the level of detail necessary to assure DDOT that adequate transit capacity will be in place prior to the occupancy of the proposed development." (Ex. 866.)

### **ANC Reports**

108. ANC 5E: On November 19, 2013, at a properly noticed public meeting at which a quorum was present, ANC 5E voted 6-2-2 in support of the Applicant's submission to HPRB for the first-stage and consolidated PUD and related map amendment. (Ex. 40.) The resolution asserted ANC 5E's support for the project and its interest in working with

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<sup>9</sup> DDOT's report stated it was the "Transportation" Implementation Plan but the Applicant consistently referred to it as the "Transit" Implementation Plan, and it is referred to it as the "Transit" Implementation Plan in the conditions of this Order.

the Applicant to address outstanding issues, including the development of a CBA, traffic mitigation measures, and the development of appropriate public transportation facilities.

109. On May 6, 2014, ANC 5E submitted a letter requesting that the Commission keep the record open until May 23, 2014, to allow ANC 5E and the Applicant to continue working toward reaching an equitable CBA, which at the time was still under negotiation. (Ex. 492.)
110. At the public hearings, Commissioner C. Dianne Barnes, on behalf of ANC 5E, testified in support of the PUD. Ms. Barnes stated that the proposed development would create a more walkable community to shop, live, work, and play, and that it would give neighborhood residents an opportunity to actively enjoy the local treasures. Ms. Barnes also expressed ANC 5E's concerns regarding the impacts on neighborhood traffic, particularly on First Street and North Capitol Street.
111. On May 27, 2014, Sylvia Pinkney, on behalf of ANC 5E, submitted a letter stating that on May 24, 2014, ANC 5E voted unanimously to support a draft CBA, which requested the Applicant to commit certain public benefits and amenities as a condition of approval to the Application. (Ex. 816.) The letter attached the terms of the CBA that were acceptable to ANC 5E.
112. On June 17, 2014, at a duly noticed public meeting, at which a quorum was present, ANC 5E voted 4-0-3, with one recusal and two abstentions, to support the PUD Application and to move forward with its final CBA. (Ex. 833.)
113. On September 10, 2014, ANC 5E submitted a letter stating its continued support for the proposal. (Ex. 852.)
114. ANC 1B: At its regularly scheduled, publicly noticed meeting on May 1, 2014, with a quorum of 9 of 11 present, ANC 1B voted 8-0-1 to defer to and participate in the process established by ANC 5E, the ANC of primary jurisdiction. (Ex. 688.)<sup>10</sup> At the May 13, 2014 hearing night, ANC 1B Commissioner Anderson-Holness testified that the decision to defer to ANC 5E was based on the fact that the PUD Site is within ANC 5E boundaries and that ANC 1B wanted to support its fellow ANC as it supports its community.
115. ANC 5A: At its regularly scheduled, publicly noticed meeting on January 29, 2014, at which a quorum was present, ANC 5A voted 7-0-0 to support the PUD Application. (Ex. 41.) In its resolution, ANC 5A applauded the city and the Applicant for the detailed plan that it developed for the PUD Site, including adjustments to accommodate residents'

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<sup>10</sup> ANC 1B also submitted a letter dated April 30, 2014, stating that it would be voting on the project at its May 1, 2014 meeting. (Ex.110.)

concerns and guidelines established by HPRB. ANC5A asserted that it looked forward to continued work with the Applicant in the development of traffic, transit, and stormwater solutions, ongoing zoning and historic preservation concerns, and the development of a community benefits agreement.

### **Contested Issues**

#### *Transportation, Traffic, and Vehicle Congestion*

116. FOMP asserted that the traffic conditions created by the PUD would be legally unacceptable under § 2403.3 of the PUD regulations, due to unmitigated impacts on the surrounding area and on the operation of city services. FOMP claimed that the influx of additional cars and congestion created by the PUD would overwhelm the existing transportation infrastructure in and serving the surrounding neighborhoods, which is already congested beyond capacity. (Ex. 34-34D.) With respect to the adequacy of the Applicant's traffic mitigation measures, FOMP argued that the Applicant's proposed transportation measures were vague, non-binding, and inadequate to mitigate transportation impacts caused by the PUD. Many persons in opposition to the Application made similar allegations in their public testimony to the Commission regarding the already overly congested streets surrounding the PUD Site and the inability for the street network to accommodate any new vehicles.
117. Joe Mehra of MCV Associates, supported FOMP's argument in his written and oral testimony. Mr. Mehra stated that the PUD would result in excessive delays and congestion on the roadways surrounding the PUD Site, and that residents and visitors to the PUD Site would not take significant advantage of public transportation to mitigate the anticipated additional traffic congestion. (Ex. 696.)
118. In addition, FOMP stated that the Applicant's analysis was generally incorrect and that the additional number of vehicle trips created as a result of the PUD would be higher than what was proffered by the Applicant. (Ex. 45.) Mr. Mehra also claimed that there were multiple errors in the Applicant's capacity analyses with respect to default values of heavy vehicles in the network, incorrect lane widths, missing details on bus blockages, and conflicting bicycle volumes, among others. Mr. Mehra asserted that there were discrepancies in the traffic counts because the Applicant used existing traffic counts for some intersections and balanced counts for others. He objected to the background traffic assumptions used by Gorove/Slade, particularly the use of the Metropolitan Washington Council of Governments ("MWCOCG") regional model as a basis for determining growth outside the study area. As a result, according to Mr. Mehra, the Applicant significantly underestimated the growth of traffic due to the PUD, its impacts on the surrounding area, and the ability to mitigate those impacts. (Ex. 696.)

119. In its written and oral testimony, DDOT confirmed that Gorove/Slade's analysis was appropriate, correct, and followed DDOT's guidelines. (Ex. 38.) DDOT specifically stated that Gorove/Slade's mode split assumptions were reasonable and even overestimated the percentage of trips occurring by vehicle, particularly for the medical office and grocery components of the PUD.
120. Gorove/Slade also refuted Mr. Mehra's findings in a post-hearing submission. It noted that capacity analysis was based on the Highway Capacity Manual, as required by DDOT, which uses a default value for some to nearly all of the model inputs. While Mr. Mehra might have wanted the Applicant to apply a different capacity analysis, the Commission finds it entirely appropriate and necessary for the Applicant to comport with DDOT guidelines. This ensures that transportation studies across the city are conducted in a consistent and cohesive manner. Similarly, the Commission finds it appropriate to use the MWCOG regional model for traffic from future developments outside the study area. Gorove/Slade followed industry and local DDOT standards in development of the background traffic assumptions and all of these assumptions were discussed and vetted with DDOT. One advantage in using the MWCOG regional model is that it provides specific information on peak traffic hours broken down by roadway direction. Additionally, it results in a study that overestimates traffic volumes because the MWCOG includes developments such as the Armed Forces Retirement Home and the PUD Site as sources of new traffic data. That is, they are double-counted in the Gorove/Slade report and the TDM measures are geared toward these higher traffic assumptions.
121. The Commission agrees with DDOT and the Applicant that approximately half of the projected number of vehicle trips generated by the PUD will arrive or depart in the off-peak direction of travel, where there is generally more capacity available on the existing transportation network. (Ex. 38.) Finally, the Commission finds that the Applicant utilized sound techniques to perform its traffic impact analysis. Consequently, the Commission finds the Gorove/Slade analysis reasonable and credible.
122. The traffic mitigation measures required by this Order will adequately ameliorate traffic on the streets surrounding the PUD Site. The Applicant will construct numerous improvements to the transportation network, and will implement various TDM measures to ameliorate traffic congestion caused by the PUD. The Commission further finds that the new street network will disperse traffic in a way that minimizes the PUD's impact on the external road network and improves connectivity to the adjacent neighborhoods. (Ex. 38, 832F2-832F3, 849B, 862.)
123. In addition, the Commission finds that DDOT and WMATA have completed plans for expanding and upgrading the transit capacity around the PUD Site through additional bus

service on WMATA's 80 and H routes, as well as an east-west Circulator route. DDOT has funding in place for Circulator expansion and is willing to expend some of these funds to commence the study and planning process for the east-west Circulator line before the end of 2014. The Commission also finds that Councilmember Kenyan R. McDuffie is committed to working with DDOT to ensure that the existing public funding for these transportation improvements stays in place and that the expanded and upgraded transit capacity needed for the project to succeed is in place by the time the Healthcare Facility opens for business. (Ex. 832D.)

124. In addition, FOMP alleged: (i) the Applicant's commitments to abide by its Transportation Performance Plan, and to develop a final Transit Implementation Plan in coordination with DDOT and other institutions to bolster transit available to the Site, are not sufficiently definite to address future traffic conditions and transit needs for the Site, (ii) that DDOT has not made a sufficiently definite commitment to provide sufficient additional public transit, (iii) the Applicant's traffic monitoring plan is not sufficiently definite, and that nothing in the monitoring plan indicates what happens if the goals are exceeded, (iv) that the additional transit trips provided will be inadequate to meet new demand, and (v) that the Applicant has not sufficiently addressed the likely effects of the proposed additional public transit trips and/or shuttles and traffic on intersections with poor levels of service. (Ex. 858.)
125. The Commission finds that the Applicant has demonstrated a sufficiently definite commitment to ensure adequate future traffic conditions and transit capacity for the Site. The Applicant is required to implement all the mitigation measures established in the Transportation Performance Plan dated August 25, 2015, as enhanced by the commitments in its October 20, 2014, and as further enhanced by the Applicant's commitment to provide shuttle capacity (if needed) without regard to cost. (Ex. 849B, 862.) The Applicant is further required to coordinate with DDOT and other nearby institutions to provide a detailed Transit Implementation Plan prior to building permit issuance that will show how the Applicant will achieve the necessary additional transit capacity to support the project. (Ex. 849B, 862.) DDOT has agreed to review the plan, and coordinate delivery of transit services. If any component of the public transit service enhancements is not possible by the Certificate of Occupancy for each parcel, the Applicant will fill any transit demand gaps through private shuttles. (Ex. 862.) The Commission finds that this level of commitment is sufficient, even though it does not rise to the level requisite for this to count as a public benefit of the PUD, pursuant to 11 DCMR § 2403.6. The Commission has not counted the project's traffic mitigation measures as public benefits of the project. Instead, it has only evaluated the traffic mitigation measures necessary to mitigate the impact of the project on the surrounding area and the operation of city services and facilities, pursuant to 11 DCMR § 2403.3. The Commission finds that the Applicant has made a sufficiently definite commitment to meet that standard.

126. With regard to FOMP's allegation that DDOT has not made a sufficiently definite commitment to provide additional public transit, the Commission takes DDOT at its word that it is "committed to enhancing public transit capacity to meet the continued growth in transit demand." (Ex. 851.) As DDOT stated in its final report, DDOT is limited in the assurances it can provide because of funding horizon limitations. (Ex. 866.) The project is several years from progressing to the point where the additional transit capacity is needed. The Commission finds that DDOT's commitment is sufficiently definite under the circumstances.
127. Turning to FOMP's assertion that the monitoring plan is not sufficiently definite, and lacks sufficient enforcement provisions, the Commission notes that DDOT actively participated in designing the metrics and has concluded that they are adequate. (Ex. 837, 851). The Commission finds that the monitoring plan is sufficiently detailed and specific.
128. The Commission disagrees with FOMP's assertion that nothing in the transportation monitoring plan indicates what happens if the goals are exceeded. (Ex. 858.) The plan states that the Applicant must suggest additional mitigation measures if the goals are exceeded. (Ex. 849B, p. 4.) The Commission finds that the monitoring plan, when combined with the other mandatory traffic mitigation measures required by the Traffic Performance Plan, are sufficient to mitigate the potential adverse effects of the project related to traffic.
129. The Commission also disagrees with FOMP that the additional transit trips provided were inadequate to meet existing demand and the new demand created by the project. The Commission is persuaded by the analysis conducted by the Applicant and DDOT that the expected sources of additional public transit trips are adequate to meet the new demand created by the project. Furthermore, the Applicant is required to provide private shuttle service if adequate public transit capacity is not achieved.
130. Finally, the Commission also disagrees with FOMP that the additional traffic, public transit trips and/or shuttles generated by the project, combined with existing traffic levels, will overwhelm the traffic infrastructure. The Commission is persuaded by the analysis conducted by the Applicant, and DDOT's conclusion that the Applicant's Traffic Performance Plan, combined with the other mitigation measures proposed by DDOT and incorporated by the Applicant, will be sufficient to adequately mitigate the traffic and transit effects of the project.

131. Opponents to the project raised other objections to the inadequacy of the on-street bicycle facilities surrounding the PUD Site, and argued that bicycle access to the PUD Site is difficult and unsafe.
132. The Commission finds that the Applicant is improving bicycle facilities by providing a sidewalk along North Capitol Street at a minimum of eight feet wide, which will provide space for cyclists riding on the sidewalk along North Capitol Street. In addition, the Applicant provided concepts for a bicycle lane for First Street, N.W. The Commission finds that the Applicant will also address bicycle infrastructure by providing funding for a minimum of 60 Capital Bikeshare docks on the PUD Site, and an additional 20 docks offsite at a nearby Metrorail station. The funding will include capital costs and one year of operations and maintenance.
133. The Commission therefore finds that the traffic and transit mitigation measures incorporated into this Order are sufficient to sufficiently mitigate the potential adverse effects of the project related to traffic.

*Historic Preservation*

134. Another major point of contention was the Applicant's proffer of historic preservation as a public benefit. FOMP claimed that the Applicant's proposal destroyed over 80% of the historic resources on the PUD Site, particularly the underground water filtration cells, that the new construction dwarfed the limited number of historic resources being retained in the North and South Service Courts, and that the significant open and green spaces of the landmark would be lost. Ms. Sellin, FOMP's expert in historic preservation, opined that a "park" on the site of the historic McMillan Reservoir Historic District was an essential component of the city's McMillan Park Plan of 1902, that it was a park open for the public's recreational use, and that the Applicant's plan would obliterate it. FOMP argued that the level of demolition and the alteration of the historic landscape is wholly inconsistent with the historic preservation laws and policies in the District, including the policies in the District of Columbia Comprehensive Plan and the requirements of the D.C. Historic Landmarks and Historic Districts Protections Act, D.C. Official Code § 6-1100 *et seq.* (Ex. 34.) According to FOMP, this extensive demolition could not constitute an amenity under § 2403.9(d) of the PUD regulations.
135. FOMP also argued that alternative redevelopment options were possible that would save more of the historic site and allow adaptive re-use of the underground cells. Miriam Gusevich, FOMP's expert in architecture, presented a schematic plan at the hearing, although she did not submit it to the record, dubbed the "People's Plan." That plan would purport to allow some development on the PUD Site while preserving the majority of it as open space and park, including an urban beach with recycled sand from the existing underground vaults. Ms. Gusevich asserted that the Applicant had not investigated

retention of the underground cells in more stable condition or their possible reuse as retail "incubator" space. FOMP relied on a 2000 structural report prepared by C.C. Johnson and Malhotra, PC ("CCJM Report"), which claimed that many of the cells could be stabilized and reused, and could support four story structures on top without destroying the historic filtration cells (*see* Chapter 6 of the CCJM Report). (Ex. 93.)

136. Other persons and organizations testified against the historic preservation component of the PUD, as well. The National Trust for Historic Preservation, for example, argued that the preservation of the majority of the above-grade structures did not constitute a PUD project amenity or public benefit because historic preservation deed restrictions on the project required retention of the structures anyway. The National Trust stated that § 2403.4 of the PUD regulations provides that a PUD must benefit the public or surrounding area to a significantly greater extent than would likely result from a project under matter-of-right zoning. According to the National Trust, a matter of right project would also require the same amount of preservation and thus it could not be credited as a public benefit or amenity. (Ex. 34B.)
137. The Applicant's expert witnesses provided a contrary view. Kirk Mettam of Robert Silman Associates, the Applicant's expert in structural engineering, testified that the unreinforced concrete used for the underground cells was extremely unstable. He stated that he studied the CCJM Report and agreed with its assessment that there is "little capacity to resist tension loads in the concrete caused by either unbalance vertical load or horizontal forces caused by possible super structure above the ground...[or] dynamic loads caused by vehicular traffic." (CCJM Report at 6-3; 05/27/2014 Tr., at p. 139.) Mr. Mettam also noted that the CCJM Report was a draft, and that his studies went further in their analysis. The Robert Silman Associates report dated April 10, 2014 ("Silman Report"), concluded that the unreinforced vaults are very susceptible to brittle failure due to settlement, both vertical and lateral movement of the surrounding soils, and that the concept of adding four stories to the existing structure will result in failure of the existing structures. (Ex. 786.) The report further concluded that any hanging remnants of the cell structure from a new slab above would subject the building to movements that will cause great distress and precipitate internal hazards. Mr. Mettam noted that the CCJM Report did not include an analysis of the existing footings, which the Silman Report did analyze. The Silman Report concluded that, based on the allowable bearing pressures presented by CCJM, the existing structure cannot support its own weight, let alone the weight of the massive slabs proposed above, or even the more modest construction proposed by CCJM. While the cells could be reinforced, they would have to be completely encased and numerous new columns introduced throughout the underground cells, leaving little of the historic configuration recognizable. In Mr. Mettam's professional opinion, the Applicant's proposed scheme balances preservation and adaptive reuse of selected cells while permitting the use of the remaining property by the community.



138. Emily Eig, an expert in historic preservation, testified that it was unrealistic to adaptively reuse the underground cells as a museum, galleries, restaurants, grocery stores, residences, fisheries, or other similar uses. Unlike buildings that are designed to support human occupancy, Ms. Eig stated that this industrial site was not meant to serve those functions. She noted that the friable character of the unreinforced concrete challenges the PUD Site's preservation, because it is simply not stable enough to support activities above or within. (Ex. 783.) She opined that none of the stabilization solutions, as detailed in the Silman Report, allow for good preservation solutions and that anything necessary to make them safe and code-compliant by modern standards would destroy their historic integrity. (Ex. 783; 05/27/14 Tr., at p. 146.)
139. Ms. Eig further testified on the strength of the preservation plan as proposed in the PUD. She stated that the design guidelines and architectural concepts of the plan, as endorsed by HPRB, retain many character-defining features of the historic landmark McMillan Park site. She opined that (i) the site will continue to read as a whole based on its form, organization, topography; (ii) almost all the above-ground historic built features will be retained; and (iii) the historic tripartite organization and horizontal plinth, which is critical to the interpretation of the historic operations of the filtration plant, will be integrated into the site plan. Moreover, she continued, the project will recreate the site-defining Olmsted Walk, re-purpose two underground cells, concentrate the public experience in the southern third of the site where the expanse of the plain across to the reservoir is most distinct and the experience most special.
140. The Commission credits the testimony of Mr. Mettam and Ms. Eig. The Commission finds that the cells are so structurally unstable that they cannot support development above, which is contemplated by the Comprehensive Plan. FOMP urges the Commission to give greater credence to the CCJM Report. Yet, this is not an instance of competing structural reports. The Silman Report builds on the analysis of the CCJM report – issued only as a draft – and provides further study of the existing footings with respect to lateral and horizon soil movement. Based on these additional studies presumably not yet conducted by CCJM, the Silman Report concludes that the less intensive development on the site that the CCJM Report suggested might be possible was, in fact, unsupported. The Commission is persuaded that stabilization of the underground cells would require such reinforcement and introduction of new structural members that the integrity of the cells would be lost. While FOMP's counsel suggested during cross-examination of Ms. Eig that the cells could be re-created under the Secretary of Interior Standards for Rehabilitation, Ms. Eig stated that those standards do not contemplate recreation of entire structures. As she explained, the Secretary of Interior Standards only contemplate reconstruction of missing elements or missing structures, not demolition of an historic resource in order to reconstruct it. (05/27/2014 Tr., at p. 243.) Based on the testimony and evidence of record, the Commission concurs with the findings of HPRB that the proposed redevelopment of the site provides significant preservation benefits. Almost all

of the above ground historic built features will be retained and rehabilitated to the Secretary of the Interior's standards and guidelines.

141. With respect to any alleged inconsistency with the historic preservation laws and policies in the District, including the policies in the District of Columbia Comprehensive Plan and the requirements of the D.C. Historic Landmarks and Historic Districts Protections Act, D.C. Official Code § 6-1100 *et seq.* (Ex. 34), the Commission notes that the master plan and individual building designs were endorsed by HPRB as well as the State Historic Preservation Officer. HPRB is the District government review board with expertise to determine consistency with the city's preservation laws and policies. Additionally, the project will be forwarded to the Mayor's Agent to consider the proposed demolition. The Commission finds it appropriate to defer to expertise of HPRB and the Mayor's Agent regarding the preservation laws. The Commission addresses consistency with the historic preservation elements of the Comprehensive Plan below.

Views and Viewsheds

142. In its written and oral testimony, FOMP expressed concerns regarding the impact of the development on historic view sheds. FOMP claimed that the proposed development would obscure all views of the National Cathedral, Howard University skyline, Washington Monument, Old Post Office, Capitol Building, Catholic University, Basilica of the National Shrine of the Immaculate Conception, the reservoir, and the sand storage towers on the PUD Site. FOMP asserted that the existing rowhouses in the adjacent communities are only two to three stories high and do not obscure the same views. (Ex. 39, 45.)
143. Evidence submitted to the record suggests otherwise. The views will be maintained in the southern portion of the PUD Site where the park will be located. The northern views have already been compromised by the hospitals located across Michigan Avenue from the PUD Site. In addition, the proposed development will not impact the views and viewsheds from the Armed Forces Retirement Home ("AFRH") located north of the PUD Site beyond the Veteran's Administration Hospital, the Washington Hospital Center and Children's National Medical Center. In 2008, AFRH completed a Master Plan to help direct new development on its site, which NCPC reviewed as part of an environmental assessment and Section 106 review under the National Historic Preservation Act. The plan analyzed views and viewsheds from various vantage points, including a sightline from Scott Statue south to the Capitol. The proposed PUD falls within that sightline; however, existing trees obscure the view of the Capitol for much of the year from Scott Circle, and the proposed Healthcare Facility on the PUD Site does not block the view to the Capitol.

144. The Commission further finds that views and viewsheds are not protected under the Zoning Regulations, unless specifically provided for through easements or other provisions of law. Here, there are no easements that protect views or viewsheds across the PUD Site, nor are there any provisions in the federal elements of the Comprehensive Plan, developed by NCPC, that protect such views. However, the Mid-City Area Element of the Comprehensive Plan for the PUD Site does provide that historic views and viewsheds across the site should be protected (10A DCMR § 2016.9). The Applicant's proposal satisfies that objective.

*Historic Preservation Covenants*

145. FOMP and several opponents also disputed whether the PUD complied with the historic preservation covenants on the property designed to enforce the Section 106 process by ensuring that redevelopment on the site complied with the Secretary of the Interior Standards for Rehabilitation. They urged the Commission to defer action until those issues were resolved with the Advisory Council on Historic Preservation. The Commission disagrees. First, the Commission finds that it is not within its jurisdiction to interpret restrictive covenants on a property unrelated to the Zoning Regulations. Second, the Commission notes that those covenants place decision-making on historic preservation matters squarely in the hands of the State Historic Preservation Office ("SHPO") for the District of Columbia. On May 22, 2014, the Historic Preservation Officer, David Maloney, and OP jointly submitted a supplemental report stating that the SHPO does not disagree with the plans for the PUD Site and has no reason to conclude that the project will not be in compliance with the preservation covenants in the deed. The Commission thus finds this issue resolved: the preservation covenants are no impediment to Commission action on this PUD and the SHPO's report, coupled with HPRB's recommendations, demonstrate that the project advances important preservation goals and objectives that constitute public benefits and amenities under the PUD regulations. (Ex. 776.)

*Environmental Degradation*

146. In its written testimony and at the public hearing, FOMP urged that the proposed development would destroy the majority of open space and landscape features on the PUD Site. FOMP quoted the National Register nomination for McMillan Park, stating that "[t]he landscaped grounds were designed by the nationally acclaimed landscape architect, Frederick Law Olmsted, Jr.," and that "the reservoir as a park opened the waterworks up for public use and contributed to the civic beauty of the city." (Ex. 34.)
147. The Commission finds that the PUD Site retains only a few remnants of the designed landscape conceived by Olmsted. Those that exist include the form of tree and shrubbery stumps, which can be used to ascertain the original patterns of some of the plantings. However, the identified species presently existing on the PUD Site do not represent

species that were specified by Olmsted. For example, the ivy that grows on many of the structures in the North and South Service Courts has been identified as Boston Ivy, which was not the species recommended by Olmsted. Because few remnants of Olmsted's original landscape plan remain, the PUD Site's designed landscape retains a low degree of integrity of materials, workmanship, feeling, setting, association, and location. (Ex. 538B, at p. 78). The PUD cannot destroy landscape features that no longer exist. Instead, the PUD will re-establish much of the Olmsted plan for the PUD Site, most significantly the Olmsted Walk, with its allee of trees around the entire perimeter of the property.

148. With respect to the open space, any development on the PUD Site will affect this characteristic of the historic use, including the one described by FOMP's expert in architecture, Ms. Gusevich. As noted above, the southern third of the site will remain open, preserving views south, west, and east of the PUD Site. Views to the north have already been compromised and development will take place in those areas. The project is sensitively designed to preserve the salient open space features of the landmark with the 6.2-acre park and the historic east-west views through the North and South Service Courts.
149. FOMP and other opponents also claimed that the proposed development would exacerbate the significant downstream flooding experienced by residents in neighborhoods immediately to the south of the PUD Site. (Ex. 34.) FOMP stated that the Applicant did not address the impact of the new sewer hookups for the proposed development on the already overburdened sewer system. (Ex. 45.)
150. The Commission credits the testimony and reports of the Applicant's expert in civil engineering and finds that the Applicant has adequately addressed storm water management on the PUD Site. The Applicant will meet and exceed the latest storm water management regulations that have been implemented by the District government. The on-site system proposed will consist of many different types of low impact design techniques, including impervious pavement and sidewalks, roadways, alleys, bio swales, bio tree pits and inlets, cartridge filters, oil grid separators, rain gardens, green screens, detention vaults, and cisterns. The large open spaces, the Park, and the Service Corridors allow the Applicant to apply many of these and other cutting edge techniques. Currently, the PUD Site has no storm water management facilities included or connected to prevent water runoff or flooding in the area. The proposed on-site systems will significantly improve water quality, reduce the volume of runoff, and control the release and safe conveyance of all storm water drainage.
151. FOMP also challenged the Applicant's proposed LEED certification for the buildings on the PUD Site as an insufficient public benefit to outweigh environmental impacts of the project. (Ex. 34.) The Commission finds, however, that the Applicant will provide LEED-ND Gold for the overall PUD Site, and will achieve LEED-Silver status in

individual buildings, given design choices. The Commission finds that the Applicant is proposing sufficient public benefits that outweigh environmental impacts.

Compliance with the PUD Evaluation Standards

152. In its written testimony and at the public hearing, FOMP asserted that the Applicant did not satisfy its burden of proving that the impacts of the PUD on the surrounding area were outweighed by the public benefits and amenities. FOMP stated that the "token" preservation of a few historic structures and landscape elements does not constitute a public benefit or amenity of the PUD that outweighs unmitigated destruction of the historic structures, open spaces, and landscapes on the PUD Site. Based on this belief, FOMP asserted that the proposed project does not afford the public any benefit in terms of "urban design, architecture, site planning, landscaping, and open space." (*see* 11 DCMR §§ 2403.9(a) and (b).) FOMP also claimed that the Applicant's proposed benefits are vague and conclusory, and that the Applicant does not quantify the benefits proposed, measure their impact, or demonstrate any reasonable commitment on the part of public agencies. (*see* 11 DCMR § 2304.6.) For example, FOMP stated that the Applicant's Transportation Impact Study ("TIS") relies on proposed transit improvements, including the new streetcar line, private shuttle buses, and the D.C. Circulator bus, to mitigate traffic impacts, but that the Applicant did not provide any evidence that WMATA has made any commitment to implement the transit improvements stated. FOMP also stated that there is no evidence of a commitment to install three new Capital Bikeshare stations. (Ex. 34.)
  
153. The Commission is not persuaded by these arguments. As noted above, the proposed PUD provides a full range of tangible public benefits and amenities, including the preservation of almost all of the above-grade historic structures and at least two underground cells; the re-establishment of the Olmsted Walk; the provision of a significant public park with open space, water features, ball fields, playgrounds, and other recreational spaces; construction of new housing, significant affordable housing above the requirements for the requested zone districts, large healthcare facilities with jobs for District residents, and a grocery store; among many other features. These alone are significant public benefits and amenities in and of themselves. The Applicant has gone beyond this to include additional elements specifically requested by the community that have special value to the neighborhood. These include streetscape beautification and storefront improvement funds in the immediate area; scholarships for high school students; contributions to parent-teacher associations or other non-profits serving Science, Technology, Engineering and Math ("STEM") programs; McMillan tour guide programs for high-school students and seniors; business start-up funds; among many others. As a result of the on-site and additional benefits, the Applicant has gained the support of ANC 5E, the ANC in which the PUD Site is located.

154. Still, FOMP took exception to the projected employment opportunities on the PUD Site and claimed that they do not constitute sufficient "employment and training" opportunities (*see* 11 DCMR § 2403.9(e)) that outweigh the adverse impacts of the project as a whole. FOMP alleged that the Applicant did not explain how the jobs would be measurable or quantifiable, as required by the PUD regulations. (*see* 11 DCMR 3403.7.) (Ex. 34.) FOMP asserted that the Applicant's job estimates are "soft," meaning either of short duration or ill defined. FOMP asserted that the Applicant made unsupported claims of the number of jobs that would be created by the PUD, especially with regard to permanent medical jobs in the healthcare facilities. FOMP also urged that the number of jobs anticipated by the Applicant were "hypothetical" because the Applicant has no knowledge of which healthcare providers, if any, would lease the proposed space. (Ex. 45.) FOMP asserted that the Applicant's anticipated number of jobs created is extravagant, especially in relation to competition from the AFRH project one block north of the PUD Site, which FOMP asserted would break ground and find tenants long before any office space would be built at the PUD Site. (Ex. 45.) FOMP claimed that more than 50% of the anticipated jobs created are construction jobs that will disappear in a few years, and that the Applicant did not adequately explain what the stated "indirect" jobs are, or where they will come from, or who will hold them. (Ex. 45.) FOMP further claimed that the Applicant did not provide any assurance that the jobs that would be provided as a result of the project would provide permanent employment for District residents who are the most in need of jobs, and that the permanent jobs provided as a result of the project will be for skilled and trained healthcare workers when most District residents are not qualified for those positions. (Ex. 858.) Finally, FOMP criticized the Applicant's workforce development fund because it does not definitively state how much of the fund will be used for measurable training and employment opportunities, arguing that therefore it did not qualify as a public benefit under the criteria established by 11 DCMR § 2403.6<sup>11</sup> (Ex. 858.)
155. The Commission finds that the Applicant's expected jobs numbers are not hypothetical and that the Applicant will provide significant new jobs to District residents. The Applicant has discussed potential tenancy with several of the healthcare providers in the immediate area, including Medstar, the Washington Hospital Center, and Children's National Medical Center. (Ex. 832I.) Moreover, the Applicant has committed \$1 million as a workforce development fund to be coordinated by the Community Foundation of the

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<sup>11</sup> "Public benefits are superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from the development of the site under the matter-of-right provisions of this title. All public benefits shall meet the following criteria:

(a) Benefits shall be tangible and quantifiable items; and

(b) Benefits shall be measurable and able to be completed or arranged prior to issuance of a Certificate of Occupancy.

Monetary contributions shall only be permitted if made to a District government program or if the applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided." (11 DCMR 2403.6.)

National Capital Region, a substantial portion of which will be directed to organizations whose core mission is workforce development to create true "career path" jobs, and other amounts for community scholarships for residents to pursue careers related to the historic or proposed uses on McMillan, such as civil engineering, landscape architecture, or the medical field. While the use of the workforce development fund is somewhat speculative, as FOMP points out, the Commission finds that it qualifies as a public benefit. The Applicant is required to show evidence to the Zoning Administrator in accordance with § 2403.6 of the Zoning Regulations of annual payments of \$140,000 each over a five-year period (\$700,000 total) to the CFNCR to support workforce development initiatives to improve low-income workers' skills, credentials, career prospects, earnings, and job placement, particularly in key local industries and occupations. The Applicant is also required to show evidence of payment of annual payments of \$60,000 each over a five-year period (\$300,000 total) to CFNCR to support scholarships for higher education, training, or job-related certification encouraging "legacy" career paths such as civil engineering, landscape architecture, or on-site jobs in the medical field, with a preference for Wards 1 and 5 residents to the extent permitted by law. The Commission finds that the workforce development fund qualifies as a public benefit of the project because it meets the criteria established by 11 DCMR § 2403.6. The workforce development fund would not be created under matter-of-right development. The contribution amounts are quantifiable, and will be arranged prior to the issuance of a certificate of occupancy, and as a condition of this order, the Applicant must show that the funds are used for their intended purposes prior to the issuance of a certificate of occupancy.<sup>12</sup> Finally, during construction of the project, the Applicant shall abide by the terms of the executed First Source Employment Agreement with the District Department of Employment Services to achieve the goal of utilizing District residents for at least 51% of the new jobs created by the PUD project. To the extent permitted by law, first preference for employment opportunities shall be given to Wards 1 and 5 residents. The Applicant and its contractor, once selected, shall coordinate training, job fairs, and apprenticeship opportunities with construction trade organizations or with healthcare facility and other organizations to maximize participation by District residents in the training and apprenticeship opportunities in the PUD.

156. FOMP further claimed that the proposed housing and affordable housing opportunities could be achieved without destroying the below-grade sand filtration cells and open

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<sup>12</sup> The Applicant is required to show it has made the scholarship payments and that the funds have been used for the stated purpose prior to the settlement of the first townhouse on Parcel 5. The Commission finds that this is an acceptable alternative to tying proof of performance to a Certificate of Occupancy, because Certificates of Occupancy are not issued for townhouses. (See 11 DCMR § 3203.1.) Settlement on the first townhouse is the most reasonable equivalent event to issuance of a Certificate of Occupancy. Much like a Certificate of Occupancy, which allows the use and occupancy of a particular building or space, settlement is the time by which a homeowner is handed the keys to the residence and can occupy the home. An alternative would be to disregard the payment because it did not comply with the requirement of the regulation requiring performance tied to a Certificate of Occupancy. This seems unduly harsh, and would unnecessarily limit potential contributions in other PUDs proposing one-family dwellings.

space. FOMP asserted that only a small percentage of the affordable housing provided on the PUD Site goes beyond what would be required under matter-of-right zoning, and thus the housing component does not satisfy the PUD requirements of exceeding what would have been required through matter-of-right development. (*see* 11 DCMR 2403.9(f.)) (Ex. 34.) FOMP also noted that none of the housing offered on the PUD Site is for low-income households, as defined in 11 DCMR § 2601.1, and that instead the Applicant proposes to devote most of the affordable housing units to households earning up to 80% of the AMI. (Ex. 39, 858.)

157. The housing and affordable housing included in this PUD is significant, real, and measurable. The proposed CR zoning only requires the Applicant to produce eight percent of the total gross floor area devoted to residential uses as inclusionary units. Those units would only need to be affordable to households earning up to 80% of AMI. Here, however, the Applicants will devote 20% of the residential GFA on the PUD Site to affordable units, with 85 units in the multi-family building set aside for senior citizens earning 50% to 60% of AMI. The Applicant has increased the number of Rowhouses set aside as inclusionary units to 22 where only 18 would be required. Nine of the affordable Rowhouses will be available to low-income households earning no more than 50% of the AMI. This is a clear benefit to the city that would not otherwise happen through matter-of-right development.
158. In its written testimony and at the public hearings, FOMP asserted that the influx of market-rate housing on Parcels 4 and 5 will accelerate gentrification in the surrounding neighborhoods, increase median sale and rental prices, and result in a net loss of affordable housing units. (Ex. 39.) FOMP stated that the development will therefore not help to meet the city's affordable housing goals. The Commission finds that this claim is conclusory and that FOMP provided no evidence to support it.

*Consistency with the Comprehensive Plan*

159. FOMP asserted that the Applicant's proposed development is inconsistent with the Comprehensive Plan, specifically the Mid-City Element. In its written testimony, FOMP asserted that the Mid-City Element stated, "reuse plans for the McMillan Reservoir Sand Filtration site [shall] dedicate a substantial contiguous portion of the site for recreational and open space. The open space should provide both active and passive recreational uses, and should adhere to high standards of landscape design, accessibility, and security... connectivity to nearby open spaces such as the Armed Forces Retirement Home, should be achieved through site design." (10A DCMR § 2016.5.) (Ex. 34.)
160. FOMP also urged that the PUD was inconsistent with the Parks, Recreation and Open Space Element (Chapter 8) of the Comprehensive Plan, which describes the network of "major federal facilities, cemeteries, and institutional uses located just north of the city's geographic center, in an area otherwise lacking in public parkland," and states that "as



detailed plans are developed for these sites, the District must take an active role in conserving the connected open space network as an historic, ecological, aesthetic, and recreational resource." (Ex. 34.)

161. The Commission finds that the PUD will provide a substantial amount of parks and open space and is consistent with the Mid-City Area Element of the Comprehensive Plan. The proposed open space on the PUD Site will include areas for passive and active recreational uses, including a community center and plaza, a pond, an open grass area above the preserved cells, a lawn, an amphitheater, a spray fountain, and portions of the Olmsted Walk. The park will enhance the PUD Site, provide significant new open spaces for public enjoyment, offer a new opportunity for many recreational services, and contribute significantly to an integrated system of permanent open spaces in the city. The proposed open space healing garden at the northern portion of the PUD Site will be a relaxing, serene space for patients, visitors, and employees, and will provide connectivity to the medical complexes across Michigan Avenue and the Armed Forces Retirement Home property. In addition, the preservation of the underground Cell 14 on the eastern portion of the PUD Site will provide a large open space above ground for active and passive recreation, as well as providing clear views of the historic elements in the North Service Court. (Ex. 37, 153.) In addition, although the intervening development of the VA Hospital, Children's Hospital, and Washington Hospital Center, already interrupt the connection from the PUD Site to the AFRH, the PUD nevertheless allows for connectivity through the creation of Half Street. The east-west connections to the reservoir site also reinforce the "emerald necklace" of green space within the city.
162. FOMP argued that the proposed development is inconsistent with the NCPC's approved amendment to the Comprehensive Plan that allows some development on the PUD Site. In its written testimony, FOMP quoted NCPC's analysis leading up to the amendment: "we find that ... any structures to be introduced with the District-owned part of McMillan Park should be widely spaced, [should] not exceed the four-story height of the Veterans Hospital, and preferably have lower transitional heights and picturesque rooflines to blend with the immediate landscape and park environs." FOMP asserted that the proposed height, mass, and scale of the proposed development would overwhelm, obscure, dominate, and distract from the features described by NCPC. (Ex. 34.)
163. FOMP raised specific concerns about the proposed height and bulk of the buildings on the PUD Site, alleging that the buildings as proposed would dominate the landscape, including the sand filtration towers on the PUD Site. (Ex. 34.) Specifically, in its written testimony, FOMP asserted that the size and scale of the Healthcare Facility and Multi-Family Grocery Building on Parcels 1 and 4 would contribute significantly to the additional harms related to open space loss, environmental degradation, and historic structure demolition. (Ex. 39.)

164. In its written testimony, FOMP claimed that the project is inconsistent with Land Use Policy 1.2.7 - *Protecting Assets on Large Sites*, since it will "demolish a park built by one of the founders of American landscape architecture on a site chosen for majestic views of downtown Washington ..." FOMP also asserted that the Application is inconsistent with *PROS 3.3.1: North-Central Open Space Network* or with *MC 2.6.1: Open Space on McMillan Reservoir Sand Filtration Site*. (Ex. 45.)
165. The Commission finds that the PUD is not inconsistent with the Comprehensive Plan. The PUD Site is one of the 25 areas of the District designated on the Generalized Policy Map as a Land Use Change Area that anticipates that the existing land use will change to a different one. "They include many of the city's large development opportunity sites, and ... represent much of the city's supply of vacant and underutilized land." (10A DCMR § 223.10.)
166. The Commission finds that the Comprehensive Plan Future Land Use Map places the PUD Site in the following three land use categories: (i) Medium Density Residential, (ii) Moderate Density Commercial, and (iii) Parks, Recreation and Open Space. These categories provide suggested corresponding zone districts (although other zone districts may apply), as follows:

	Matter-of-Right Residential FAR	Matter-of-Right Commercial FAR	IZ Bonus	Total FAR Permitted as a Matter-of-Right
<b>Medium-Density Residential</b>				
R-5-B	1.8	n/a	0.36	2.16
R-5-C	3.5	n/a	0.7	4.2
<b>Moderate-Density Commercial</b>				
C-2-A	1.0	1.5	0.5	3.0
C-2-B	2.0	1.5	0.7	4.2
C-3-A	2.5	1.5	0.8	4.8

The density of the total PUD on the net land area is 2.36 FAR, of which 1.29 FAR is office and retail. Those numbers are well within and below the density permitted as a matter-of-right under C-2-A, which is the lowest of the three zones indicated as "corresponding" to Moderate Density Commercial. Thus, the 2.36 FAR proposed under the McMillan PUD is not inconsistent with the Future Land Use Map designation.

167. The Commission finds that based on the flexibility afforded by the PUD process, the proposed density can be appropriately distributed across the PUD Site by concentrating development on the northern parcel while leaving other portions, particularly at the south

end of the PUD Site, as parks, recreation, and open space, consistent with the Comprehensive Plan designation. The trade-off for providing the substantial amount of open space is the concentration of height and density at the northern portion of the PUD Site. The only building to reach 115 feet is the western-most healthcare facility at the western portion of Parcel 1, between Michigan Avenue, the North Service Court, First Street, and Half Street. This segment of the PUD is the farthest removed from adjacent rowhouse neighborhoods – more than 1,000 feet from the houses on the south side of Channing Street, and more than 500 feet from the houses on the east side of North Capitol Street. This section of the PUD Site also abuts the higher height and density permitted on the Children's Hospital, Washington Hospital Center, and VA Hospital sites. Children's Hospital is built to a height of 127.5 feet.

168. The Commission finds that the proposed cluster development approach to the PUD Site is a critical and essential part of fulfilling the parks, recreation, and open space designation of the Future Land Use Map, while at the same time achieving the other elements of the Comprehensive Plan and the city's strategic economic plan. The Land Use Element of the Comprehensive Plan sets forth policies for protecting and utilizing historic resources as assets on large sites. Large sites are also to be leveraged to provide public benefits such as affordable housing, new parks and open spaces, healthcare and civic facilities, as well as other public facilities. (10A DCMR §§ 305 and 703.13 (*LU-1.2* and *ED-1.1.5*)). The Mid-City Element of the Comprehensive Plan specifically recognizes that development on portions of the PUD Site may be necessary to stabilize the PUD Site, and provides that the desired open space and amenities should consist of moderate to medium density housing, retail, and other compatible uses. (10A DCMR § 2016.9.) The city's strategic economic plan specifically calls for the development of the PUD Site as a medical office hub as a focal point for the city's medical institutions and much-needed expansion space for area hospitals.
169. The Commission finds that the policies, goals, and interpretive guidelines of the Comprehensive Plan all support the conclusion that the proposed zoning for the PUD Site is not inconsistent with the Comprehensive Plan. The policies and goals, which sometimes may be in conflict with one another, must be applied using the interpretive guidelines of the Comprehensive Plan. These guidelines state that the Future Land Use Map is to be "interpreted broadly" and recognize that the densities within any given area on the Future Land Use Map "reflect all contiguous properties on a block – there may be individual buildings that are higher or lower than these ranges within each area." (10A DCMR § 226(c).) The guidelines further advise that "the land use category definitions described the general character of development in each area, citing typical building heights (in stories) as appropriate. It should be noted that the granting of density bonuses (for example, through planned unit developments) may result in heights that exceed the typical ranges cited here." (*Id.*)

170. The Commission finds that the PUD Site's landmark status and the design constraints imposed through the Historic Preservation Review Board process also affect the spacing of buildings and utilization of existing improvements both above and below grade. In order to afford the necessary protections set forth in the Historic Preservation Element of the Comprehensive Plan, and the specific considerations for the McMillan planning area under the Mid-City Element, it is essential to decrease and limit the footprint of buildings. Buildings must be placed, as proposed, in locations compatible with other adjacent uses and densities on nearby properties. Healthcare is the most proximate institutional use close to the PUD Site across Michigan Avenue, and will provide a strong market to permit the Applicant to leverage the area for sound economic development. Finally, the Commission finds that NCPC's amendment to the Comprehensive Plan is outdated and irrelevant.
171. In its written submission dated September 15, 2014, FOMP raised an additional issue related to the project's consistency with the Comprehensive Plan, namely, that its height was inconsistent with the Future Land Use Map's designation of the site for (i) Medium Density Residential, (ii) Moderate Density Commercial, and (iii) Parks, Recreation and Open Space. FOMP further argued that NCPC's staff report dated August 25, 2014 supported this conclusion insofar as it stated that the project would interfere with the federal interest because it would interfere with views from the Armed Force Retirement Home, in part because of the high-density zoning proposed for the northern portion of the site. (Ex. 850.)
172. Regarding FOMP's argument that the height was inconsistent with the Future Land Use Map's designation, as stated above, the Commission does not believe that the high-density zoning proposed for the northern end of the site is inconsistent with the Comprehensive Plan as a whole. The high-density zoning and corresponding building heights at the northern end of the site are appropriate given that they cluster the high-intensity uses and largest buildings on the portion of the site adjacent to existing intensive uses with similar building heights, and allow the southern end of the site to remain open space and low-density residential uses.
173. The Commission is not persuaded by FOMP's argument based on the staff report because NCPC staff subsequently changed its position in a subsequent letter dated September 15, 2014. (Ex. 856B.) In its September 15<sup>th</sup> letter, NCPC staff stated that because the Applicant redesigned the healthcare building to reduce its height and shift some of the bulk to the west, it had no objection to the proposed building heights.

*Other Contested Issues*

174. Opponents to the project testified that the PUD is inconsistent with the 2002 recommendations for the McMillan Sand Filtration Site prepared by OP and the

Department of Housing and Community Development ("DHCD"). Many of those recommendations were, in fact, included in the present proposal in some form. The Commission further notes, however, that additional studies were conducted since that time, including structural and historic preservation, which helped inform the present plan. Finally, the 2006 Comprehensive Plan provides the legal guidance for the Commission on this project.

175. Persons testified that the Applicant did not adequately investigate the environmental impacts of the proposed redevelopment and that the Applicant failed to put any agency reports, public health studies, or environmental reviews on the record. Persons asserted that the PUD would increase pollution, noise, waste, emissions, carbon footprint, municipal water use, electric and gas use, and sewer needs. Environmental studies are best conducted by the District Department the Environment, however, and will be part of the building permit process. (*See Foggy Bottom Association v. District of Columbia Zoning Comm'n*, 878 A.2d 1160 (D.C. 2009).)
176. Opponents also testified that the construction of the project would cause adverse effects related to construction noise, traffic, and other related effects. Review of construction related effects are not part of the Commission's review of PUDs, which are limited to the zoning related impacts of a project. Mitigation of construction related impacts are covered by the District's building codes and will be part of the building permit process. The Commission nonetheless encourages the Applicant to enter into a construction management agreement or agreements with neighboring community groups to mitigate the effect of construction of the project on neighbors.

#### **CONCLUSIONS OF LAW**

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated 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, loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD, as approved by the Commission, complies with the applicable height, bulk and density standards of the Zoning Regulations under the proposed C-3-C and CR Zone Districts for the PUD Site. The uses for this project are appropriate for the PUD Site. The impact of the project on the surrounding area is not unacceptable. Accordingly, the project should be approved.
6. The Application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
7. The Applicant's request for flexibility from the Zoning Regulations is not inconsistent with the Comprehensive Plan. Moreover, the project's benefits and amenities are reasonable tradeoffs for the requested development flexibility.
8. Approval of this PUD is appropriate because the proposed development is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the PUD Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
9. The Commission is required under § 13(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1021; D.C. Official Code § 1-309.10(d)) to give great weight to the affected ANC's recommendation. In this case, on June 17, 2014, ANC 5E voted 4-0-3 to support the project, with two members absent and one seat vacant. The PUD Site also borders ANC 1B and ANC 5A, and thus their views are also entitled to great weight. On May 1, 2014, ANC 1B voted 8-0-1 to defer to and participate in the process established by ANC 5E. On January 29, 2014, ANC 5A voted 7-0-0 to support the PUD application.
10. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP's recommendations. For the reasons stated above, the Commission concurs with OP's recommendation for approval and has given the OP recommendation the great weight it is entitled.

11. The application for a PUD 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.*).

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the Application for preliminary review and approval of a first-stage PUD, consolidated PUD, and a related map amendment to zone the north portion of the PUD Site (Parcel 1) to the C-3-C Zone District, for a depth of 277 feet as measured from the middle of the curb at Michigan Avenue, N.W., and the remainder of the PUD Site to the CR Zone District. The approval of this PUD is subject to the guidelines, conditions, and standards set forth below:

#### **A. FIRST-STAGE PUD DEVELOPMENT PARAMETERS**

1. Architectural Plans: The PUD shall be developed in accordance with the Master Plan (Volume 1) and the PUD and Consolidated Stage Two (Volume 2) prepared by EEK Perkins Eastman Architects, dated April 11, 2014, marked as Exhibits 32A1A1-32A1A26 and 32A2A1-32A2A72 (hereinafter Exhibit 32A), and supplemented by drawings submitted on June 23, 2014, marked as Exhibits 832A1-832A3 (hereinafter “Ex. 832A”) in the record, and the drawings submitted on August 25, 2014, marked as Exhibit 849A1-849A2 (hereinafter “Exhibit 849A”) (the “Plans”); as modified by the guidelines, conditions, and standards herein;
2. Project Uses and Density: The PUD shall be a mixed-use development devoted to residential, retail, service, institutional, community, and medical and related office uses, as shown on the approved Master Plan. The PUD shall have a maximum overall density of 1.92 FAR (2.36 FAR excluding the private rights of way), and a combined gross floor area of approximately 2,070,753 square feet;
3. Building Heights: The maximum building height of the Healthcare Facility on Parcel 1, to be located in the C-3-C Zone District, shall not exceed 115 feet. The maximum building height on Parcel 2, to be located in the CR Zone District, shall be 110 feet. The maximum building height on Parcel 3, to be located in the CR Zone District, shall be 110 feet. The maximum building height on Parcel 4, to be located in the CR District, shall be 77 feet. The maximum building height on Parcel 5, located in the CR Zone District, shall be 48 feet. The maximum building height on Parcel 6, located in the CR Zone District, shall be 26 feet. Parcel 7 shall be improved with the existing historic silos (sand bins) and regulator houses; and

4. Design and Public Art Guidelines: The Applicant shall implement and follow the Master Plan Design Guidelines prepared by EEK Perkins Eastman Architects marked as Exhibit 17C to the record; and the Cultural DC Public Art Master Plan as marked as Exhibit 17D10 to the record.

**B. CONSOLIDATED PUD DEVELOPMENT PARAMETERS**

1. Parcel 1: Parcel 1 shall be developed as a Healthcare Facility with approximately 835,000 to 860,000 square feet of space devoted to medical offices, related healthcare uses, and retail. The Parcel 1 building shall have a maximum FAR of 4.08 (or approximately 5.52 FAR exclusive of private rights-of-way and Cell 14), and a maximum building height of 115 feet. Parcel 1 shall be developed as a single building for zoning purposes, with the above-grade connection located at the main level of the building along the North Service Court. Approximately 1,900 vehicle parking spaces shall be provided in a below-grade garage. Approximately 200 bike parking or storage spaces shall be provided in the garage. Loading shall be provided as shown on the drawings;
2. Parcel 4: Parcel 4 shall be developed as a mixed-use residential/grocery building consisting of approximately 305,847 square of gross floor area, or a maximum density of 3.21 FAR. Approximately 55,567 square feet of gross floor area shall be devoted to a grocery store use (inclusive of loading) and approximately 258,235 square feet of gross floor area shall be devoted to multi-family residential uses (inclusive of loading), which equates to approximately 196 market rate units and 85 affordable units for senior citizens (55 years of age or older) whose household income is between 50% and 60% of the AMI. The condition pertaining to this affordable housing component is set forth in Condition C.6 below. The maximum height of the building shall be 77 feet, as measured from North Capitol Street, N.W. Approximately 329 vehicle parking spaces shall be provided in a below-grade garage, with 154 spaces devoted to the retail uses and 175 spaces devoted to the residential uses. Approximately 100 bike parking or storage spaces shall be provided in the garage. Loading shall be provided as shown on the drawings Submitted August 25, 2014, marked as Exhibit 849A in the record;
3. Parcel 5: Parcel 5 shall be developed with 146 row dwellings, consisting of approximately 350,000 square feet of gross floor area, or a maximum density of 1.42 FAR. The row dwellings shall have a maximum height of 48 feet, which equates to four stories. Each row dwelling shall provide a minimum of one parking space. The affordable housing conditions applicable to this parcel are set forth in the Condition C.6 below;



4. Parcel 6: Parcel 6, which includes the South Service Court, shall be developed as a Park including a 6.2- acre open space with a community center, as shown on the drawings prepared by EEK Perkins Eastman Architects dated April 11, 2014, marked as Exhibit 32A to the record, and as supplemented by drawings submitted on June 23, 2014, marked as Exhibit 832A in the record. The community center shall be constructed to a maximum height of 26 feet and contain approximately 17,500 square feet of gross floor area, or a density of approximately .07 FAR. The community center shall include gallery space with exhibits on the history of the McMillan site, a 25-meter swimming pool, a multipurpose community meeting room with a catering kitchen, outdoor gathering space, fitness studio, and locker and shower facilities. This amenity shall be open to the public and provide a user-friendly and convenient space for public gatherings and community events. The multipurpose community meeting room shall include moveable partitions to create smaller and larger spaces for gathering. Parcel 6 shall have 21 dedicated parking spaces and a dedicated loading area located in the South Service Court;
5. Parcel 7: Parcel 7 shall include the North Service Court with preserved historic silos and regulator houses, two-way circulation for all modes, and pedestrian facilities, as described in Condition C.4;
6. The Applicant shall have the flexibility with the design of the PUD in the following areas:
  - a. To provide a range in the number of residential units on Parcel 4 of plus or minus 10% from the number depicted on the plans dated April 11, 2014, marked as Exhibit 32A, and supplemented by drawings submitted on June 23, 2014, marked as Exhibit 832A in the record;
  - b. From the roof structure set back requirements, consistent with the roof plans submitted as part of the plans dated April 11, 2014, marked as Exhibit 32A, and supplemented by drawings submitted on June 23, 2014, marked as Exhibit 832A in the record, and drawings submitted August 25, 2014, marked as Exhibit 849A of the record;
  - c. From the loading requirements, consistent with the loading diagrams submitted in Exhibit 699B, and as modified by Exhibit 832A, and drawings submitted August 25, 2014, marked as Exhibit 849A of the record;
  - d. From the rear yard depth requirements, consistent with the plans dated April 11, 2014, marked as Exhibit 32A, and supplemented by drawings submitted on May 13, 2014, marked as Exhibit 699A in the record;

- e. From the rear yard requirements for all of the Rowhouses except Building 9 and 19, consisted with the submitted plans;
- f. From the open court width requirements at Building;
- g. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not substantially change the exterior configuration of the buildings;
- h. To vary the location and configuration of the affordable units on Parcels 2 and 4. Except for the affordable senior units on Parcel 4, the proportion of studio, efficiency, and one-bedroom affordable units to all affordable units shall not exceed the proportion of market-rate studio, efficiency, and one-bedroom units to all market rate units with a mixed-income building. The affordable units shall be of a size equal to the market-rate units, provided that the affordable units may be the smallest size of each market-rate type and have no luxury-scaled unit counterpart;
- i. To vary the garage layout, the number, location, and arrangement of the parking spaces on each of the Parcels, provided that the total number of parking spaces is not reduced below the minimum level required by the Commission;
- j. To vary the layout of the loading facilities on Parcel 1, provided that the dimensions and number of loading facilities are not reduced;
- k. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, location, orientation, and quantity of the fins, or any other changes to comply with the District of Columbia Building Code, the recommendations of the D.C. Historic Preservation Review Board or the Mayor's Agent for Historic Preservation, or that are otherwise necessary to obtain a final building permit;

- l. To vary the final design of retail frontages, including locations of doors, design of show windows and size of retail units, to accommodate the needs of specific retail tenants;
  - m. To vary the location and size of signs on the buildings, as long as they conform to the sign guidelines for the PUD;
  - n. To vary the location, attributes and general design of the public spaces and streetscapes incorporated in the PUD to comply with the requirements of the approval by DDOT's Public Space Division;
  - o. To vary the final selection of plantings and beds within the range and types as proposed, based on availability at the time of installation during the appropriate planting season for the material selected, without reducing the quality of plantings or the layout or arrangement; and
  - p. If any retail areas are leased by a restaurant or food service user, flexibility to vary the location and design of the ground floor components of the building(s) in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any restaurant use; and
7. The Applicant shall have the option to construct the project in phases, as shown on the plans, as follows:
  - a. Phase I consists of Parcels 1, 4, 5, 6, and 7, which include the Olmstead Walk and the internal roadways; and
  - b. Phase II consists of Parcels 2 and 3.

The deadline for filing applications for building permits and to construct the phases is set forth in Condition E.2.

**C. Public Benefits**

1. Urban Design, Architecture, and Site Planning: The PUD shall be developed in accordance with the Master Plan prepared by EEK Perkins Eastman Architects dated April 11, 2014, marked as Exhibit 32A, and supplemented by drawings submitted on June 23, 2014, marked as Exhibit 832A in the record, and the drawings submitted on August 25, 2014, marked as Exhibit 849A; as modified by the guidelines, conditions and standards herein. Prior to the issuance of a Certificate of Occupancy for the Healthcare Facility on Parcel 1, the Applicant

shall obtain a building permit for all the necessary public infrastructure to support the development of Parcels 1, 4, 5, 6, and 7, including all project site work; all streets, alleys, sidewalks, and bike paths; historic and commemorative signage throughout the PUD site to create a walking museum of preserved buildings and views; and all related utilities;

2. Parks, Open Space, and Landscaping: Prior to the issuance of a Certificate of Occupancy for the Healthcare Facility on Parcel 1, the Applicant shall obtain a building permit to construct the Community Center, and approximately 500,000 square feet of public open space comprised of the South Park, the North and South Service Courts, the healing gardens, and preserved Cell 14. The South Park shall include covered seating areas with at least four durable, high quality picnic tables and benches, an amphitheater adjacent to the Community Center, a children's playground, a "spray-ground," an outdoor adult fitness area, a pond and open lawns for casual sports, all as shown on the drawings (pp. 33-35) and marked as Exhibit 32A210-32A2A12. The PUD shall provide all related streetscape improvements and street furniture, including lighting, benches, trash receptacles, and bicycle racks;
3. Design Guidelines; Public Art Guidelines: The Applicant shall implement and follow the Master Plan Design Guidelines prepared by EEK Perkins Eastman Architects marked as Exhibit 17C to the record; and the Cultural DC Public Art Master Plan as marked as Exhibit 17D10 to the record;
4. Historic Preservation: The Applicant shall obtain a building permit within three years of the effective date of this Order to retain and rehabilitate and renovate the North and South Service Courts, including all 20 sand storage bins, all four regulator houses, at least one sand washer, 11 filter bed portals and extended portions of the service court walls, and the preservation of Cells 14 and 28, all in accordance with the plans. The Applicant shall also obtain a building permit within three years of the effective date of this Order to re-establish the Olmsted Walk around the perimeter of the site, as shown on the plans, and this shall be accessible to persons with disabilities and include benches along the walk. The preservation work shall be completed prior to the issuance of the certificate of occupancy for the community center on Parcel 6. The Applicant shall seek permission from the U.S. Army Corps of Engineer or other responsible government agency to obtain the historic McMillan Fountain, formerly located on portion of the McMillan Reservoir west of First Street and, if permission is granted, to install it on the PUD Site;
5. Housing: The PUD shall provide approximately 924,583 square feet of gross floor area devoted to residential uses, or approximately 674 units of new housing

in single-family and apartment houses, for both rental and ownership opportunities;

6. Affordable Housing: A portion of the total square feet of gross floor area devoted to housing shall be set aside for affordable housing, as follows: On Parcel 4, a minimum of 67,018 square feet of gross floor area of the total new housing provided, or approximately 85 units, shall be set aside as senior housing (55 years of age or older) for households earning 50% to 60% of AMI. An additional 25 units, or approximately 21,341 square feet of total gross floor area devoted to housing, shall be set aside on Parcel 2 for household earning 80% of the AMI. Finally, 22 of the single-family rowhouses on Parcel 5 shall be set as affordable housing. Nine of the affordable rowhouses will be made available to households earning no more than 50% of the AMI and the remaining affordable rowhouses will be made available to households earning no more than 80% of the AMI. The affordable housing units shall be constructed prior to or concurrently with the market-rate units on a given parcel, except that if the development is phased, the affordable units shall be constructed at a pace that is proportional with the construction of the market-rate units. All affordable units will remain subject to the applicable rental or price controls for so long as the project is in existence;<sup>13</sup>
7. CBE Participation: Prior to the issuance of a building permit, the Applicant shall execute a CBE Agreement with the Department of Small and Local Business Development (“DSLBD”) 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 PUD. Business opportunities will be posted on the DSLBD website, and the Applicant shall give opportunities to CBE businesses for smaller contracts, such as catering, trash collection, and delivery service. The Applicant shall continue to work cooperatively with DSLBD, its contractors and with the Business Development Councils and other local community organizations to maximize opportunities for CBE firms throughout the process. The PUD shall also include 20% equity sponsor participation by a CBE;
8. Training and Employment Opportunities: During construction of the project, the Applicant shall abide by the terms of the executed First Source Employment Agreement with the District Department of Employment Services to achieve the goal of utilizing District residents for at least 51% of the new jobs created by the PUD project. To the extent permitted by law, first preference for employment opportunities shall be given to Wards 1 and 5 residents. The Applicant and its

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<sup>13</sup> As noted the Applicant intends to seek an exemption from the Inclusionary Zoning (“IZ”) regulations set forth in Chapter 26 of this Title. If the exemption is not granted, the Applicant shall nevertheless abide by the requirements of this condition, unless the IZ regulations impose more restrictive standards.

contractor, once selected, shall coordinate training, job fairs and apprenticeship opportunities with construction trade organizations or with healthcare facility and other organizations to maximize participation by District residents in the training and apprenticeship opportunities in the PUD;

9. Project Association: Prior to the issuance of the first certificate of occupancy for the PUD, the Applicant shall establish a project association or business improvement district for the PUD that will be responsible for the maintenance and improvements of the private roadways, alleys, bicycle paths, historic walks, sidewalks, parks, historic resources, streetscapes, street furniture and fixtures, and signage within the PUD boundaries. Additionally, the project association will contribute to funding for programming and staging events within the PUD for the benefit of the public;
10. Environmental Benefits: The master plan for the overall development for the PUD Site shall be evaluated for LEED-Neighborhood Development and shall be certified at least LEED-Gold or its equivalent. Each project shall be LEED-Silver or Green Communities compliant, depending on its commercial or residential designation. Upon completion, the overall PUD Site shall achieve, at minimum, the applicable provisions of the Green Construction Code of the 2013 Construction Code of the District of Columbia. The Applicant shall put forth its best efforts to achieve a LEED-Silver rating or higher for the buildings on Parcels, 1, 4, 5, and 6, but the Applicant shall not be required to obtain the certification from the U.S. Green Building Council;
11. Uses of Special Benefit to the Community and City: The Applicant shall provide the following community benefits. The certificates of occupancy described in subparagraph (a) and subparagraphs (c) through (h) shall not be issued unless the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided:
  - a. Prior to the issuance of the first Certificate of Occupancy for the Healthcare Facility on Parcel 1, the Applicant shall initiate, and show evidence to the Zoning Administrator in accordance with § 2403.6 of the Zoning Regulations of annual payments of \$140,000 each over a five-year period (\$700,000 total) to the Community Foundation of the National Capital Region ("CFNCR") to support workforce development initiatives to improve low-income workers' skills, credentials, career prospects, earnings, and job placement, particularly in key local industries and occupations. Additionally, prior to settlement on the sale of the first townhouse on Parcel 5, the Applicant shall initiate annual payments of \$60,000 each over a five-year period (\$300,000 total) to the CFNCR to

support scholarships for higher education, training or job-related certification encouraging “legacy” career paths such as civil engineering, landscape architecture, or on-site jobs in the medical field, with a preference for Ward 1 and 5 residents to the extent permitted by law;

- b. Prior to settlement on the sale of the first townhouse on Parcel 5, the Applicant shall initiate, and show evidence to the Zoning Administrator in accordance with § 2403.6 of the Zoning Regulations of annual payments of \$25,000 each over a five-year period (\$125,000 total) to the D.C. Education Fund to be used to improve science, technology, engineering, and math ("STEM") teacher professional development and instruction, as well as student learning and achievement, particularly at Dunbar High School, McKinley Technical High School, and Langley Educational Campus;
- c. Prior to the issuance of the first Certificate of Occupancy for the building on Parcel 4 and prior to the first settlement on the sale of a house on Parcel 5, the Applicant shall initiate, and show evidence to the Zoning Administrator in accordance with § 2403.6 of the Zoning Regulations of annual payments of \$50,000 over a 10-year period (\$500,000 total) to the Partnership, as defined by finding of fact 75, to hire high-school age residents and senior residents to provide guided tours of the McMillan site highlighting the preserved historic resources;
- d. Prior to the issuance of the first Certificate of Occupancy for the building on Parcel 4 and prior to the first settlement on the sale of a house on Parcel 5, the Applicant shall initiate, and show evidence to the Zoning Administrator in accordance with § 2403.6 of the Zoning Regulations of annual payments of \$75,000 over a 10-year period (\$750,000 total) to the Partnership operating budget to create a community market, outdoor cafe, and space for art installations between the South Service Court and South Park, and to activate the South Service Court and existing elements, such as regulator houses for small business incubators, silos as hanging gardens, water features and observation points;
- e. Prior to the issuance of the first Certificate of Occupancy for the building on Parcel 4, the Applicant shall show evidence to the Zoning Administrator in accordance with § 2403.6 of the Zoning Regulations of payment of \$225,000 to the Partnership to facilitate business start-ups by awarding grants or in-kind resources to small, local retail/service businesses looking to locate and operate on site to try out their retail/service concepts. A "local" business is a retailer/service provider

that is either a CBE or a business headquartered in the District of Columbia; a “small” business is a retailer/service provider owning or operating fewer than eight retail/service outlets in the aggregate at the time such retailer/service provider enters into a lease at the PUD (inclusive of such outlet at the PUD);

- f. Prior to the issuance of the first Certificate of Occupancy for the building on Parcel 4 and prior to the first settlement on the sale of a house on Parcel 5, the Applicant shall provide evidence to the Zoning Administrator in accordance with § 2403.6 of the Zoning Regulations, that it has initiated payments to a contractor or otherwise will incur costs in the amount of \$500,000 over a five-year period for fabricating, installing, repairing and restoring tree box fence enclosures; planting trees and ground cover plants, and installing certain neighborhood signage in coordination with the Bates, Bloomingdale, Eckington, Edgewood, Hanover Area, and Stronghold Civic Associations;
  - g. Prior to the issuance of the Certificate of Occupancy for the Community Center, the Applicant shall use best efforts to provide free WiFi for public use in the community center and park; and
  - h. Prior to the issuance of the first Certificate of Occupancy for the mixed-use building on Parcel 4, the Applicant shall initiate annual payments in the amount of \$30,000 each over a five-year period (\$150,000 total) to North Capitol Main Street, Inc. for storefront improvements located on North Capitol Street, N.E. and N.W., between Channing Street and New York Avenue.
12. The Applicant will provide a total of approximately 97,770 square feet of gross floor area devoted to retail and service uses on the PUD Site. The retail space will include a full service grocery store.

**D. Transportation Mitigation Measures**

- 1. Transportation Features: The PUD Site shall be a multi-modal transit hub that accommodates transit services, such as the Metrobus, Circulator Bus, and the future Streetcar, and provides simple connections to Capital Bikeshare stations. The Applicant shall provide 80 Bikeshare docks on the PUD Site. The Applicant shall provide short- and long-term bicycle storage and changing facilities, and on- and off-street parking facilities, as shown on the Plans. The Applicant shall also do the following:



- a. Prior to the issuance of the building permit for the Healthcare Facility on Parcel 1, the Applicant shall coordinate with DDOT and nearby institutions to provide a detailed final Transit Implementation Plan. The Final Transit Implementation Plan shall include the following:
  - i. Recommended improvements to nearby bus routes to better serve the PUD Site and the neighbors, including instituting rush hour express bus service;
  - ii. Recommended acceleration of planning and development of the planned Brookland-Columbia Heights Streetcar;
  - iii. The provision of an interim shuttle service to the Brookland Metrorail Station prior to the District's implementation of a Circulator Bus route and streetcar line that would serve the PUD Site, without regard to cost; and
  - iv. The Applicant's commitment to incentivize on-site residents and retail tenants to use public transit, such as providing space for a Transit Store, supplementing employee SmarTrip cards, and providing car-sharing and Capital Bikeshare memberships;
- b. For the life of the Project, the Applicant shall implement the loading and curbside management plan, as set forth in Exhibit 832F3 to the record;
- c. For the life of the Project, the Applicant shall abide by the Transportation Performance Plan dated August 25, 2014, submitted to the record as Exhibit 849B, and updated by Exhibit 862. The Applicant shall have the flexibility to modify the Transportation Performance Plan if approved by DDOT in writing;
- d. For the life of the Project, the Applicant shall implement the transportation infrastructure improvements recommended by Gorove/Slade Associates and DDOT; and
- e. For the life of the Project, the Applicant shall provide the electric car charging stations stated in Exhibit 849B. The car charging stations on Parcel 1 shall be completed prior to the issuance of a Certificate of Occupancy for Parcel 1. The car charging station on Parcel 4 shall be completed prior to the Certificate of Occupancy for Parcel 4. The car charging station on Parcel 6 shall be completed prior to the Certificate of Occupancy for Parcel 6.

**E. Miscellaneous**

1. The Zoning Regulations Division of Department of Consumer and Regulatory Affairs (“DCRA”) shall not issue any building permits for the 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 Consolidated PUD shall be valid for a period of two (2) years from the effective date of Z.C. Order No. 13-14. Within such time, an application must be filed for a building permit for the construction of Phase I of the project (described in B.7 above) as specified in 11 DCMR § 2409.1. Construction of Phase I of the project must commence within three (3) years of the effective date of this Order. Applicant shall not be required to file an application for a building permit for the park on Parcel 6 or the improvements to Cell 14 on Parcel 1 until six months prior to the date that D.C. Water intends to vacate that particular portion of the Phase I PUD site. Construction of the park on Parcel 6 or the improvements to Cell 14 must commence within one (1) year after the building permit is issued for that portion of the Phase I PUD site;
3. The first-stage PUD shall be valid for a period of two years after the effective date of this Order during which time the Applicant shall file a stage-two PUD application for Phase II of the PUD. The Applicant shall provide the Commission with an update of its implementation of the Transit Implementation Plan, and its compliance with the Community Benefits Chart and Payment Schedule (Ex. 849C), with each second-stage PUD application.
4. 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, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also

prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On September 29, 2014, upon the motion of Chairman Hood, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the Application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Marcie I. Cohen, not having participated, not voting).

On November 10, 2014, upon the motion of Chairman Hood, as seconded by Commissioner Miller, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt; Marcie I. Cohen, not having participated, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Corrected Order became final and effective upon its publication in the *D.C. Register* April 17, 2015.