

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 12-14/12-14A**  
**Z.C. Case Nos. 12-14/12-14A**  
**3<sup>rd</sup> and M Streets, LLC and Park In Associates, LP**  
**(Consolidated Approval for a Planned Unit Development and Zoning Map**  
**Amendment @ Sq. 542, Lot 816 and part of Lot 79)**  
**January 28, 2014**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on October 7, 2013 to consider applications from 3<sup>rd</sup> & M, LLC and Park Inn Associates, LP (the “Applicant”) for consolidated review and approval of a planned unit development (“PUD”) and related Zoning Map amendment. The Commission considered the applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

**FINDINGS OF FACT**

**The Application, Parties, and Hearing**

1. The project site consists of Lot 816 and part of Lot 79 in Square 542 (“Subject Property” or “Property”). The Subject Property is zoned R-5-D. The Subject Property includes approximately 108,895 square feet of land area and is located within the boundaries of Advisory Neighborhood Commission (“ANC”) 6D. (Exhibit [“Ex.”] 2.)
2. On August 13, 2012, the Applicant submitted an application seeking review and approval of a consolidated PUD and related Zoning Map amendment to the CR Zone District for two new multifamily apartment buildings. (Ex. 2.)
3. On October 1, 2012, the Applicant submitted revised applications splitting the original application into two since the Subject Property is not contiguous. One application, Z.C. Case No. 12-14, includes the northern portion of the Subject Property, and the other application, Z.C. Case No. 12-14A, includes the southern portion of the Subject Property. (Ex. 11.)
4. By memorandum dated October 5, 2012, and through testimony at the public meeting held on October 15, 2012, the Office of Planning (“OP”) recommended that the Commission set down the applications for public hearing as a consolidated PUD and

related Zoning Map amendment to the CR Zone District. (Ex. 14; 10/15/12 Transcript [“Tr.”] at pp. 80-84.)

5. At its October 15, 2012 public meeting, the Commission set down the cases for a public hearing as a contested case. The Commission adopted OP’s recommendation that the application be set down as a consolidated PUD and related Zoning Map amendment to the CR Zone District. (10/15/12 Tr. at pp. 98-99.)
6. The Commission also agreed to hear the two cases together and to receive all filings for both cases in the file for Z.C. Case No. 12-14. (10/15/12 Tr. at pp. 99-100.)
7. Notice of the public hearing was published in the *D.C. Register* on April 5, 2013, was mailed to ANC 6D and to owners of all property within 200 feet of the Property in accordance with 11 DCMR § 3015.3, and was posted on signs at the Property at least 40 days before the hearing.
8. On March 15, 2013, the Applicant filed a pre-hearing submission, and a public hearing was timely scheduled for May 30, 2013. On May 10, 2013, prior to the public hearing, the Applicant supplemented its application with additional information, including updated public benefits and amenities; revised plans; clarification on requested flexibility from the Zoning Regulations; and transportation impact study. (Ex. 17, 23.)
9. On May 17, 2013, the Applicant filed a motion for a continuance of the public hearing. The Applicant requested this delay so that it could continue to work with the ANC and because a landmark application was filed for the Property that the Historic Preservation Review Board (“HPRB”) was to consider in June 2013. The Commission granted the continuance at its May 20, 2013 public meeting and rescheduled the public hearing for July 25, 2013. (Ex. 34.)
10. On July 9, 2013, the Applicant filed another motion for continuance of the public hearing. The Applicant requested the continuance because it needed time to change the design to account for the fact that the Property and its buildings were designated as a landmark by the HPRB on June 27, 2013. The Commission granted this continuance and rescheduled the public hearing for October 7, 2013. (Ex. 36.)
11. The Applicant made a motion to waive the posting requirements under § 3015.4 for the October 7, 2013 public hearing. While the original May 30, 2013 public hearing was advertised in conformance with all of the notice requirements of § 3015, the Applicant re-posted notice on the Property only five days before the re-scheduled public hearing. While the Commission did not decide whether re-posting of the October 7, 2013 hearing was even required, the Commission granted the motion. The Commission noted the Applicant’s significant community outreach regarding the case and the fact that the case was widely known in the community. In addition, notice of the re-scheduled October 7, 2013 hearing was mailed to all property owners within 200 feet of the Property and

- published in the *D.C. Register* on July 19, 2013 in conformance with § 3015.3. (Ex. 49; 10/7/13 Tr. at pp. 6-8.)
12. The public hearing on the application was conducted on October 7, 2013. The hearing was conducted in accordance with the provisions of 11 DCMR § 3022.
  13. In addition to the Applicant, ANC 6D was automatically a party in this proceeding. ANC 6D submitted a report and resolution in support of the application, with conditions. The ANC also provided testimony in support of the application at the public hearing. (Ex. 45, 51; 10/7/13 Tr. at pp. 148-157.)
  14. The Commission received party status requests in opposition from Carrollsburg A Condominium (“CAC”), Angeles Estrada, and Hara Ann Bouganim. The Commission granted party status to CAC. The Commission denied party status to Estrada and Bouganim for failure to demonstrate how they would be significantly, distinctly, or uniquely affected by the project. (Ex. 24, 21, 30; 10/7/13 Tr. pp. 21-22, 25-27.)
  15. The Commission received four party status requests in support from Waterfront Tower Condominium (“WFT”), Ravi Goud, Olivia Paek, and Bridgette Kilkenny. The Commission granted party status to WFT. The Commission denied party status to Goud, Paek, and Kilkenny because they did not demonstrate how they would be significantly, distinctly, or uniquely affected by the project. (Ex. 25, 25A, 32, 28A; 10/7/13 Tr. at pp. 17-20, 29-30.)
  16. The Commission received party status requests not indicating either proponent or opponent status from Jingyi Zhou, Robert Major, Nishanthi Mendis-Krishnaiyer, and Alena Chalan. The Commission denied party status to these applicants due to incomplete applications. (Ex. 33, 27, 31, 29; 10/7/13 Tr. at pp. 10-12.)
  17. At the public hearing, the Commission heard testimony and received a report from the Office of Planning (“OP”) in support of the application. (Ex. 43; 10/7/13 Tr. at pp. 142-44.)
  18. At the public hearing, the Commission heard testimony and received a report from the District Department of Transportation (“DDOT”) in support of the application. (Ex. 44; 10/7/13 Tr. at pp. 144-46.)
  19. At the October 7, 2013 public hearing, the Applicant presented evidence and testimony from Marc Duber, Executive Vice President and Chief Operating Officer, a member of the development team; Maurice Walters, qualified as an expert in architecture; Betsy Boykin, qualified as an expert in landscape architecture; Robert Schiesel, qualified as an expert in traffic engineering; and Greg Rooney, Vice President, Development, a member of the development team. (10/7/13 Tr. at pp. 37-92.)

20. On October 21, 2013, the Applicant submitted additional information in response to issues and questions raised at the October 7 public hearing. The submission included additional views of the project, changes to the buildings' penthouses, and copies of letters to WFT. (Ex. 59.)
21. At a public meeting held on November 18, 2013, the Commission took proposed action to approve the applications. The Commission requested that the Applicant address a number of issues before it would consider final action on the applications, namely:
  - a. The size and appearance of the penthouse at the ends of the building;
  - b. The use of the rooftop accessory space;
  - c. Whether compliance with Chapter 26 of the Zoning Regulations (requiring affordable housing) constituted a public benefit of the PUD;
  - d. The long time period for completion of the project, and the Applicant's proposed condition that would vest the project once the Applicant filed its initial building permit application;
  - e. If any MOU is entered into between the Applicant and WFT what if any of the MOU's conditions would the Applicant agree to include as conditions of this Order;
  - f. An alternative proffer to replace the proposed financial donation to the Department of Parks and Recreation; and
  - g. Response to the letter submitted by the WFT on October 28, 2013.
22. On November 25, 2013, the Applicant submitted a list of proffered public benefits of the PUD and proposed conditions to ensure that they are delivered, pursuant to 11 DCMR § 2403.16.
23. On December 16, 2013, the Applicant submitted additional information in response to the issues raised by the Commission before it took proposed action, as follows:
  - a. A revised penthouse drawing showing a darker color;
  - b. An illustration of the accessory space in the penthouse;
  - c. A clarification that the Applicant did not claim its affordable housing qualified as public benefit of the PUD;
  - d. A clarification and explanation of its request pertaining to the expiration and vesting of the PUD;

- e. A list of the terms from MOU between the Applicant and the WFT that could be incorporated into this Order;
  - f. An alternative proffer to replace the proposed financial donation to the Department of Parks and Recreation; and
  - g. Response to the letter submitted by the WFT on October 28, 2013.
24. On December 23, 2013, the Applicant submitted its final list of proffered public benefits of the PUD and proposed conditions, pursuant to 11 DCMR § 2403.20.
25. The Commission considered taking final action at its January 13, 2014 public meeting, but deferred making a decision because it was concerned that the Applicant's proposed phasing and expiration condition would permit a development timeline that extended too far into the future. The Commission therefore requested that the Applicant submit a revised phasing and expiration condition with a shorter timeframe. On January 21, 2014, the Applicant submitted a revised expiration condition.
26. At a public meeting on January 28, 2014, the Commission took final action to approve the applications in Case Nos. 12-14/12-14A, subject to conditions. The Commission largely adopted the Applicant's revised phasing and expiration condition, but modified it slightly so that the deadline for filing a building permit application for the second building was tied to the issuance of a Certificate of Occupancy for the first building, instead of completion of the first building, as the Applicant proposed. The Commission made this change because it believed that the issuance of a Certificate of Occupancy was a more discrete event and therefore more easily measured by the Zoning Administrator than completion of the building.

### **The Subject Property and Surrounding Area**

27. The Subject Property stands at the eastern side of Square 542 in Southwest Washington. The Property is split into two parts and is bounded by K Street to the north, 3<sup>rd</sup> Street to the east, M Street to the South, and the Waterfront Station development to the west. Lot 79 is improved with two nine-story residential towers constructed circa 1960 and designed by I.M Pei (the "Pei Towers"), but only the northern Pei Tower is included in the Property and the PUD site. The extreme northern and southern portions of the Property are improved with surface parking lots, and the area between the two Pei Towers is an open courtyard. The southern Pei Tower and the surface parking lot to the west are part of WFT and not part of the Property. The Property includes approximately 108,895 square feet of land area. (Ex. 2.)
28. Immediately to the west of the Property is an 11-story building once occupied by the U.S. Environmental Protection Agency, now being redeveloped into a residential building. Further to the west is the Waterfront Station development that includes two eight-story

mixed-use commercial buildings occupied by the D.C. government and ground-floor retail. Once completed, the Waterfront Station project will include two additional large commercial buildings fronting on M Street. (Ex. 2.)

29. The Property is located among both residential and commercial properties. Across 3<sup>rd</sup> Street to the east is the Greenleaf Gardens public housing complex, which is a series of moderate density townhouses and garden-style apartment buildings. Across M Street to the south are the Carrollsburg Square and CAC complexes, which are a mixture of high-density residential towers and moderate-density residential townhouses. (Ex. 2.)
30. The Property is encompassed by higher-density zones. The Subject Property is zoned R-5-D but abuts a much higher-density zone and is generally surrounded by moderate- and high-density development. In particular, the Waterfront Station development immediately to the west is zoned C-3-C and contains high-density commercial uses with two more high-density buildings planned. Also, moderate- and high-density residential zones are all around the Property. The Greenleaf Gardens complex immediately to the east across 3<sup>rd</sup> Street is located entirely in the R-5-A Zone District. The properties located to the south, particularly the residential towers and townhouses are located in the R-5-D and R-3 Zone Districts, respectively. The recently approved St. Matthew's PUD to the southeast at the corner of Delaware and M Street was rezoned to CR and will have a height of 110 feet. Further to the west of the Waterfront Station project, the Marina View PUD at the northeast corner of 6<sup>th</sup> and M rezoned that parcel from R-5-D to C-3-C. (Ex. 2.)
31. The Property is located in the high-density residential category on the District of Columbia Future Land Use Map ("FLUM"). The Applicant requested a PUD-related rezoning of the Subject Property to the CR Zone District. (Ex. 2.)

### **Description of the PUD Project**

32. The project will include two new residential towers, a connection to the north Pei Tower, two underground parking garages, a small ground-floor retail space in the new south building, and extensive site improvements and landscaping ("Project"). The Project will have a gross floor area of approximately 444,788 square feet, which equates to a density of 4.1 floor area ratio ("FAR"). This density is less than what is permitted as a matter-of-right in the R-5-D Zone District (4.2 FAR) or for a PUD in the CR Zone District (8.0 FAR). The two new buildings will each have a height of 110 feet, not including the penthouse. (Ex. 41, 50.)
33. The Project will consist of one new 11-story residential building at the north end of the site (the "North Tower") where one surface parking lot currently exists and another new 11-story residential building at the south end of the site (the "South Tower") where another surface parking lot currently exists. The North and South Towers will have similar narrow rectangular massing as the Pei Towers and will be oriented to be parallel to the Pei Towers. The North Tower will be connected to the north Pei Tower by a

ground-level glass pavilion, so the two will function as one building. As part of the Project, the Applicant will also renovate the interior of the north Pei Tower while the tenants remain in place. This building contains 128 residential units. (Ex. 2, 41, 50.)

34. In total, the Project will include approximately 359 new residential units in two new buildings. As required by the Inclusionary Zoning Regulation, the Project will provide eight percent of the new units (on floors 1-9) as affordable for the life of the Project to households making at or below 80% of the Area Median Income.<sup>1</sup> The North Tower will contain approximately 175 residential units, and the South Tower will contain approximately 184 residential units. The residential units will consist of a mix of studio, one bedroom, and two bedroom units. (Ex. 41, 50.)
35. The design of the new buildings is influenced by the signature elements of the Pei Towers but will feature elements more appropriate for the energy efficiency and durability requirements of a modern building. The design and materials of the building evolved to be compatible with and compliment the landmark Pei Towers. The Project received concept approval from the HPRB on September 26, 2013. The central façade organization of the new towers will be organized to align with the façade grid of the Pei Towers. The south-facing (South Tower) and north-facing (North Tower) apartments will feature large areas of fixed glazing picture windows, coupled with operable glazing panels below. As an accommodation to privacy concerns of certain residents in WFT, the north-facing units (South Tower) and south-facing units (North Tower) will include Juliet balconies with frosted glass on the front of the balconies. The Commission finds that these features will obscure views into and from the Pei Towers and will protect privacy. (Ex. 41, 50; 10/7/13 Tr. at pp. 51, 58-59, 63-64, 69-71.)
36. The South Tower will be separated from the south Pei Tower by 63 feet at its closest point, and the North Tower will be separated from the north Pei Tower by 66 feet at its closest point. The Applicant provided examples of similar or smaller separation distances between other buildings to illustrate that these are appropriate distances and will not cause adverse impacts. The Commission finds that, given the urban context, the design elements to enhance privacy, and the open site features, this building separation is appropriate and will not visually intrude on the Pei Towers or adversely impact them or their residents. (Ex. 41, 50; 10/7/13 Tr. at pp. 55-57.)
37. The South Tower will provide approximately 111 parking spaces in multiple underground levels. This parking garage will be accessed from a private alley along the west side of the site. Loading facilities will also be accessed from the private alley and located on the west side of the building. Similarly, the North Tower will provide approximately 174 parking spaces in multiple underground levels accessed from K Street. At the west side of the building, cars entering the North Tower parking garage will drive under a paseo,

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<sup>1</sup> As noted, the Applicant indicated in its December 16<sup>th</sup> submission that it was not claiming such compliance as a public benefit of the PUD.

- under which the ramp to the parking will open. Loading facilities will also be provided on the west side of the North Tower and accessed under the paseo. Further, the Project will include at least 119 bike parking spaces between the two underground garages and at least 20 above-ground bike parking spaces. (Ex. 41, 50; 10/7/13 Tr. at p. 85.)
38. A motor court located to the north of the South Tower and off the private alley will allow for drop-offs and pick-ups and direct access to the main lobby. The main lobby will also be directly accessible from M Street. Similarly, the North Tower will provide a motor court off of K Street and after driving under the paseo. The motor court will be between the North Tower and the north Pei Tower. The link between the two north buildings will serve as the main entrance for both. The North Tower lobby may also be accessed from K Street. (Ex. 41, 50; 10/7/13 Tr. at pp. 64-66.)
  39. Two of the courtyards will be accessible to the public and open for public enjoyment. The site design will remove many of the existing fences and walls to make the site more porous. The south courtyard will be accessible from the west at all times and will be unobstructed. The western side of the north courtyard will be accessible from K Street at all times and will be unobstructed. The entire site will contain light fencing between buildings along 3<sup>rd</sup> Street, but there will be gates from 3<sup>rd</sup> Street to the south courtyard and to the eastern side of the north courtyard. The gates will be open from 8:00 a.m. to 6:00 p.m., and signs on the gates will indicate when they are open. (Ex. 41, 50, 59, 71-73.)
  40. The site design will include significant improvements to the landscaping and greenery on the Property. Between the South Tower and the south Pei Tower, new landscape features will introduce a green and inviting courtyard with geometric features. The large courtyard between the Pei Towers will introduce a design similar to the original, effectively restoring it from its present substandard condition, and it will include new greenery and improved landscape features, such as a screen from the surface parking lot to the west. The courtyard between the North Tower and the north Pei Tower will include the same geometric design and landscape features. Throughout the Property, the landscape will include lush plantings and many new trees. (Ex. 41, 50; 10/7/13 Tr. at pp. 80-83).
  41. The landscape design will incorporate many sustainability features and will capture as much stormwater as possible. By siting the new buildings on existing asphalt parking lots and transforming the majority of the remaining paved surfaces into green space, the Project will provide a number of benefits, perhaps the largest of which is the conversion of impervious surfaces to pervious surfaces to mitigate stormwater runoff. This reuse of existing pervious surface and conversion of remaining surface parking to planted areas will reduce the amount of impervious surface by approximately 0.5 acre and will provide approximately 1.2 acres of at-grade green space. In addition, the site design will include numerous techniques for collecting and cleaning water on-site and using it for plant watering and groundwater recharge. Further, the building plans to recapture and re-use

all cooling tower condensation. The captured water will be re-used as cooling tower make-up water. (Ex. 41, 50, 59C; 10/7/13 Tr. at pp. 80-83.)

42. The landscaping will retain the geometric design that is typical of the period for this neighborhood. The design will include a variety of space sizes that are left unprogrammed. Town Center East's redesigned landscape builds on the modern classicism of the original landscape architect for the site (Zion & Breen) and of the dominant landscape for the area (Kiley). The proposed landscape design elements are compatible with and reflective of the Kiley and Zion & Breen elements, and are therefore compatible with the surroundings. The Project's landscape design recreates part of the original central courtyard circular path, and uses the newly landscaped north and south courtyards to add a variety of scales of smaller geometric spaces, all in classically ordered geometric spaces that flow from one to the next. These flanking courtyards will be made up of a series of geometric spaces (squares and rectangles). Their materials will be lawn, gravel, concrete, stone, and grids of trees. The spaces will be formed based of the buildings' geometries, and they will flow from one to the next, just as did Kiley and Zion & Breen's landscapes. (Ex. 41, 50; 59D; 10/7/13 Tr. at pp. 80-83.)

#### **Flexibility Requested**

43. The Applicant requested relief from the requirement in § 411.5 that the roof structures on the new buildings have walls of equal height. The North and South Towers each will each have a penthouse that ranges in height from 15' to 18'-6". The taller portion of the penthouses will accommodate the elevator overruns, but the rest of the roof structures are smaller to minimize the appearance of height. (Ex. 41.)
44. The Applicant requested flexibility from § 3202.3 to allow the erection of multiple buildings on a single record lot and on an Assessment and Taxation lot that does not have an underlying record lot. The existing record lot already contains two buildings: the North and South Pei Towers, and Lot 816 is an Assessment and Taxation lot without an underlying record lot. The WFT property bifurcates the PUD site, and securing the approval of all condominium owners to allow the subdivision would be extraordinarily difficult. Multiple buildings on one record lot is an existing condition at the site. (Ex. 41.)
45. The Applicant requested flexibility from the loading requirements in § 2201.1 for the South Tower. Subsection 2201.1 requires a 55-foot loading berth, but the South Tower will provide a 30-foot loading berth. The required maneuvering space for bringing larger 55-foot trucks to the new South Tower would be disruptive to the adjacent public streets. (Ex. 41.)
46. The Applicant requested flexibility from the side yard requirement in § 637. The South Tower fronts on M Street, and the North Tower fronts on K Street. The required side yards are 27.5 feet since the western sides of the new buildings are not adjacent to the

property lines. The provided side yards along the western sides of the new buildings will be 16 feet wide (interrupted by the paseo for the new North Tower). Because of the multi-building nature of the overall Project site plan and the placement of the existing buildings, it is not possible to provide side yards of the required dimensions. The overall Project site plan will provide significant open space to allow sufficient light and air and to avoid the encroachment of the new buildings on neighboring properties. (Ex. 41.)

47. The Applicant requested flexibility from the open space requirements in § 633. The CR Zone District requires that 10% of the lot area be reserved for open space adjacent to main entrances and continually open to the public. The proposed PUD provides 24,910 square feet of open space, which amounts to 23% of the site, but that space does not meet the technical requirements. Some of the space will not be adjacent to the main entrances and will not be publicly accessible from all sides at all times. However, much of the abundant open space will be accessible from certain points at all times and will be spread throughout the Property. (Ex. 41, 50.)

### **Benefits and Amenities**

48. Based on the Applicant's written submissions and testimony before the Commission, the following benefits and amenities will be created as a result of the Project, in satisfaction of the enumerated PUD standards in 11 DCMR § 2403. The PUD will provide superior public benefits and amenities in the following proffered categories from 11 DCMR § 2403.9:

a. *Housing*

The Project will provide approximately 359 new residential units in an area of the District that is rapidly growing. The demand for housing in the Southwest Waterfront neighborhood continues to increase, and this Project will satisfy some of that demand. In addition, the provision of more residential units will assist in the redevelopment of an area that the District has targeted for new residences, office, and retail uses; (Ex. 2, 41, 50.)

b. *Urban Design, Architecture, Landscaping, or Creation of Open Spaces*

The Project will exhibit many characteristics of exemplary urban design, including infill redevelopment, thoughtful integration into the neighborhood, innovative architecture, the use of high-quality materials, sustainable landscape and hardscape improvements, visually appealing landscaping features, large open space, and other "green" features. Indeed, the building has been designed to minimize impacts on neighboring properties while maintaining the development pattern of large open green spaces among buildings in Southwest. Further, the Project will eliminate large impermeable surface parking lots and will add

landscaping and publicly available open space that will enhance the neighborhood; (Ex. 2, 41, 50.)

c. *Historic Preservation*

The two Pei Towers and the Property are a historic landmark. Renowned architect I.M Pei designed the Pei Towers early in his career, and the buildings are demonstrative of the style of architecture when much of the Southwest quadrant was redeveloped. The HPRB-approved concept design for the new buildings will compliment and respect the historic buildings and the open site planning characteristic of Southwest by drawing on Pei's design elements without overwhelming the historic buildings. The height and placement of the new buildings will respect the historic landmark while maintaining the historic open site planning. In addition, the site improvements will reflect the original landscape design of Zion & Breen. The landscaping will return many of the original design features, will re-create much of the open and green feel that was originally on the site, and will harmonize with the Kiley design elsewhere in the neighborhood. Furthermore, the Applicant will renovate and preserve the north Pei Tower (the Applicant renovated the south Pei Tower prior to this application). The Applicant will undertake an interior renovation of the north Pei Tower in order to preserve and respect this historically significant building; (Ex. 41, 50, 59D.)

d. *Site Planning and Efficient and Economical Land Uses*

The creation of new housing along a major corridor within two blocks of a Metro station will be appropriate site planning and efficient and economical land use as a project amenity. The existing site is under-utilized and fails to fully capitalize on the site's location along a major transit corridor adjacent to a Metrorail station and a proposed streetcar line. In addition, it is close to offices, retail, and a supermarket. By providing more housing on such a large site, the proposed Project provides a far more efficient utilization of this strategic transit-oriented site. The location of the new buildings adjacent to the M Street and K Street sidewalks will activate the streets and enhance the pedestrian experience; (Ex. 2, 41, 5.0)

e. *Effective and Safe Vehicular and Pedestrian Access*

The circulation plan for the Project will diminish vehicular and pedestrian conflicts. All parking and loading access will occur from the private alley along the western side of the Property or from K Street, for the South Tower and North Tower, respectively. The Project will incorporate only one curb cut from K Street and will eliminate all other curb cuts on the site, which will dramatically decrease pedestrian conflicts. Tenants will not be permitted to use 55-foot trucks for

move-ins or move-outs, and if a 55-foot truck arrives, then it will be turned away. Furthermore, the closing of curb cuts on 3<sup>rd</sup> Street will minimize pedestrian conflicts. The Project's circulation plan for pedestrians and cars will allow for safe walking between the Project and destinations to the west because pedestrians will rarely cross paths with cars. Indeed, pedestrians on the site walking to the west will likely cross car paths only once. (Ex. 41, 50; 10/7/13 Tr. at p. 85.)

The Applicant's traffic impact study ("TIS") concluded that the Project will not create detrimental impacts to the transportation network. The proposed site plan contains many transit-oriented and multi-modal elements and will enhance the pedestrian environment around the site. Roadway impacts generated by new vehicular trips will be minimal and non-detrimental, in part due to a transportation demand management plan focused on encouraging alternative modes of travel (non-single occupancy vehicle). (Ex. 23C.)

As the TIS indicates, and DDOT confirmed, the transportation demand will be managed by the site's location near transit, car-sharing spaces, bicycle parking, pedestrian facilities, and the provision of a transportation demand management program. (Ex. 23, 41, 44; 10/7/13 Tr. at pp. 84-87.) In order to mitigate any possible adverse impacts from traffic generated by the project, the Applicant proposed the transportation demand management ("TDM") plan that incorporates DDOT recommendations; (Ex. 23, 23C, 41, 44; 10/7/13 Tr. at pp. 84-87.)

f. *Environmental Benefits*

The new buildings will attain a LEED Certified rating, and the Applicant will aim to qualify for a LEED Silver rating. The Applicant's preliminary LEED scorecard illustrates the Applicant's goal of 58 points, which is enough for a LEED Silver rating. The Project will incorporate additional environmental benefits:

- i. Elimination of approximately 29,300 square feet (nearly 50% of existing) of impervious parking surface and replacing it with pervious material;
- ii. Significant increase in outdoor green space, plantings, and tree cover;
- iii. Addition of approximately 26,400 square feet of green roofs; and
- iv. Extensive stormwater retention and water re-use features; and (Ex. 23, 41, 59C.)

g. *Uses of Special Value*

Prior to and after the filing of the PUD and Zoning Map Amendment applications, representatives of the Applicant's team engaged in significant outreach to the neighboring community. The Applicant and its design team have held many meetings with, and made many presentations to, ANC 6D, WFT, and other members of the community. The Applicant sought input from ANC 6D and the Southwest Community Benefits Coordinating Council ("CBCC") about the public amenities and benefits package. The Project's community amenities and public benefits were the result of the Applicant's extensive discussions with these groups. The Applicant's community amenities package includes the following:

- i. The Applicant will provide at least two Level II 240-volt electric car charging stations in the underground parking garage;
- ii. Prior to issuance of the building permit for the first new building, the Applicant will provide \$200,000 of direct construction services and supplies for capital improvements to the Randall Recreation Center ("RRC"), as identified by the Department of Parks and Recreation ("DPR") and the organization selected by the District of Columbia to operate the RRC; and

If the capital improvements to the RRC cost less than \$200,000, then the Applicant will contribute the remaining balance of the \$200,000 to the operating organization of RRC for salaries of a director and support staff. Prior to the issuance of a building permit for the first new building, the operating organization must demonstrate to the Zoning Administrator that it has used the funds for the stated purpose:

- a) If DPR or any other District of Columbia entity decides that the RRC shall not be used as a community recreation center, then prior to the issuance of a building permit for the first new building, the Applicant will provide \$200,000 worth of direct construction services and supplies for capital improvements that are identified by DPR.

### **Comprehensive Plan**

49. The Commission finds that the PUD advances the goals and policies in the Land Use, Environmental Protection, Housing, Urban Design and Lower Anacostia Waterfront Near Southwest Area Elements of the District of Columbia Comprehensive Plan ("Plan").
50. The Land Use Element of the Comprehensive Plan includes the following policies advanced by the Project:

- ***Policy LU-1.3.2: Development Around Metrorail Stations:*** Concentrate redevelopment efforts on those Metrorail station areas which offer the greatest opportunities for infill development and growth, particularly stations in areas with weak market demand, or with large amounts of vacant or poorly utilized land in the vicinity of the station entrance. Ensure that development above and around such stations emphasizes land uses and building forms which minimize the necessity of automobile use and maximize transit ridership while reflecting the design capacity of each station and respecting the character and needs of the surrounding areas;
- ***Policy LU-1.3.3: Housing Around Metrorail Stations:*** Recognize the opportunity to build senior housing and more affordable “starter” housing for first-time homebuyers adjacent to Metrorail stations, given the reduced necessity of auto ownership (and related reduction in household expenses) in such locations;
- ***Policy LU-1.3.4: Design To Encourage Transit Use:*** Require architectural and site planning improvements around Metrorail stations that support pedestrian and bicycle access to the stations and enhance the safety, comfort and convenience of passengers walking to the station or transferring to and from local buses. These improvements should include lighting, signage, landscaping, and security measures. Discourage the development of station areas with conventional suburban building forms, such as shopping center surrounded by parking lots;
- ***Policy LU-1.4.1: Infill Development:*** Encourage infill development on vacant land within the city, particularly in areas where there are vacant lots that create “gaps” in the urban fabric and detract from the character of a commercial or residential street. Such development should complement the established character of the area and should not create sharp changes in the physical development pattern;
- ***Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods:*** Recognize the importance of balancing goals to increase the housing supply and expand neighborhood commerce with parallel goals to protect neighborhood character, preserve historic resources, and restore the environment. The overarching goal to “create successful neighborhoods” in all parts of the city requires an emphasis on conservation in some neighborhoods and revitalization in others;
- ***Policy LU-2.1.10: Multi-Family Neighborhoods:*** Maintain the multi-family residential character of the District’s Medium- and High-Density residential areas. Limit the encroachment of large scale, incompatible commercial uses into these areas, and make these areas more attractive, pedestrian-friendly, and transit accessible; and

- **Policy LU-2.2.4: Neighborhood Beautification:** Encourage projects which improve the visual quality of the District’s neighborhoods, including landscaping and tree planting, façade improvement, anti-litter campaigns, graffiti removal, improvement or removal of abandoned buildings, street and sidewalk repair, and park improvements.

The Commission finds that the Project is not inconsistent with the land use element and will enhance its policies. The Project will provide new residential buildings on undeveloped land less than one block from a Metro station and adjacent to a proposed streetcar line. The Project will infill a site along a primary gateway to the Southwest Waterfront and bridges a gap between residential uses and commercial and entertainment venues. This Project will help infuse the neighborhood with new residents and increase the vibrancy of the area surrounding a Metrorail Station. The Project will provide opportunities for more affordable “starter” housing adjacent to a Metrorail stations, given the reduced necessity of auto ownership and related reduction in household transportation expenses in such locations. The Project will provide additional housing options for residents of the District and will encourage transit use through its location and design. Further, the Project will help revitalize the multifamily neighborhood by infusing it with new residents.

The Project will provide site planning improvements around a Metrorail station that will support pedestrian and bicycle access to the stations and will enhance the safety, comfort and convenience of passengers walking to the station. The Project will be a new development on an existing underdeveloped site that will increase the activity on the street and will increase the comfort of those using the Metro station.

In addition, the Project will incorporate extensive beautification efforts through improved landscaping surrounding the entire project including along M, 3<sup>rd</sup>, and K Streets. By replacing a large parking lot along M Street with a new building and landscaping, the Project will instantly and drastically improve the streetscape and aesthetic along M Street. In addition, the Project will incorporate significant open space that will enhance the open space already in the area and that will beautify the neighborhood.

51. The Comprehensive Plan’s Housing Element includes the following policies that are supported by the Project:

- **Policy H-1.1.1: Private Sector Support:** Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives;

- ***Policy H-1.1.5: Housing Quality:*** Require the design of affordable housing to meet the same high-quality architectural standards required of market-rate housing. Regardless of its affordability level, new or renovated housing should be indistinguishable from market rate housing in its exterior appearance and should address the need for open space and recreational amenities, and respect the design integrity of adjacent properties and the surrounding neighborhood; and
- ***Policy H-1.1.3: Balanced Growth:*** Strongly encourage the development of new housing on surplus, vacant and underutilized land in all parts of the city. Ensure that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including the need for low- and moderate-density single family homes as well as the need for higher-density housing.

The Commission finds that the Project will not be inconsistent with the housing element and will advance many of its policies. The Project will offer new market-rate and affordable housing along a prominent transportation route and adjacent to a Metro station. In addition, the Project will contribute to the District's housing supply by providing new housing on an under-developed parcel that is in an area of the District that has not generated much new housing in the past but can easily support more. The Project will provide new high-quality housing in an emerging employment and entertainment node of the District. The Project will offer a mix of studio, one bedroom, and two bedroom units.

52. The Environmental Protection Element of the Comprehensive Plan includes the following policies that are supported by the Project:

- ***Policy E-1.1.3: Landscaping:*** Encourage the use of landscaping to beautify the city, enhance streets and public spaces, reduce stormwater runoff, and create a stronger sense of character and identity;
- ***Policy E-2.2.1: Energy Efficiency:*** Promote the efficient use of energy, additional use of renewable energy, and a reduction of unnecessary energy expenses. The overarching objective should be to achieve reductions in per capita energy consumption by DC residents and employees;
- ***Policy E-3.1.1: Maximizing Permeable Surfaces:*** Encourage the use of permeable materials for parking lots, driveways, walkways, and other paved surfaces as a way to absorb stormwater and reduce urban runoff; and
- ***Policy E-3.2.1: Support for Green Building:*** Encourage the use of green building methods in new construction and rehabilitation projects, and develop green building methods for operation and maintenance activities.

The Commission finds that the Project is not inconsistent with this element and will advance its policies. The Project incorporates many environmentally sensitive features that will allow it to secure a LEED Certified (and likely Silver) rating. The Project incorporates many “green” features that will allow it to satisfy the LEED Silver standard. Such green features include green roofs, fewer permeable surfaces, water efficient landscaping, more trees, water retention and reuse, and enhanced energy efficiency for HVAC systems and lighting. (Ex. 2, 17, 41, 50.)

53. The Project supports the following policies of the Urban Design Element of the Comprehensive Plan:

- ***Policy UD-1.4.1: Avenues/Boulevards and Urban Form:*** Use Washington’s major venues/boulevards as a way to reinforce the form and identity of the city, connect its neighborhoods, and improve its aesthetic and visual character. Focus improvement efforts on avenues/ boulevards in emerging neighborhoods, particularly those that provide important gateways or view corridors within the city;
- ***Policy UD-1.4.3: Avenue/Boulevard Vistas and View Corridors:*** Protect views and view corridors along avenues/boulevards, particularly along streets that terminate at important civic monuments or that frame distant landmarks. Vistas along such streets should be accentuated by creating more well-defined street walls, improving landscaping, and requiring the highest architectural quality as development takes place;
- ***Policy UD-2.2.1: Neighborhood Character and Identity:*** Strengthen the defining visual qualities of Washington’s neighborhoods. This should be achieved in part by relating the scale of infill development, alterations, renovations, and additions to existing neighborhood context;
- ***Policy UD-2.2.4: Transitions in Building Intensity:*** Establish gradual transitions between large-scale and small-scale development. The relationship between taller, more visually prominent buildings and lower, smaller buildings (such as single family or row houses) can be made more pleasing when the transition is gradual rather than abrupt. The relationship can be further improved by designing larger buildings to reduce their apparent size and recessing the upper floors of the building to relate to the lower scale of the surrounding neighborhood;
- ***Policy UD-2.2.5: Creating Attractive Facades:*** Create visual interest through well-designed building facades, storefront windows, and attractive signage and lighting. Avoid monolithic or box-like building forms, or long blank walls which detract from the human quality of the street;

- ***Policy UD-2.2.7: Infill Development:*** Regardless of neighborhood identity, avoid overpowering contrasts of scale, height, and density as infill development occurs; and
- ***Policy UD-2.2.2: Areas of Strong Architectural Character:*** Preserve the architectural continuity and design integrity of historic districts and other areas of strong architectural character. New development within such areas does not need to replicate prevailing architectural styles exactly but should be complementary in form, height, and bulk.

The Commission finds that the Project is not inconsistent with this element and will advance its policies. The Project has been carefully designed to achieve strong architectural character in an area that is recently attracting new development. It is situated along a major east-west corridor (M Street) in Southwest Washington with vistas to the Potomac River. The buildings' design will help connect the waterfront to the neighborhoods to the east by closing a gap in the urban fabric and by providing more housing in a newly emerging employment and entertainment district. In addition, the excellent design will create noteworthy and attractive buildings that respect and enhance two historic buildings in the neighborhood, helping to give the neighborhood a more defined character. Further, the building design is inspired by the styles in the Southwest Waterfront neighborhood and incorporates elements from the historic Pei Towers. The site plan incorporates appropriate spacing and building layout to respect the Pei Towers and the site planning of Southwest and to provide ample open space. (Ex. 2, 41, 50; 10/7/13 at Tr. pp. 53-76.)

54. The Project supports the following policies of the Lower Anacostia Waterfront Near Southwest Area Element of the Comprehensive Plan:

- ***Policy AW-1.1.1: Conservation of Established Waterfront Neighborhoods:*** Revitalize and preserve established neighborhoods in the Waterfront Planning Area. Continued investment in the existing housing stock and in established local commercial areas should be strongly encouraged;
- ***Policy AW-2.1.1: Mixed Use Development:*** Support the redevelopment of the Southwest Waterfront with medium to high-density housing, commercial and cultural uses, and improved open space and parking. The development should be designed to make the most of the waterfront location, preserving views and enhancing access to and along the shoreline; and
- ***Policy AW-1.1.2: New Waterfront Neighborhoods:*** Create new mixed use neighborhoods on vacant or underutilized waterfront lands, particularly on large contiguous publicly-owned waterfront sites. Within the Lower Anacostia Waterfront/Near Southwest Planning Area, new neighborhoods should be

developed at the Southwest Waterfront, Buzzard Point, Poplar Point, Southeast Federal Center and Carrollsburg areas. These neighborhoods should be linked to new neighborhoods upriver at Reservation 13, Poplar Point, and Kenilworth-Parkside. A substantial amount of new housing and commercial space should be developed in these areas, reaching households of all incomes, types, sizes, and needs.

The Commission finds that the Project is not inconsistent with this area element. The Project will advance the goal of helping to create a new Southwest Waterfront neighborhood. By providing new housing only a few blocks from the Southwest Waterfront, the Project will strengthen the overall neighborhood with additional residents who will enliven the streets and patronize businesses, while creating a strong sense of a community. The Project will bring a mix of residents to the neighborhood by providing both market-rate and affordable units. (Ex. 2, 41, 50.)

55. Based on the evidence and testimony from the Applicant and OP, the Commission finds that the proposed PUD-related Zoning Map amendment to the CR Zone District is not inconsistent with the Property's designation on the Future Land Use Map. The CR Zone District in this case is congruent with the high-density residential land use category in the Comprehensive Plan. *See* Future Land Use Map and Categories § 225.5. The Framework Element of the Comprehensive Plan provides guidelines for using the Future Land Use Map. This Element states that the Future Land Use Map is not a zoning map and "by definition... is to be interpreted broadly." *See* Guidelines for Using the Generalized Policy Map and the Future Land Use Map § 226. It also states that zoning for an area should be guided by the Future Land Use Map interpreted in conjunction with the text of the Comprehensive Plan and that "a range of densities and intensities applies within each category and the use of different zone districts within each category should reflect this range." By the Plan's own terms, it should be used only as guidance and not as a definitive source for appropriate uses. In addition, the Framework Element does not suggest an "appropriate" land use designation for the CR Zone District. In this case, it is significant that some nearby properties with the same land use designation are included in higher-density Zone Districts. The requested CR zoning will allow the Project to attain a greater height, which is necessary for massing to preserving the site plan with significant open space. The CR zoning will not be necessary for additional density since the Project has an FAR of 4.1, which is less than what is permitted as a matter-of-right in the R-5-D Zone District. Given all of these considerations, the proposed CR Zone District is appropriate for this site and Future Land Use Map designation. (Ex. 2, 41, 43.)
56. Based on evidence and testimony from the Applicant and OP, the Commission finds that Project's height and massing are not inconsistent with the Future Land Use Map or the Comprehensive Plan. The interpretation guidelines in the Comprehensive Plan for the Future Land Use Map are explicit that the Future Land Use Map is not a zoning map and does not specify allowable uses or dimensional standards. The interpretation guidelines

also indicate that the “typical building heights and densities included in the land use category simply describe the ‘general character’ of the area, and state that the ‘granting of density bonuses [through PUDs] may result in heights that exceed the typical ranges cited here.’ Finally, the Guidelines indicate that the Future Land Use map designations are not parcel-specific and should be interpreted in conjunction with the text of the Plan.” Accordingly, the Commission finds that in the context of the overall Comprehensive Plan and the Project, the PUD-related Zoning Map amendment, and height of the Project allowed by it are not inconsistent with the Future Land Use Map. (Ex. 2, 41, 43, 50; 10/7/13 Tr. at pp. 142-144.)

### **Government Agency Reports**

57. By report dated September 27, 2013, OP recommended, subject to conditions, that the proposed PUD and related Zoning Map amendment should be approved. In its testimony at the public hearing, OP reiterated its recommendation for approval. (Ex. 43; 10/7/13 Tr. at pp. 142-144.)
58. OP determined that the Project and related Zoning Map amendment would not be inconsistent with the Comprehensive Plan and would be consistent with the Future Land Use Map. In its report, OP stated, “The proposed CR zoning, which is intended to accommodate a more intensive residential project, is consistent with the land use designation.” (Ex. 43; 10/7/13 pp. Tr. at pp.142-144.)
59. By its report dated September 30, 2013, DDOT supported approval of the PUD and related Zoning Map amendment, with conditions and recommendations. At the public hearing, DDOT reiterated its support. DDOT stated that it found that the Project will generate minimal or insignificant amounts of new vehicle trips as well as minimal impacts on the on-street parking supply. (Ex. 44; 10/7/13 Tr. at pp. 144-146.) DDOT submitted a second report dated December 13, 2013 regarding relocation of the bus stop currently located at 1101 3<sup>rd</sup> Street S.W. during construction of the PUD project.
60. Through OP, DC Water submitted a letter, dated April 25, 2013 that stated that there is water and sewer infrastructure available for the Project. (Ex. 43.)

### **ANC 6D Report**

61. On September 30, 2013, ANC 6D submitted a report in support of the applications, with conditions. The letter stated that, on September 9, 2013, at a duly noticed meeting with a quorum present, the ANC voted to support the PUD and related Zoning Map amendment applications. The recommendation included conditions of support, which included addressing privacy concerns, a construction management plan, a signage plan, removal of

the project from RPP eligibility, necessary access easements, and ADA accessible drop-off areas. (Ex. 45.)

62. At the public hearing, Roger Moffatt testified in support on behalf of ANC 6D. During his testimony, Mr. Moffatt stated that the Applicant had worked with the community and WFT and made many changes to the site and building design to address concerns such as privacy. In addition, he stated that the ANC worked with the Applicant to improve the site planning by removing one of the originally proposed buildings. Mr. Moffatt noted that the Applicant agreed to and satisfied all of the ANC's conditions of support. Further, Mr. Moffatt testified, "[We] believe the project will be beneficial to the community and we ask the commission to approve the PUD application." (10/7/13 Tr. at pp. 148-157.)

### **Parties in Support**

63. WFT testified as a party in support of the applications stating that they do not oppose the applications. WFT testified that the Applicant made significant outreach efforts to WFT. WFT stated that the Applicant was responsive to WFT's list of concerns including changes to the building to address privacy concerns and agreeing to examine respective maintenance obligations for the central courtyard. (10/7/13 Tr. at pp. 165-168.)
64. WFT also discussed a letter it received from the Applicant's attorney dated April 19, 2013. (Ex. 58.) That letter indicated that "any action taken by any unit owner of the Waterfront Tower Condominium, or any action taken by the Unit Owners Association or its Board of Directors, to oppose or hinder the [Applicant's] proposed redevelopment of the Property constitutes a material breach of the ... Public Offering Statement." Therefore all units refrain from "taking any, other action that would oppose or hinder the proposed redevelopment." The letter closed by threatening to take legal action against both individual unit owners and Board members and to hold each person responsible for any costs or damages incurred by the Applicant, noting that this could "result in significant financial responsibility."
65. WFT acknowledged that the Applicant sent a follow-up letter from that same law firm stating its understanding that the previous letter was "viewed as threatening, counterproductive and not conducive to ongoing communications between the Developer and the Unit Owners Association."<sup>2</sup> (Ex. 59, Tab E.) The firm indicated that this was not the intent of the Applicant and apologized if "the tone of our firm's letter was unintentionally aggressive". The letter closed by indicating that the Applicant had "no intention of filing a law suit against the Units Owners, the Unit Owners Association, or the Board of Directors for communications with the Developer on this project."

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<sup>2</sup> This was followed by a direct letter of apology from the Applicant, which also clarified that it would not file any lawsuit against anyone for voicing opposition to the project. (Ex. 59, Tab E.)

66. Based upon the representations made in this second letter, WFT stated that they testified as a party in support without coercion. (10/7/13 Tr. at pp. 177-187.)
67. On October 28, 2013, WFT submitted a letter stating that it was negotiating a memorandum of agreement with the Applicant concerning the proposed development. The letter also stated that WFT was opposed to the Applicant's commitment to open the gates from 3<sup>rd</sup> Street into the south courtyard from 8:00 a.m. and 6:00 p.m. for use by pedestrians.

### **Persons in Support**

68. Tanya Patterson testified in support. She testified that she was the sales agent for WFT when it was converted to condominiums. She testified that the sales office displayed future development plans with conceptual renderings of the buildings. She also testified that she explained to every purchaser about the future development on the Property. Further, she stated that the Project would boost local property values and would be an asset to the Southwest neighborhood. (10/7/13 Tr. at pp. 209-211.)
69. Afifa Klouj testified in support. She testified that she is a WFT resident and that she was the former president of the tenants association when the Applicant converted the building to condominiums. She testified that, in her experience, the Applicant was very responsive. She also stated that the development agreement stated that there would be large buildings on the existing north and south parking lots. She stated that the Applicant listened and responded to concerns from WFT residents by modifying the Project. She testified that design is appropriate and respects the design of the Pei Towers. (10/7/13 Tr. at pp. 211-214.)
70. Two other nearby residents testified in support of the Project. They testified that the Project is a better use of land by eliminating surface parking lots, will enhance services in the neighborhood, that the scale of the new buildings is appropriate for their context, that the historic buildings can be enhanced by increased density. Further, they testified that the Project will enhance the site by renovating the north Pei Tower and that the project will benefit the neighborhood by establishing a street wall. (10/7/13 Tr. at pp. 218-223.)
71. The Commission received three letters of support for the Project. The letters expressed support of the Project based on the proffered public amenities, the Applicant's history of commitment to the neighborhood, the appealing context-appropriate design of the Project, the elimination of unsightly surface parking lots, the enhancement of open space, overall enhancement and benefit to the character of the neighborhood, the potential to draw greater amenities and reduce crime, the appropriateness of the new buildings' heights, and the Project's design sensitivity to the landmark. (Ex. 42, 48, 52.)

### **Parties in Opposition**

72. CAC testified as a party in opposition. They testified that the Project does not reflect design elements of Southwest, that the new buildings are too tall, and that the Project lacks sufficient open space. (10/7/13 Tr. at pp. 227-231.)

### **Persons in Opposition**

73. At the public hearing, five people testified in opposition to the Project. Reasons cited for opposition to the project included: the Project is not in character with the neighborhood; building heights are too tall and should not be greater than the Pei Towers; that the design does not respect the historic Pei Towers and blocks them from view; that the design provides insufficient open space; that there could be traffic conflicts, and that the design could be improved. (10/7/13 Tr. at pp. 203-209, 214-218, 231-39.)

### **Satisfaction of the PUD and Zoning Map Amendment Approval Standards**

74. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects.” (11 DCMR § 2403.8.) The Applicant engaged in extensive communication with ANC 6D and the CBCC to develop a specific and appropriate package of public benefits and amenities. Given the amount and quality of the project amenities and public benefits included in this PUD and related Zoning Map amendment applications, the Commission finds that the very limited development incentives to be granted for the Project and the related rezoning are appropriate and that the applications satisfy the requirements for a PUD under Chapter 24 of the Zoning Regulations. The Commission also finds that the requested areas of flexibility from the requirements are consistent with the purpose and evaluation standards of Chapter 24 of the Zoning Regulations and are fully justified by the superior benefits and amenities offered by this Project.
75. Based on evidence and testimony submitted by the Applicant, the Commission finds that the Project is acceptable in all proffered categories of public benefits and project amenities and is superior in public benefits and project amenities relating to land use, urban design, housing, historic preservation, site planning, transportation, environment, and uses of special value to the neighborhood and District as a whole.
76. The Commission also credits the testimony of the Applicant and OP that the proposed PUD project and rezoning of the Property are not inconsistent with the Comprehensive Plan or the Future Land Use Map. The proposed CR Zone District is consistent with the Property’s FLUM designation as high-density residential. The Project and related rezoning are consistent with high-density residential development and advance numerous policies of the Comprehensive Plan.

77. The Commission credits the written submissions and testimony of the Applicant, the party in support, and persons in support that the PUD, related map amendment, and community amenities package resulted from significant and inclusive community outreach and input over many years. The Commission finds that the Applicant engaged in extensive outreach with the community, particularly WFT, and participated in numerous meetings, phone calls, and email exchanges with various community and ANC members to solicit feedback. The Commission acknowledges that Applicant was responsive to concerns, demonstrated by the number of changes to the Project – including removal of one building, reduction in size of each new building, architectural refinements, and adjustments for increased privacy – that were direct responses to community concerns. The Commission is not persuaded by testimony from opponents that the Applicant did not engage them or was not responsive, or that they did not have the opportunity to provide feedback on the Project. The Commission finds that the Applicant engaged in extensive public outreach during the planning for the Project and that no person or organization was ever deliberately excluded.
78. The Commission credits the written submissions and testimony of the Applicant and persons in support that owners in WFT made aware of the Project and that development plans for the Property were widely known. Nevertheless, this was no excuse for the April 19, 2013 letter that threatened legal action if the Unit Owners voiced opposition to this application. Regardless of whether the Applicant was within its legal rights, the letter was later properly characterized by that same law firm as “threatening, counterproductive and not conducive to ongoing communications between the [Applicant] and the Unit Owners Association.” It also was entirely inconsistent with the spirit of the Zoning Regulations and fell far below the minimum standard of Applicant conduct expected by the Commission.
79. Nevertheless, The Commission finds that the Applicant’s subsequent two letters to the WFT sufficiently retracted the original threat of legal retribution and sufficiently apologized for the tone and substance of the first letter, which understandably caused consternation among WFT residents.
80. The Commission credits the written submissions and testimony of the Applicant and persons in support that height, size, and placement of the new buildings is appropriate and will not detrimentally restrict light, air, and openness on the site. The Commission is compelled by the narrow profiles of the new buildings and the significant amounts of open space around them to conclude that the massing of new buildings will be appropriate for the site and for the Southwest neighborhood. The Commission finds that the distances between the buildings is appropriate to retain the character of the neighborhood and respect the Pei Towers while acknowledging that these separation distances are not unusual for an urban environment containing many tall buildings, such as this part of Southwest. Toward this conclusion, the Commission credits the Applicant’s examples of other buildings in the District of Columbia where such building

separations are appropriate. Furthermore, the Commission is convinced that the design refinements made in response to community comments will preserve the design integrity and resident privacy of the Pei Towers. Based on the many enhancements and benefits that this Project will bring to the neighborhood, the Commission concludes that the Project will not have a deleterious effect.

81. The Commission credits the testimony and written submissions of the Applicant that the Project design will provide significant amounts of open space that will preserve light, air, and quality of life for the neighborhood. The Project's landscape and site design will incorporate many new features, such as parking screening, more plantings, fewer fences, and less asphalt, that will enhance the existing open spaces and will provide more landscaped and welcoming spaces than currently exist. The Commission concludes that the high quality of the public open space in the neighborhood that will accompany the addition of two new buildings on the Property will significantly outweigh the loss of low quality open space.
82. The Commission credits the testimony and written submissions of the Applicant, OP, and persons in support that the Project design is compatible with and consistent with the historic Pei Towers and the surrounding neighborhood. The Commission is convinced that the height and placement of the new buildings will not unreasonably restrict views of the Pei Towers or isolate them from the neighborhood because of the open space character of the site plan and the narrow new building profiles. The design of the new buildings draws elements from the Pei Towers and incorporates many elements to respect and be compatible with the historic structures. The placement of these new buildings immediately among many other planned or existing tall buildings will not disrupt and will not be incompatible with the Mid-Century design character of other parts of Southwest that have tall buildings surrounded by lower buildings. Furthermore, the Commission is convinced that the design, height, and placement of the new buildings is appropriate for the historic context because of the extensive community and agency review, and ultimately, HPRB concept approval of the design.
83. The Commission credits the testimony and written submissions of the Applicant that the landscape design is compatible with the neighborhood context and is consistent with the historic Kiley and Zion & Breen landscape designs for the much of the neighborhood and the Property, respectively. The Commission finds that the Project's landscape design will create an open park setting that draws upon and incorporates elements of the historic landscape design from Kiley and Zion & Breen.
84. The Commission credits the testimony and written submissions of the Applicant and DDOT that the site will provide a safe traffic flow pattern for both cars and pedestrians. The Commission finds that elimination of curb cuts and the circulation pattern for the Project will limit pedestrian-automobile conflicts. Furthermore, the Project's ban on 55-foot trucks will limit any potential for problems or conflicts with large trucks at the site.

The Commission finds that the pedestrian pathways to the Metro station and retail establishments to the west will not unduly compromise pedestrian or public safety.

85. The Commission finds that the proposed PUD and related map amendment of the Property to the CR Zone District is appropriate for the location given the superior features of the Project. Such features include the high-quality architecture; the narrow building profiles; the significant landscaping improvements, and context-sensitive design. In addition, the project will include superior features related to transportation, including its location in close proximity to many forms of public transit; dedicated car-sharing spaces; dedicated electric car charging spaces; and the provision of numerous bicycle parking facilities; and underground loading facilities. The Commission's conclusion is consistent with OP's recommendations to approve the project and the PUD-related Zoning Map amendment.
86. The Commission finds that through its testimony at the October 7, 2013 hearing and in its October 21, 2013 submission, the Applicant sufficiently complied with or agreed to OP's conditions of support. The Applicant withdrew its request for relief from Inclusionary Zoning, set a development timeframe, and conditioned a building permit on delivery of the amenities package. Accordingly, the Commission can accord OP's full support for the Project and related Zoning Map amendment. (Ex. 59.)
87. The Commission finds that, through the Applicant's testimony at the October 7, 2013 hearing and through its October 21, 2013 submission, the Applicant sufficiently responded to DDOT's conditions and recommendations in its report. The Commission concludes that DDOT's full support for the Project and related Zoning Map amendment can be accorded. The Applicant agreed to the recommended TDM measures, which will reduce demand for parking and automobiles. Based on this agreement and the Applicant's own testimony and written submissions, the Commission finds that the Project will not have an adverse impact on the transportation or parking network in the vicinity of the Project. (Ex. 59; 10/7/13 Tr. at pp. 42-43.)
88. The Commission finds that the Applicant satisfactorily complied with or agreed to the ANC's conditions of support.
89. From evidence presented at the hearing the Commission finds that the PUD and related Zoning Map amendment will not have material adverse impacts on neighboring properties. The Commission credits the Applicant's examples of the distances between other buildings in the District of Columbia and the architectural and site planning features of the Project to demonstrate that the distances between new buildings and the Pei Towers are appropriate. Further, the Commission credits the Project's architectural, narrow massing, and landscaping features to demonstrate that the building heights will not cause adverse impacts on neighboring properties. Finally, the Commission credits the site planning and landscape features to demonstrate that the Project will retain the open park-like characteristics of the neighborhood. (Ex. 50; 10/7/13 Tr. at pp. 55-57)

90. The Commission finds that the Applicant's submission on October 21, 2013 adequately addressed questions raised during the October 7, 2013 hearing. The Commission credits the before and after views of the Project site that demonstrate the significant improvement the Project will bring to the Property. The Commission credits the Applicant's revised penthouse design to minimize their visual impacts and to eliminate the need for penthouse setback relief. The Commission credits the reduced penthouse sizes and lighter color to accomplish this goal. Further, the Commission credits the many sustainable features of the Project that will retain and reuse water on-site. The Commission also credits the Applicant's demonstration of the landscape plan's consistency with the original landscape design and the Kiley designs in the neighborhood.
91. The Commission finds that the Applicant's submission dated December 16, 2013 adequately responded to the concerns raised by the Commission when it took proposed action. Specifically with respect to project vesting, the Commission understands that the Applicant is not seeking to vest the entire PUD upon the filing of a building permit for the first building, but that it wishes to have the first building's PUD rights vested once construction timely commences. The proposed condition has been modified accordingly. As to the length of this approval, the Commission accepts the Applicant's explanation that the need to time the delivery of the buildings to adjust to a changing residential market requires that it be given the flexibility to begin construction of the first building no later than seven years after this order becomes effective and begin construction of the second building 13 years after that effective date.
92. The Applicant also addressed the issues raised in WFT's October 28, 2013 letter. The Applicant has completed a Memorandum of Understanding ("MOU") with WFT that includes almost all the terms mentioned in WFT's letter, and the Commission has made some of those terms into conditions of this Order. The Applicant and WFT do not agree on whether to lock the gates from 3<sup>rd</sup> Street into the south courtyard of the project. The Commission believes that opening the gates will enhance pedestrian access to the Metro station for community residents living east of the project. WFT believes that permitting the gates to be open presents a public safety threat. The Applicant has proposed a logical compromise: to permit public access through the gates during the day, but allow the gates to be closed at night. The Commission believes that what the Applicant has proposed is a reasonable compromise. The Order therefore includes a condition requiring the Applicant to keep the gates open between the hours of 8:00 a.m. and 6:00 p.m.

### **CONCLUSIONS OF LAW**

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promote "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces-and other amenities." (11 DCMR § 2400.1.) The

overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience.” (11 DCMR § 2400.2.)

2. Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD. (11 DCMR § 2402.5.) The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, and yards or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment. (11 DCMR § 2405.)
3. The development of the Project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design and that would not be available under matter-of-right development.
4. The applications meet the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The two applications each meet the contiguity requirements of § 2401.3, even though the Commission is reviewing and deciding on them as one.
6. The proposed height and density of the buildings in the Project will not cause a significant adverse effect on any nearby properties and does, in fact, comport with District goals for development of an infill parcel near a Metro station. Any impact of the Project on the surrounding area and adjacent properties is deemed to be not unacceptable. As demonstrated by the Applicant’s architect, the Project’s height, massing, placement, and design will not unreasonably restrict light, air, open space, and it will not unduly compromise privacy in nearby buildings.
7. The Commission finds, in concurrence with the Court of Appeals for D.C., that a property owner does not enjoy any right to a view across a neighbor’s property. *See Ash v. Tate*, 73 F.2d 518, 519 (Ct. App. D.C. 1934); *Hefazi v. Stiglitz*, 862 A.2d 901, 911 (D.C. 2004). Accordingly, opponent assertions that the Project will diminish views are immaterial to the Commission’s considerations of this PUD’s impact on light and air available to neighboring properties.
8. The Commission finds that the benefits and amenities provided by the Project are significant, and the project will offer superior features that will benefit the neighborhood to a greater extent than a matter-of-right development would. Thus, granting the development incentives proposed in this application is appropriate.

9. The application seeks a PUD-related Zoning Map amendment to the CR Zone District. The application also seeks flexibility from the Zoning Regulations regarding side yard, single record lot, open space, loading, and roof structure size requirements. The Commission finds that granting such flexibility is appropriate for the Project and will not impair the zone plan embodied in the Zoning Regulations and Zoning Map for the District of Columbia.
10. The Commission finds that approval of the PUD and change in zoning is not inconsistent with the Comprehensive Plan or Future Land Use Map. The Commission finds that the PUD-related rezoning of the Property to CR is not inconsistent with the Future Land Use Map or the Comprehensive Plan as a whole since the CR Zone District is commensurate with high-density residential development. Accordingly, the Commission finds project at this location with this height, massing, and density is appropriate and consistent with District land use policies as set forth in the Comprehensive Plan.
11. The Commission finds that the PUD is not inconsistent with the Comprehensive Plan and advances the goals and policies in the elements of the Comprehensive Plan, as stated in Findings of Fact Nos. 49-56. The PUD is not inconsistent with the major themes and citywide elements of the Comprehensive Plan, including the Land Use, Housing, Urban Design, Environmental, and Area Elements.
12. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give “great weight” to the written recommendation of the affected ANC. As reflected in the Findings of Fact, ANC 6D voted to support the application, and its written recommendation included conditions of support, which included addressing privacy concerns, a construction management plan, a signage plan, removal of the project from RPP eligibility, necessary access easements, and ADA accessible drop-off areas. The Commission has found that the Applicant has satisfactorily complied with or agreed to the ANC’s conditions of support. (See Finding of Fact No. 88.) By virtue of the preceding discussion, the Commission has accorded ANC 6D the great weight to which it is entitled. In so doing, the Commission fully credited the unique vantage point that ANC 6D holds with respect to the impact of the proposed PUD on the ANC’s constituents.
13. The Commission is required to give “great weight” to the recommendations of OP by § 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). The Commission gives OP’s recommendation to approve the PUD and related Zoning Map amendment to the CR Zone District great weight and concurs with its conclusions.
14. The PUD project and the rezoning of the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

15. The Commission notes that the Zoning Regulations treat a PUD-related Zoning Map amendment differently from other types of rezoning. PUD-related Zoning Map amendments do not become effective until after the filing of a covenant that binds the current and future owners to use the Property only as permitted and conditioned by the Commission. If the PUD project is not constructed within the time and in the manner enumerated by the Zoning Regulations and the conditions of this Order, the Zoning Map amendment expires and the zoning reverts to the pre-existing designation, pursuant to 11 DCMR § 2400.7. A PUD-related Zoning Map amendment is thus a temporary change to existing zoning that does not begin until a PUD covenant is recorded, ceases if the PUD is not built, and ends once the PUD use terminates. Here, the Commission finds that the proposed PUD-related map amendment of the Property to the CR Zone District is appropriate given the superior features of the PUD project and is subject to the limitations stated herein.

### **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 consolidated review of a planned unit development and related Zoning Map amendment to the CR Zone District for the Subject Property (Lot 816 and part of Lot 79 in Square 542). The approval of this PUD is subject to the following conditions:

#### **A. PROJECT DEVELOPMENT**

1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 41, 50, 59B, 63A, and 63B of the record, as modified by the guidelines, conditions, and standards of this Order.
2. The Applicant shall have flexibility with the design of the PUD in the following areas:
  - a. To make adjustments and refinements to the exterior design of the Project in response to direction received from the Historic Preservation Office or Historic Preservation Review Board;
  - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
  - c. To vary final selection of the exterior materials within the color ranges and materials types as proposed based on availability at the time of construction or in response to direction received from the Historic Preservation Office or the Historic Preservation Review Board; and

- d. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings, and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the building uses or systems.

**B. PUBLIC BENEFITS**

1. The northern and southern courtyard gates from 3<sup>rd</sup> Street will be unlocked from 8:00 a.m. to 6:00 p.m. every day. The Applicant will affix a sign on the gates indicating when they will be open.
2. The Applicant will provide at least two Level II 240-volt charging stations for electric cars in the underground parking garages. The charging stations may be in one or both parking garages.
3. The Applicant shall include in each residential lease/purchase agreement a provision prohibiting the tenant/owner from applying for an off-site permit under the Residential Parking Permit (“RPP”) Program set forth at 18 DCMR §§ 2411 through 2416. In addition, the Applicant will request that DDOT remove the Subject Property from the list of properties eligible for RPPs, or if presently not on the list, classifying it as ineligible for RPP. For so long as the Applicant owns the Subject Property, and once DDOT has removed the Subject Property from the list of properties eligible for RPPs or has classified the Subject Property as ineligible for RPP, the Applicant shall not reapply to have the Subject property added back to the list of properties eligible for RPPs or reclassified as eligible for RPP. The Applicant shall also include in each residential lease/purchase agreement a provision prohibiting the tenant/owner from reapplying to have the Subject Property added back to the list of properties eligible for RPPs or reclassified as eligible for RPP.
4. The Applicant shall make the following contributions within the specified period:
  - a. Prior to issuance of the building permit for the first new building, the Applicant will provide \$200,000 of direct construction services and supplies for capital improvements to the Randall Recreation Center (“RRC”), as identified by the Department of Parks and Recreation (“DPR”) and the organization selected by the District of Columbia to operate RRC;
  - b. If the capital improvements to RRC cost less than \$200,000, then the Applicant will contribute the remaining balance of the \$200,000 to the operating organization of RRC for salaries of a director and support staff.

Prior to the issuance of a building permit for the first new building, the operating organization must demonstrate to the Zoning Administrator that it has used the funds for the stated purpose; and

- c. If DPR or any other District of Columbia entity decides that RRC shall not be used as a community recreation center, then prior to the issuance of a building permit for the first new building, the Applicant will provide \$200,000 worth of direct construction services and supplies for capital improvements are identified by DPR.
5. The Project shall be designed to satisfy a LEED Certified rating, and the Applicant shall endeavor to satisfy a LEED Silver rating. However, the Applicant shall not be required to obtain LEED Certified or LEED Silver certification from the United States Green Building Council.
  6. The Applicant shall establish a TDM program that includes the following:
    - a. During construction, the Applicant shall be responsible for relocation of the existing bus stop located at 1101 3<sup>rd</sup> Street, S.W. during the construction of the project at its expense. Any modifications to the bus stop shall comply with WMATA standards. The Applicant shall contact WMATA regarding this relocation in sufficient time for WMATA to give two weeks notice to customers and operators. The Applicant shall make best efforts to mitigate impacts to existing bus service during construction;
    - b. The Applicant will unbundle all parking costs from the cost of lease or purchase. Parking costs will be set at no less than the charges of the lowest fee garage located within one quarter mile;
    - c. The Applicant will post all TDM commitments on-line, publicize availability, and allow the public to see what commitments have been promised;
    - d. The Applicant will identify a TDM Leader (for planning, construction, and operations), and provide DDOT/Zoning Enforcement with annual TDM Leader contact updates;
    - e. The Applicant will provide website links to [CommuterConnections.com](http://CommuterConnections.com) and [goDCgo.com](http://goDCgo.com) on developer and property management websites;
    - f. The Applicant will provide an on-site business center to residents with access to copier, fax, and internet services;

- g. The Applicant will provide a one-year membership in a car-sharing program or bike share program for each initial resident;
  - h. The Applicant will reserve at least one parking space for a car-sharing service in the underground parking garages. The exact number of spaces will be determined by the car-sharing service's requirement and demands for this location. The car-sharing service will rent the space(s) at the same cost as building tenants. If the reserved space is not desired by any car-sharing service, then it shall revert to the Applicant's general use;
  - i. The Applicant will provide an electronic message screen displaying real-time transportation information in the lobbies of both new buildings; and
  - j. The Applicant will provide at least 119 bike parking spaces in the two underground parking garages combined, and at least 20 bike parking spaces above ground.
7. The Applicant shall abide by the terms of the Construction Management Plan. (Ex. 45.)
8. Prior to the issuance of a Certificate of Occupancy for the first new building, the Applicant will meet with the ANC, WFT, and the Historic Preservation Office to create a signage plan for K, M, and 3<sup>rd</sup> Streets that precludes art and billboards on the sides of the buildings. The Applicant will work with the same groups to address gate door designs for new entrances from 3<sup>rd</sup> Street, S.W., modification to the west end of 1101 3<sup>rd</sup> Street for ADA access and for trash container storage, and window treatment/film for energy efficiency for WFT. To the extent that any of the buildings in the PUD application may have different ownership in the future, easements necessary for preserving pedestrian and vehicle access for the entire PUD site, particularly the courtyard and the parking areas, will be recorded. The existing easements for these purposes shall remain and shall convey with the land unless and until modified.

### **C. MOU CONDITIONS**

- 1. The Applicant shall have the following obligations with respect to the WFT:
  - a. The Applicant will fund the acquisition and installation of a semi-transparent interior window film on all of WFT's apartment windows. WFT shall be responsible for all film installation and maintenance. The type, appearance, and cost of the film shall be mutually agreed upon by both WFT and the Applicant. The Applicant will fund the film acquisition and installation in such manner and at such time as the parties shall mutually agree, but not later than commencement of construction on the

new South Building. The Applicant shall submit written evidence it has funded the film acquisition and installation to the Zoning Administrator prior to the issuance of the Certificate of Occupancy for the South building;

- b. Once the Applicant provides access to the Center Courtyard for any of the buildings in the PUD, then Applicant and WFT shall share the maintenance costs of the Center Courtyard (defined as all of the private outdoor space on Lot 869 bounded by the existing north building to the north, WFT to the south, 3<sup>rd</sup> Street S.W. to the east, and WFT's surface parking lot to the west). The Applicant and WFT shall each pay a pro rata share of the maintenance costs, depending on the total number of Applicant's and WFT's units with access to the Center Courtyard. Until the Applicant provides access to the Center Courtyard for any of the buildings in the PUD, WFT will continue to have exclusive use of the Center Courtyard green space and to pay all of the maintenance costs, as described in the easement agreement recorded in the Office of the Surveyor as Instrument No. 2009120470. Residents of WFT shall continue to be permitted to access the Center Courtyard now and after new developments. No later than 120 days after the effective date of the Memorandum between the Applicant and WFT, the easement agreement shall be modified and recorded to reflect the new shared maintenance obligations described herein. The Applicant shall submit written evidence it has modified and recorded the easement to the Zoning Administrator prior to the issuance of the first Certificate of Occupancy for the project; and
- c. The Applicant shall be responsible for paying for and providing all cleaning, maintenance, and repairs for the area of the South Courtyard (defined as all of the private outdoor space on Lot 817 bounded by WFT to the north, the private alley to the west, the New South Building to the south, and 3<sup>rd</sup> Street S.W. to the east). Residents of WFT shall be permitted to access the South Courtyard, and the Applicant will execute and record easements as necessary to guarantee WFT's perpetual access to the South Courtyard. The Applicant shall submit written evidence it has modified and recorded the easements to the Zoning Administrator prior to the issuance of the first Certificate of Occupancy for the project.

**D. MISCELLANEOUS**

1. No building permit shall be issued 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, which is satisfactory to the Office of the Attorney

General and the Zoning Division of the Department of Consumer and Regulatory Affairs (“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 Zoning Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.


2. The change of zoning from the R-5-D Zone District to the CR Zone District shall be effective upon the recordation of the covenant discussed in Condition No. D.1 pursuant to 11 DCMR § 3028.9.
3. The PUD shall remain valid for two years from the effective date of this Order, during which the Applicant must file for a building permit for the first building, and construction on the first building must begin within four years after the effective date of this Order for the PUD to remain valid. Thereafter, for the PUD to remain valid, the Applicant must file for a building permit for the second building within two years after the issuance of a Certificate of Occupancy for the first building, and construction on the second building must begin within four years after the issuance of a Certificate of Occupancy for the first building.
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, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which 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 November 18, 2013, upon the motion of Commissioner Miller, as seconded by Commissioner May, the Zoning Commission **APPROVED** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On January 27, 2014, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

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In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on March 14, 2014.

  
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ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION

  
\_\_\_\_\_  
SARA A. BARDIN  
DIRECTOR  
OFFICE OF ZONING