

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 13-14A
Z.C. Case No. 13-14A**

**JAIR LYNCH Development Partners, on behalf of Vision McMillan Partners and the
Office of the Deputy Mayor for Planning and Economic Development
(Second-Stage PUD @ Square 3128, Lot 800 – McMillan Reservoir Slow Sand Filtration
Site – Parcel 2)**

[Date of Final Action]

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on December 17, 2015, to consider an application from JAIR LYNCH Development Partners, on behalf of Vision McMillan Partners and the Office of the Deputy Mayor for Planning and Economic Development (collectively the "Applicant") for approval of a second-stage planned unit development ("PUD") at Parcel 2 of the McMillan Reservoir Slow Sand Filtration Site (Lot 800 in Square 3128). 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 ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On November 22, 2013, the Applicant filed an application with the Zoning Commission for first-stage and consolidated review of a PUD and related map amendment at the McMillan Reservoir Slow Sand Filtration Site (Square 3128, Lot 800)(the "Overall PUD Site"), which is bounded by North Capitol Street to the east, Michigan Avenue to the north, First Street to the west, and Channing Street to the south, all in the northwest quadrant of Washington, D.C., and which contains approximately 1,075,356 square feet (24.69 acres) of land area.
2. The Overall PUD Site is part of the larger McMillan Reservoir and Filtration complex, a 92-acre facility comprised of a reservoir, the slow sand filtration facility, and a pumping station, all of which were constructed at the turn of the twentieth century by the U.S. Army Corps of Engineers. The entire complex is listed as an individual landmark in the D.C. Inventory of Historic Sites and as a Historic District in the National Register of Historic Places.
3. Pursuant to Z.C. Order No. 13-14 (corrected), dated November 10, 2014, and effective April 17, 2015, the Commission granted approval of the first-stage and consolidated PUD and zoning map amendment (the "Approved PUD").
4. The zoning map amendment related to the Approved PUD rezoned the northern portion of the Overall PUD Site from unzoned to the C-3-C District for a depth of 277 feet, as

measured from the center of the curb at Michigan Avenue, N.W., and the remainder of the Overall PUD Site from unzoned to the CR District.

5. The Approved PUD divides the Overall PUD Site into seven distinct Parcels. Parcel 1 encompasses the northern portion of the Overall PUD Site and consists of the land area located to the north of the Overall PUD Site element known as the North Service Court. Parcels 2 through 5 are located within the center portion of the Overall PUD Site between the North Service Court and the South Service Court. Parcel 6 encompasses the southern portion of the Overall PUD Site and consists of the land area located to the south of the South Service Court, as well as the South Service Court itself. Parcel 7 encompasses the area of North Service Court.
6. The first-stage portion of the Approved PUD includes approval of the master plan for the Overall PUD Site (the “Master Plan”), as well as Parcels 2 and 3 (the “First-Stage PUD”). Parcel 2, the subject of the Second-Stage PUD, was approved for a mixed-use, multi-family building containing ground floor retail. Parcel 3 was approved for a mixed-use commercial building containing healthcare uses and ground-floor retail
7. Parcel 1, and Parcels 4 through 7, comprise the consolidated portion of the Approved PUD. Parcel 1 will be developed with a health care facility with ground floor retail and a park above a preserved water filtration cell ("Cell 14"). Parcel 4 will be developed with a mixed-use, multi-family residential building with a ground floor grocery store. Parcel 5 will be developed with approximately 146 individual row dwellings, Parcel 6 will be developed as a 6.2 acre park and community center and included the existing historic structures of South Service Court which will be retained and restored. Lastly, Parcel 7 (North Service Court) will be developed as the primary “main street” of the Overall PUD Site and include the existing historic structures of North Service Court which will be retained and restored.
8. Collectively, the development approved for the Overall PUD Site consists of a large, mixed-use development made up of office, retail and service, apartment house, attached one-family dwelling, community center, and open space uses. The Approved PUD contains approximately 2,070,753 gross square feet (GFA) of development, and an overall floor area ratio (FAR) of 1.92 (2.36 FAR excluding easements and private rights-of-way). *See* Z.C. Order No. 13-14, p. 54.
9. The Approved PUD prescribes maximum building heights for Parcels 1 – 6. The maximum building height for Parcel 2 is 110 feet. *See* Z.C. Order No. 13-14, p. 54.
10. On June 27, 2014, the Applicant filed an application with the Commission for review and approval of a second-stage PUD for development of Parcel 2, in accordance with the First-Stage PUD development parameters (the “Second-Stage PUD”).
11. Parcel 2 is located on the west side of the Overall PUD Site and is bounded by First Street to the west, North Service Court to the north, Half Street to the east, and Parcel 5 to the south. While First Street is a public street, North Service Court and Half Street are

private streets that will be constructed as part of the Master Plan. The private street constructed as part of the Master Plan will be publicly owned and/or accessible.

12. Parcel 2 has an actual land area of approximately 66,654 square feet, including the area of private streets and easements. Excluding private streets and easements, Parcel 2 has an effective land area of 48,178 square feet.
13. The First-Stage PUD authorized development of a mixed-use, multi-family building on Parcel 2 (the “Parcel 2 Building”) consisting of approximately 334,950 GFA, of which approximately 23,250 GFA would be devoted to ground floor retail, a maximum building height of 110 feet, and a maximum effective (not including private streets and easements) FAR of 6.95 (6.47 residential, 0.48 nonresidential). Under the First-Stage PUD, the Parcel 2 Building included 258 dwelling units, 313 off-street parking spaces (218 residential, 95 retail), and 86 bicycle parking spaces.
14. As part of the Approved PUD’s public benefits and project amenities, the Parcel 2 Building is required to provide approximately 25 affordable dwelling units (ADU), or approximately 21,341 GFA, devoted to households earning up to 80% of the area median income (AMI). The ADUs provided in the Parcel 2 Building will be sufficient to achieve a 20% split of ADUs across the Overall PUD Site. *See* Z.C. Order No. 13-14, p. 20.
15. The Applicant was granted flexibility to vary the location and configuration of ADUs in the Parcel 2 Building. *See* Z.C. Order No. 13-14, p. 57.
16. At its public meeting held on July 27, 2015, the Commission voted to schedule a public hearing on the application.
17. On September 18, 2015, the Applicant filed a Prehearing Statement (Exhibits 12A – 12K). The Prehearing Statement set forth information requested by the Commission, including: additional information regarding the portion of the building that would span Three Quarter Street (the “Three Quarter Street span”); details on the design and materials of the Three Quarter Street span; revised plans that comply with the penthouse setback requirements; additional information related to the requested loading flexibility and the required 20-foot service delivery space; and additional information related to the distribution of ADUs within the Parcel 2 Building.
18. A Notice of Public Hearing was published in the D.C. Register on October 9, 2015. The Notice of Public Hearing was mailed to all property owners within 200 feet of the Site as well as to ANC 5E.
19. On November 10, 2015, the Applicant filed a Supplemental Prehearing Statement (Exhibit 23). The Supplemental Prehearing Statement included a traffic statement, dated October 30, 2015, prepared by Gorove/Slade Associates, Inc., the Applicant’s transportation consultant. The traffic statement was submitted to the District Department of Transportation (“DDOT”), as required by 11 DCMR § 3013.8.

20. On December 4, 2015, the McMillan Coalition for Sustainable Agriculture (“MCSA”) filed a Party Status Request (Exhibits 24 - 27) to participate at the hearing in opposition to the application. The Party Status Request raised issues regarding the impact of the Parcel 2 Building, and the Overall PUD, on MCSA’s mission; the lack of analysis of environmental concerns such as increased air pollution, urban heat island effects, and the loss of open space; impacts on historic resources; increased traffic and related impacts on emergency vehicle response times; and impacts on back-up municipal water supply (Exhibit 27).
21. The Commission held a hearing on the application on December 17, 2015. The parties to the case were the Applicant and Advisory Neighborhood Commission (“ANC”) 5E.
22. At the public hearing, the Commission denied MCSA’s party status request based on the Commission’s findings that: (i) MCSA is not significantly, distinctively, or uniquely affected by the proposed development on the PUD Site, and (ii) the broad range of issues raised by MCSA in its party status request did not relate directly to anything that was presently before the Commission. However, the Commission granted the MCSA representative additional time at the public hearing to present its case.
23. The Office of Planning (OP) submitted a report, dated December 7, 2015, recommending approval of the application contingent upon conditions (Exhibit 28). The conditions are discussed below in the OP section of this order. The OP report stated that the proposal is not inconsistent with the First-Stage PUD approval or the Comprehensive Plan. In its testimony at the public hearing, OP reiterated its support for the application and the requested flexibility and rested on the record.
24. DDOT submitted a report, dated December 7, 2015, that assessed the potential safety and capacity impacts of the project on the District’s transportation network (Exhibit 29). The DDOT report expressed no objection to the application contingent upon conditions which are discussed below in the DDOT section of this order. In its testimony at the public hearing, DDOT reiterated its support for the application and rested on the record.
25. On December 16, 2015, ANC 5E, the ANC in which the Overall PUD Site, including Parcel 2, are located, submitted its resolution (Exhibit 34) in support for the application. The resolution states that at its meeting held on October 20, 2015, which was duly noticed and at which a quorum was present, ANC 5E voted 6-0-2 to support the application. At the public hearing, Commissioner Dianne Barnes, Single Member District (“SMD”) 5E09, testified on behalf of ANC 5E.
26. Four witnesses testified on behalf of the Applicant at the hearing: Anne Corbett of Vision McMillan Partners, Jair Lynch of JAIR LYNCH Development Partners, Jim Voelzke of MV+A Architects, and Shane Dettman of Holland & Knight. The Commission accepted Mr. Voelzke as an expert in architecture, and Mr. Dettman as an expert in planning and land use.

27. Nineteen individuals and local organizations submitted letters in opposition to the application (Exhibits 30, 31, 33, 35-39, 41-50, and 56).
28. A letter in support for the application was submitted by Ward 5 Councilmember, Kenyan McDuffie (Exhibit 40).
29. At the public hearing, two persons testified in support of the application. The persons in support of the application were Rashida Brown, representing SMD 1A10, and Andrew Deputy. *See* Transcript, 12/17/2015, pp. XXX-XXX.
30. At the public hearing, eight persons testified in opposition to the application. The persons in opposition of the application were Robin Diener; Paul Cerruti; Debbie Hammerham; Jim Schulman; Daniel Wolkoff, MCSA; Amal Mimish; LeRoy Hall, and Chris Otten, DC for Reasonable Development. *See* Transcript, 12/17/2015, pp. XXX-XXX.
31. At the conclusion of the public hearing, the Commission requested the Applicant to submit the following alternatives for the Three Quarter Street span: (i) an alternative that retains the design of the Three Quarter Street span with affordable housing units devoted to households earning up to 50% AMI located within the center dwelling units within the span, (ii) an alternative that eliminates the dwelling units from the Three Quarter Street span and includes only a glass-enclosed pedestrian connection, (iii) an alternative that eliminates the dwelling units from the Three Quarter Street span as well as the lower third and fourth floors of the pedestrian connection portion of the span and adds an additional floor to the Parcel 2 Building.
32. The Commission also requested the Applicant to: (i) submit a roof plan that clearly demonstrates compliance with the 1:1 penthouse setback requirements, (ii) submit larger versions of the precedent images that were submitted for the interior feature wall proposed along the north side of the Three Quarter Street span; and (iii) consider committing to a LEED-Gold rating, at a minimum, rather than the proposed LEED-Silver or Green Communities compliance.
33. On January 12, 2015, the Applicant submitted a Posthearing Submission (Exhibit 58). The Posthearing Submission included final architectural plans and drawings (the “Final Plans”)(Exhibit 58A1 – 58A5). The Final Plans included two alternatives for the Three Quarter Street span which were identified as Option A and Option B, and are described as follows:
 - a. The Option A alternative for the Three Quarter Street span generally is the same design as shown in the initial application, and as was presented to the Commission at the public hearing. The span consists of a circulation corridor along the north side of the span with dwelling units proposed along the south side of the corridor. The span begins at the third floor. In Option A, two additional ADUs will be provided, and will be set aside for households earning up to 50% AMI. These two additional ADUs would be located on the 3rd and 5th floors of the span. In addition, one previously proposed ADU (80% AMI) would be relocated to the 4th floor of the span.

- b. The Option B alternative for the Three Quarter Street span only includes a glass-enclosed pedestrian connection between the east and west portions of the building. As a result of the substantially narrowing of the span due to the elimination of the dwelling units, the span in this alternative begins at the second floor in order to increase the internal circulation of the building. The Applicant also included an alternative ground floor plan for Option B that includes the option for approximately 5,200 – 6,100 GFA of additional retail or live/work residential units. Thus, the Applicant has requested flexibility to adjust the final programming of a portion of the ground floor in Option B, as shown in the Final Plans, and has proffered two additional ADUs (80% AMI) should the Commission grant the flexibility and should the Applicant implement that alternative ground floor plan.
34. Per the Commission’s request, the Posthearing Submission also included a study of an alternative for the Three Quarter Street that eliminates the dwelling units from the Three Quarter Street span as well as the lower third and fourth floors of the pedestrian connection portion of the span and adds an additional floor to the Parcel 2 Building. Upon evaluation, the Applicant determined that this alternative caused several programmatic, design, and construction challenges; and therefore, did not included this alternative in the Final Plans as an option for approval by the Commission.
 35. At its public meeting held on February 8, 2016, the Commission took proposed action by a vote of 5-0-0 to approve Option B of the “Final Plans,” including the alternate ground floor plan that allows flexibility in the final programming of the ground floor, that were submitted to the record (Exhibits 58A1 – 58A5).
 36. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") on _____ under the terms of the District of Columbia Home Rule Act (Exhibit __). NCPC, by action dated _____, found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital (Exhibit ____).
 37. The Commission took final action to approve the application on _____, by a vote of _____.

The Second-Stage PUD Project

38. The Second-Stage PUD for Parcel 2 of the McMillan Reservoir Slow Sand Filtration Site is situated in Ward 5, and is zoned CR, pursuant to Z. C. Order No. 13-14. The Overall PUD Site is bounded by North Capitol Street to the east, Michigan Avenue to the north, First Street to the west, and Channing Street to the south, all in the northwest quadrant of Washington, D.C., and contains approximately 1,075,356 square feet (24.69 acres) of land area.
39. Parcel 2 is located on the west side of the Overall PUD Site and is bounded by First Street to the west, North Service Court to the north, Half Street to the east, and Parcel 5

to the south. While First Street is a public street, North Service Court and Half Street are private streets that will be constructed as part of the Master Plan. Not including the area of private streets and easements, Parcel 2 has a land area of approximately 48,178 square feet. Three Quarter Street, another private street that is part of the Master Plan, will bifurcate Parcel 2.

40. The Applicant proposes to develop Parcel 2 with a mixed-use building containing residential and retail uses (the “Parcel 2 Building”). The Parcel 2 Building will consist of approximately 235,513 gross square feet, of which approximately 18,259 – 24,359 gross square feet will be devoted to retail uses, and contain approximately 233 residential dwelling units (plus or minus 5 percent). The Parcel 2 Building will have a maximum density of approximately 4.89 FAR, not including private streets and easements, and a maximum height of 82’-6”, not including penthouses.

Parking and Loading

41. The Parcel 2 Building will provide a minimum of 222 off-street parking spaces located on two levels of below-grade parking accessed from an entrance located on the east side of Three Quarter Street. The building will also provide a minimum of 86 secure bicycle parking spaces within the parking garage.
42. The Applicant will implement the Transportation Demand Management (TDM) program and monitoring plan approved as part of the Approved PUD under Z.C. Order No. 13-14, as applicable to the Parcel 2 Building, as well as the following additional TDM measures that are specific to the Parcel 2 Building:
 - a. The Applicant shall designate a TDM coordinator, who is responsible for organizing and marketing the TDM plan and who will act as a point of contact with DDOT; and
 - b. An electronic display shall be installed in the Half Street residential lobby to display real-time transit arrival and other transportation options information; and
 - c. The Applicant shall post all TDM commitments to the project website, which shall include links to Commuter Connections and goDCgo; and
 - d. The Applicant shall hold annual commuter fairs with representatives of various transportation providers to explain transportation services available for employees and residents. These fairs can be hosted by the project association or business improvement district established for the Overall PUD Site and not specific to Parcel 2; and
 - e. All on-site parking shall be priced at market rates at minimum, defined as the average cost for parking in a 0.25 mile radius from the site, and all residential parking will be unbundled from the costs of leasing apartments or purchasing condos; and
 - f. The Applicant shall comply with Zoning requirements to provide bicycle parking/storage facilities, including secure parking located in the garage for residents; and
 - g. As part of the entire McMillan car-sharing program, the Applicant shall accommodate car-sharing company requests to provide parking spaces. Until

- requested by a car-sharing company, these spaces shall be part of the general parking supply; and
- h. All retail employers shall be encouraged to provide SmartBenefits for their employees; and
 - i. The Applicant shall offer the first occupant of each unit an annual carsharing membership or an annual Capital Bikeshare membership for a period of three years.
43. The Parcel 2 Building will contain two loading berths, one on either side of Three Quarter Street. The loading berth located on the west side of Three Quarter Street will be 40-foot deep. The loading berth on the east side of Three Quarter Street will be 30-foot deep, and will also be managed and signed to function as the required 20-foot service delivery space. The loading berths will be shared by the retail and residential uses.
44. The Applicant will implement the following restrictions and guidelines on loading operations at the Parcel 2 Building to accommodate expected loading demand, ensure coordination of deliveries and loading between the residential and retail uses, and mitigate any potential impacts that may result from the requested loading flexibility:
- a. A loading dock manager shall be designated by building management and shall be responsible for coordinating delivery schedules among building tenants. All residential move-ins and move-outs shall be scheduled in a manner that does not conflict with retail deliveries; and
 - b. The loading dock manager shall schedule deliveries such that the loading dock capacities are not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver shall be directed to return at a later time so as to not impede traffic flow; and
 - c. The loading dock manager shall monitor inbound and outbound truck maneuvers and shall ensure that trucks accessing the loading berths do not block vehicular or pedestrian traffic along Three Quarter Street except during those times when a truck is actively entering or exiting a loading berth, and shall ensure that any surrounding pedestrians have vacated the area before allowing a truck to back into the loading area; and
 - d. The 30-foot loading berth shall be managed such that conflicts between the building's loading and service/delivery needs are avoided by designating peak periods during the day when the loading berth can only be used for service/delivery vehicles, and loading or unloading is not permitted. The 30-foot loading berth shall be appropriately signed to indicate the hours where loading is not permitted, or when the dock is reserved for deliveries; and
 - e. Trucks using the loading dock shall not be allowed to idle and must follow all District guidelines for heavy vehicle operation including, but not limited to, DCMR 20 – Chapter 9, Section 900 (Engine idling), and the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document; and
 - f. The loading dock manger shall be responsible for disseminating information to drivers related to DDOT's Freight Management and Commercial Vehicle

Operations document and DDOT's truck routes, the loading dock manager shall post this information in a prominent location within the loading areas.

Sustainable Development

45. In keeping with the Approved PUD, the Master Plan for the Overall PUD Site will be evaluated for LEED-ND (Neighborhood Development) and shall be certified at least LEED-Gold or its equivalent, and shall achieve, at minimum, the applicable provisions of the Green Construction Code of the 2013 Construction Code of the District of Columbia.
46. As required under the Approved PUD, the Parcel 2 Building will be certified LEED-Silver, or its equivalent under Green Communities. (*see* Z.C. Order No. 13-14, Condition No. C-10 at 61).

Project Association

47. Pursuant to Z.C Order No. 13-14, a project association or business improvement district will be established, referred to as the McMillan Public Space Partnership (the "Partnership"). The Partnership will provide an operating framework to maintain and program the public space within the McMillan redevelopment, including the private roadways, alleys, bicycle paths, historic walks, sidewalks, parks, open space, historic resources, streetscapes, street furniture and fixtures, and signage within the Overall PUD Site boundaries. The Partnership will be a not-for-profit corporation governed by a board of directors responsible for strategic and financial planning, management, and reporting to the public. As its primary function, the Partnership will maintain and program most, if not all, of the public assets within the Overall PUD Site via an agreement with the District. The assets include the parks and open space, historic resources, public art, and internal streets and their components (e.g., paving, light fixtures, benches).

CBE and First Source Employment Opportunities

48. Pursuant to the First Source Agreement established between the D.C. Department of Employment Services ("DOES") and Vision McMillan Partners, dated June 23, 2014 (See Exhibit 832K in Z.C. Case 13-14), the Applicant is required to use DOES as the first source to fill all new jobs created as a result of the Second-Stage PUD, and requires that 51% of all new hires on government contracts between \$300,000 and \$5 million shall be District residents. The Applicant is committed to meeting the requirements under the First Source Agreement and to maximize job opportunities for District residents, especially Ward 5 residents.
 - a. *Training and Employment Opportunities*: During construction of the Parcel 2 Building, the Applicant will abide by the terms of the executed First Source Employment Agreement with DOES. To the extent permitted by law, first preference for employment opportunities will be given to Wards 1 and 5 residents.

- b. *CBE Participation*: Pursuant to Z.C. Order No. 13-14, Condition C-7, a CBE Agreement has been executed with the D.C. Department of Small and Local Business Development ("DSLBD") to achieve, at a minimum, 35% participation by certified business enterprises in the contracted development costs for the design, development, construction, maintenance, and security created as a result of the Approved PUD. Business opportunities will be posted on the DSLBD website, and CBE businesses will be given opportunities for smaller contracts, such as catering, trash collection, and delivery service. Work will continue with DSLBD, contractors, and with the Business Development Councils and other local community organizations to maximize opportunities for CBE firms throughout the process. The Approved PUD will also include 20% sponsor equity participation by a CBE developer.

Public Benefits and Project Amenities

49. The public benefits and project amenities associated with Parcel 2 are part of the substantial number of public benefits and project amenities approved as part of the Approved PUD, at which time the Commission considered the balance between the public benefits and project amenities offered, including the amount of affordable housing, and the degree of development incentives requested and any potential adverse effects of the Approved PUD. The Commission found then, as it does now, that the public benefits and project amenities of the Approved PUD are adequate to support the Second-Stage PUD.
50. Pursuant to the Approved PUD, approximately 25 units, or approximately 21,341 square feet of total gross floor area, within the Parcel 2 Building will be devoted to households earning up to 80% of the AMI. The affordable dwelling units located on Parcel 2 will be sufficient to achieve a 20% split of affordable units across the Overall PUD Site (*See* Z.C. Order No. 13-14, Finding of Fact 79(b), at 19). In addition, the Parcel 2 Building will contain two additional ADUs devoted to households earning up to 50% of the AMI which the Applicant proffered as part of its request for flexibility relating to the final programming of the ground floor of the Parcel 2 Building, which the Commission grants.

Areas of Flexibility

51. With respect to development of the Parcel 2 Building, the Applicant requested the following areas of flexibility from the Zoning Regulations:
 - a. *Flexibility from Residential Lot Occupancy* – Pursuant to Section 634 of the Zoning Regulations, the maximum permitted lot occupancy within the CR Zone District for any building or structure, including an accessory building or structure, devoted to residential use is 75%, as calculated on a horizontal plane located at the lowest level where residential uses begin. For the purposes of Section 634, “residential uses” includes dwellings, flats, multiple dwellings, rooming and boarding houses, hospitals, and community based residential facilities. 11 DCMR § 634.3. As proposed, the Parcel 2 Building includes residential dwelling units on the ground floor, and thus, is the level at which the residential lot occupancy must

be calculated. As shown on Sheet 7 of the Final Plans, the lot occupancy of the ground floor is 84%, when calculated without including the areas of Parcel 2 that are encumbered by private streets and easements, exceeding the permitted residential lot occupancy by 9%. The lot occupancy on Floors 2 – 7 of the Parcel 2 Building is less than 75%; and therefore, do not require flexibility. The Commission finds the relatively minor extent of lot occupancy flexibility requested on the ground floor to be appropriate and can be granted given the reduced amount of land area that can be built on due to the private streets and easements that encumber portions of Parcel 2.

- b. *Flexibility from Side Yard Requirements* – Pursuant to Section 637 of the Zoning Regulations, a side yard need not be provided in the CR Zone District, however, if one is provided it must meet the requirement of three-inches per foot of building height, and no less than eight feet. Based on the proposed building height of 82'-6", the minimum side yard requirement would be 20'-7". The Parcel 2 Building provides non-compliant side yards along the north and south sides. Along the north, the building is setback approximately 2'-5" to provide additional space for pedestrian circulation and outdoor seating along North Service Court. Along the south, an average side yard of approximately 7'-3" is provided to provide a modest outdoor space to the dwelling units along the south side of the Parcel 2 Building, and to afford some relief between the Parcel 2 Building and the lower-height townhomes to the south. The Commission finds that the requested side yard flexibility can be granted. On the north, the small side yard that is provided will provide additional space for outdoor seating along North Service Court without adversely impacting pedestrian circulation. In addition, given the width of North Service Court, and the upper-level building setbacks on both the Parcel 2 Building and the building proposed for Parcel 1, there will be no impact to light and air to the Parcel 2 Building, or to the pedestrian realm along North Service Court. Along the south, the flexibility can be granted without adversely impacting the residents of the Parcel 2 Building or the townhomes to the south. In addition to the side yard provided on the Parcel 2, the townhomes to the south will also be setback approximately eight feet, resulting in a total separation distance of approximately 15 feet. This distance will be sufficient to provide adequate light and air.
- c. *Flexibility from the Loading Requirements* – Section 2201.1 of the Zoning Regulations requires the Parcel 2 Building to provide one loading berth at 55-foot deep, one loading platform at 200 square feet, and one service/delivery space at 20-foot deep. The Applicant requested flexibility to provide one loading berth at 40-foot deep and one loading berth at 30-foot deep. The 40-foot loading berth would be serviced by a 200 square foot loading platform, and the 30-foot loading berth would be serviced by a 100 square foot loading platform. In addition, the Applicant is requesting flexibility to allow the 30-foot loading berth to also be used as the required service delivery space, rather than have a fulltime dedicated service/delivery space, as required by the Zoning Regulations. The Applicant proposes to devote the 30-foot loading berth to service/delivery vehicle use during

specified times of the day. These specified time will be clearly marked outside the loading berth and properly enforced through the Applicant's proposed loading management plan. The loading flexibility is necessary due to the narrow width of Three Quarter Street and the limited depth of the footprint of the Parcel 2 Building on either side of Three Quarter Street. As a result of these constraints, a 55-foot truck could not be accommodated on Parcel 2 . Based upon the analysis provided in the DDOT Report, the Commission finds that the proposed loading facilities will be sufficient to serve the loading needs of the residential and retail uses of the Parcel 2 Building, including the additional retail that is included in the Applicant's alternative ground floor plan for Option B. Given the modest number of dwelling units and amount of retail, it is expected that the 40-foot loading berth will be sufficient to accommodate the majority of the building's loading demand. The 30-foot loading berth proposed on the east side of Three-Quarter Street will be used during infrequent instances where there is a need for two trucks to load/unload simultaneously. These instances will be scheduled such that they do not occur during peak delivery times when the 30-foot loading berth will be reserved for service delivery vehicles.

52. Additional Areas of Flexibility – In addition to the technical areas of zoning flexibility requested by the Applicant, as described above, the Applicant also requested flexibility to make refinements/adjustments to the building design in the areas listed below. The Commission finds these areas of design flexibility to be appropriate, and generally consistent with the flexibility that is typically granted by the Commission to accommodate refinements/adjustments that are often necessary during more advanced stages of design.
- a. From the maximum residential lot occupancy requirements, consistent with Option B of the Final Plans; and
 - b. From the minimum side yard requirements, consistent with Option B of the Final Plans; and
 - c. From the loading requirements, consistent with Option B of the Final Plans; and
 - d. To adjust the size and/or number of dwelling units $\pm 5\%$ to accommodate fluctuations in market conditions, including corresponding changes to required parking so long as the number of parking spaces provided for the residential use is not reduced below the minimum required by §2101.1 of the Zoning Regulations; and
 - e. To adjust the final programming of the portion of the ground floor identified in the Final Plans as “FLEXIBLE SPACE (APARTMENTS/LIVE-WORK/RETAIL,” in manner that is consistent with what is shown on Sheet 35 of Exhibit 58A2 of the case record; and
 - f. To vary the location and configuration of affordable dwelling units within the Parcel 2 Building, provided the proportion of studio, efficiency, and one-bedroom affordable units to all affordable units does not exceed the proportion of studio, efficiency, and one-bedroom market-rate units to all market rate units, and the affordable dwelling units are not overly concentrated in any one portion of the building; and

- g. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building; and
- h. To make refinements to the garage configuration, including layout, parking spaces and other elements, so long as the total number of parking spaces, for both retail and residential uses, is not reduced below what is required by §2101.1 of the Zoning Regulations; and
- i. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, location, orientation, and quantity of the fins, or any other changes to comply with the District of Columbia Building Code, the recommendations of the D.C. Historic Preservation Review Board or the Mayor's Agent for Historic Preservation, or that are otherwise necessary to obtain a final building permit;
- j. To vary the location, attributes and general design of the streetscape within public space to comply with the requirements of and the approval by the District Department of Transportation Public Space Division; and
- k. To vary the final design of retail frontages, including locations of doors, design of show windows and size of retail units, to accommodate the needs of specific retail tenants; and
- l. To design and locate building signage, including all retail signage, in accordance with the sign guidelines approved as part of the Master Plan and the District of Columbia sign regulations in effect at the time of permit.

Compliance with the PUD Standards

- 53. The Second-Stage PUD complies with the standards for a PUD as set forth in Chapter 24 of the Zoning Regulations.
- 54. The Commission finds that the Parcel 2 Building is consistent with the First-Stage PUD approval in Order No. 13-14.
- 55. The overall development of the Approved PUD, including Parcel 2, provides important public benefits and project amenities which are described in detail in Order No 13-14. These public benefits and project amenities have not changed with this application. Accordingly, the Commission's finding that the relative value of the project amenities and public benefits offered is sufficient given the degree of development incentives requested and any potential adverse effects of the Approved PUD, including the Parcel 2 Building, does not change.
- 56. The Parcel 2 Building has been evaluated under the PUD guidelines for the CR Zone District. The density of the Parcel 2 Building is below the density permitted for a PUD in the CR Zone District and is less than that approved in Order No. 13-14. The maximum

height of the Parcel 2 Building is well below that permitted for a PUD in the CR Zone District and the First-Stage PUD approval in Order No. 13-14.

57. The application has been evaluated by the relevant District agencies and has been found to have no unacceptable adverse impacts. The Commission finds that the Parcel 2 Building will have a positive impact on the city and will have no unacceptable adverse impacts.

Compliance with the Comprehensive Plan

58. The Commission finds that the proposed Second-Stage PUD, continues to: (i) be consistent with the District of Columbia Comprehensive Plan Future Land Use Map and the Generalized Policy Map; (ii) helps implement many of the guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, connecting the city, and building green and healthy communities; and (iii) furthers the objectives and policies of the Comprehensive Plan's major elements, as set forth in the OP Report (Exhibit 28) and as previously found by the Commission in Findings of Fact No. 159-173 of Z.C. Order No. 13-14 (Exhibit 2E).

Office of Planning Reports

59. By report dated December 7, 2015, and through testimony presented at the public hearing, OP recommended approval of the application, contingent upon the following conditions: (i) if there is a reduction in the total number of units, the number of ADUs at 80% of AMI would remain at 25; (ii) the distribution patterns of ADUs would be of a similar pattern and proportion to that shown on Exhibit 12C4, Sheet 12, Page 53; (iii) flexibility to make changes to the internal parking and loading areas would not extend to external changes or the relocation of parking and loading entrances; and (iv) the roof structure on the western portion of the building will meet the 1:1 setback requirement through selection of a system that has an override that is no taller than the smallest setback dimension shown on the roof plan, and/or making minor adjustments to the configuration, footprint and location of the elevator core/stairway enclosures (Exhibit 28).
60. The OP report stated that the proposal would not be inconsistent with the Comprehensive Plan Future Land Use and Policy maps, and would further many important Citywide Elements, and specifically those providing guidance for the development of the McMillan Reservoir property. In addition, the OP Report stated that the application is generally consistent with the First-Stage PUD and furthers a number of the Master Plan's Guiding Principles.

DDOT Report

61. By report dated December 7, 2015, and through testimony at the public hearing, DDOT expressed no objection to the Second-Stage PUD, contingent upon the following conditions: (i) strengthen the proposed transportation demand management (TDM) plan to include an electronic display in the Half Street residential lobby to display real-time

transit arrival and transportation options information, and offer the first occupant of each unit an annual carsharing membership and an annual Capital Bikeshare membership for a period of three years, and (ii) flip on-street parking on Evarts Street from the south side of the street to the north side to facilitate truck movements (Exhibit 29). The Applicant agreed to these additional conditions.

62. DDOT also stated in its report that it is likely to require an updated Comprehensive Transportation Review (CTR) as part of the second-stage PUD for Parcel 3 in order to review multi-modal project impacts, including vehicular impacts based on updated traffic counts that should include observed volumes from completed buildings elsewhere on the site rather than based on projects.

ANC 5E Report

63. By letter dated December 16, 2015, ANC 5E indicated it voted to support the application by a vote of 6-0-2. (Exhibit 34)
64. The Commission afforded the views of ANC 5E the “great weight” to which they are entitled.
65. Overall, based upon the written evidence of record, combined with the testimony presented at the public hearing on this application, the Commission finds that the materials and design of the Parcel 2 Building are compatible with the surrounding neighborhood; that the height and density of the Parcel 2 Building are consistent with the underlying zoning, the approved First-Stage PUD, and the Comprehensive Plan; that the project will not adversely affect neighborhood traffic or on-street parking availability; that the project will not result in an over-concentration of affordable housing within the Parcel 2 Building, or at the Overall PUD Site; and that the Applicant’s TDM Plan and Loading Management Plan, together with the TDM Plan that was previously approved for the Overall PUD Site, will adequately mitigate any potential impacts to the surrounding transportation network.

Contested Issues

66. The testimony provided at the public hearing by the persons appearing in opposition raised issues related to the inadequacy of the public benefits and project amenities provide by the Second-Stage PUD, the process by which the developer of the Overall PUD Site was selected and was approved, the impact to the historic character and features of the Overall PUD Site, impacts on views, transportation impacts, the loss of open space, sustainability, affordable housing, and the seismic integrity of the Three Quarter Street.
67. The public benefits and project amenities associated with Parcel 2 are part of the substantial number of overall public benefits and project amenities approved as part of the Approved PUD, at which time the Commission considered the balance between the project amenities and public benefits offered, including the amount of affordable housing,

and the degree of development incentives requested and any potential adverse effects of the Approved PUD. The Commission finds that the public benefits and project amenities are adequate to support the Second-Stage PUD.

68. The Commission finds that the testimony relating to the process by which the developer of the Overall PUD Site was selected to be outside of the Commission jurisdiction, and not relevant to the scope of review that the Commission must carry out as part of the Second-Stage PUD. The Commission finds that the process carried out for the Approved PUD, and for the current Second-Stage PUD, to be consistent with the requirements of Chapters 24 and 30 of the Zoning Regulations
69. With respect to the other issues raised regarding impacts on traffic and transportation, historic resources, open space, sustainability, and views, the Commission finds that these issues were thoroughly addressed during the Approved PUD process, and that proposed Second-Stage PUD does not change any of Commission's prior findings relating to these issues.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider and approve the Second-Stage PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. Development of Parcel 2, which is part of the Overall PUD Site, carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. Both the Overall PUD Site and Parcel 2 meet the minimum area requirements of § 2401.1 of the Zoning Regulations and complies with the applicable height, bulk, and density standards of the Zoning Regulations. The uses proposed are appropriate for the Overall PUD Site and Parcel 2. The impact of the proposed Parcel 2 Building on the surrounding area and on the operation of city services is acceptable given the quality of the public benefits approved as part of the Approved PUD.
5. The application is consistent with the First-Stage PUD approval in Order No. 13-14.

6. The flexibility requested by the Applicant from the lot occupancy, side yard, loading, and penthouse requirements of the Zoning Regulations are reasonable tradeoffs compared to the public benefits and project amenities that will be provided as part of the Approved PUD, including those that are specific to Parcel 2.
7. Approval of this Second-Stage PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development of Parcel 2 will promote the orderly development of the Overall PUD Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
8. The Commission is required under Section 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 affected ANC's recommendations. The Commission has carefully considered ANC 5E's support for the project, expressed in its resolution and in testimony provided at the public hearing, and has given that support great weight.
9. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04) to give great weight to OP recommendations. For the reasons stated above, the Commission concurs with OP's recommendation for approval, subject to the conditions included in the OP Report, and has given the OP recommendation the great weight it is entitled.
10. Notice was provided in accordance with the Zoning Regulations.
11. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401 *et seq.* (2007 Repl.)

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for a second-stage PUD for Parcel 2 of the McMillan Reservoir Slow Sand Filtration Site. The approval of this PUD is subject to the guidelines, conditions, and standards set forth below:

A. PROJECT DEVELOPMENT

1. The Parcel 2 Building shall be developed in accordance with Option B of the Final Plans (Exhibits 58A1 – 58A5), dated January 14, 2016, with flexibility provided in the final programming of the ground floor to allow additional retail or live-work apartments within

the area shown on Sheet 35 of the Final Plans (Exhibit 58A2), as modified by the guidelines, conditions, and standards herein.

2. In accordance with Option B of the Final Plans, the Parcel 2 Building shall consist of approximately 235,513 gross square feet, of which approximately 18,259 – 24,359 gross square feet will be devoted to retail uses, and contain approximately 233 residential dwelling units (plus or minus 5 percent).
3. The Parcel 2 Building will have a maximum density of approximately 4.89 FAR, not including private streets and easements, and a maximum height of 82'-6", not including penthouses.
4. Subject to the flexibility stated in Condition A-8 of this order, the Parcel 2 Building shall contain a minimum of 222 off-street parking spaces, and a minimum of 86 secure bicycle parking spaces.
5. The Parcel 2 Building shall contain a 30-foot loading berth and a 40-foot loading berth. The 30-foot loading berth will also serve as the required 20-foot service delivery space.
6. The Applicant shall provide an affordable housing unit distribution that is generally consistent with that which is shown in Exhibit 63 of the case record, provided the Applicant shall retain the flexibility granted in Order No. 13-14, and included below, with respect to the ability to vary the location and configuration of affordable dwelling units within the Parcel 2 Building.
7. The Applicant shall design and construct the Parcel 2 Building to a minimum LEED-Silver, or its equivalent under the Green Communities rating system.
8. The Applicant shall have flexibility with the design of the Parcel 2 Building in the following areas:
 - m. From the maximum residential lot occupancy requirements, consistent with Option B of the Final Plans; and
 - n. From the minimum side yard requirements, consistent with Option B of the Final Plans; and
 - o. From the loading requirements, consistent with Option B of the Final Plans; and
 - p. To adjust the size and/or number of dwelling units $\pm 5\%$ to accommodate fluctuations in market conditions, including corresponding changes to required parking so long as the number of parking spaces provided for the residential use is not reduced below the minimum required by §2101.1 of the Zoning Regulations; and
 - q. To adjust the final programming of the portion of the ground floor identified in the Final Plans as "FLEXIBLE SPACE (APARTMENTS/LIVE-WORK/RETAIL," in manner that is consistent with what is shown on Sheet 35 of Exhibit 58A2 of the case record; and

- r. To vary the location and configuration of affordable dwelling units within the Parcel 2 Building, provided the proportion of studio, efficiency, and one-bedroom affordable units to all affordable units does not exceed the proportion of studio, efficiency, and one-bedroom market-rate units to all market rate units, and the affordable dwelling units are not overly concentrated in any one portion of the building; and
- s. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building; and
- t. To make refinements to the garage configuration, including layout, parking spaces and other elements, so long as the total number of parking spaces, for both retail and residential uses, is not reduced below what is required by §2101.1 of the Zoning Regulations; and
- u. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, location, orientation, and quantity of the fins, or any other changes to comply with the District of Columbia Building Code, the recommendations of the D.C. Historic Preservation Review Board or the Mayor's Agent for Historic Preservation, or that are otherwise necessary to obtain a final building permit;
- v. To vary the location, attributes and general design of the streetscape within public space to comply with the requirements of and the approval by the District Department of Transportation Public Space Division; and
- w. To vary the final design of retail frontages, including locations of doors, design of show windows and size of retail units, to accommodate the needs of specific retail tenants; and
- x. To design and locate building signage, including all retail signage, in accordance with the sign guidelines approved as part of the Master Plan and the District of Columbia sign regulations in effect at the time of permit.

B. TRANSPORTATION MITIGATION MEASURES

1. TDM Program: For the life of the project, the Applicant shall implement the TDM program and monitoring plan approved for the Overall PUD Site under Z.C. Order No. 13-14, and the TDM measures specific to the Second-Stage PUD listed in Finding of Fact 42 of this order.
2. Loading Restrictions and Guidelines: For the life of the project, the Applicant shall implement the restrictions and guidelines on loading operations at the Parcel 2 Building, as listed in Finding of Fact 44 of this order.

C. PUBLIC BENEFITS

1. *Affordable Housing*: The Applicant shall dedicate 25 dwelling units, or approximately 21,341 square feet of gross floor area, in the Parcel 2 Building as affordable dwelling units for households earning up to 80% of the AMI. The Applicant shall also provide two (2) additional affordable dwelling units targeted to households earning no more than 50% of the AMI. All affordable dwelling units shall remain subject to the applicable rental or price controls for so long as the Parcel 2 Building is in existence.
2. *Training and Employment Opportunities*: During construction of the Parcel 2 Building, the Applicant shall abide by the terms of the executed First Source Employment Agreement with the DOES to help achieve the goal of utilizing District residents for at least 51% of the new jobs created by the Approved PUD. To the extent permitted by law, first preference for employment opportunities shall be given to Wards 1 and 5 residents.
3. *CBE Participation*: During construction of the Parcel 2 Building, the Applicant shall abide by the terms of the executed CBE Agreement with the DOES to achieve, at a minimum, 35% participation by certified business enterprises in the contracted development costs for the design, development, construction, maintenance, and security created as a result of the Approved PUD.
4. *Project Association*: Prior to issuance of a certificate of occupancy, the Applicant shall create a project association or business improvement district for the Approved PUD that will be responsible for the maintenance and improvements of the private roadways, alleys, bicycle paths, historic walks, sidewalks, parks, open space, historic resources, streetscapes, street furniture and fixtures, and signage within the Overall PUD Site boundaries. Additionally the project association will contribute to funding for programming and staging events within the Overall PUD Site boundaries for the benefit of the public.
5. *Environmental Benefits*: Prior to the issuance of a certificate of occupancy, the Applicant shall furnish a copy of its LEED certification application to the U.S. Green Building Council, or a copy of its prebuild submission documentation under Green Communities certification, whichever is applicable to the project, that is generally consistent with the score sheets included in the Final Plans (Exhibit 58A4, Sheets 63 - 67). The Applicant shall continue to evaluate ways to incorporate additional sustainability features as design of the Parcel 2 Building is further developed, and shall make a good faith effort to achieve LEED-Gold, or its equivalent under Green Communities, but shall not be required to obtain a LEED certification for the Parcel 2 Building higher than LEED-Silver.

D. MISCELLANEOUS

1. The Second-Stage PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 13-14A. Within such time, an application must be filed for a building permit for the Parcel 2 Building as specified in 11 DCMR § 2409.1; the filing of the building permit application will vest the Order. Construction must commence within three years of the effective date of Z.C. Order No. 13-14A.

2. No building permit shall be issued for the Second-Stage PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

3. 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 prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On _____, 2015, upon the motion of Commissioner _____, as seconded by Commissioner _____, the Zoning Commission **APPROVED** the application at its public meeting by a vote of _-_- (NAMES OF COMMISSIONERS, to approve).

On _____, 2015, upon the motion of Commissioner _____, as seconded by Commissioner _____, the Zoning Commission **ADOPTED** the Order at its public meeting, by a vote of _-_- (NAMES OF COMMISSIONERS, to approve).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the DC *Register*, that is on _____