



ADVISORY NEIGHBORHOOD COMMISSION 3E

TENLEYTOWN AMERICAN UNIVERSITY PARK FRIENDSHIP HEIGHTS
c/o Lisner-Louise-Dickson-Hurt Home 5425 Western Avenue, NW Washington, DC 20015
www.anc3e.org

BY E-MAIL

February 19, 2013

Anthony J. Hood
Chairperson
Zoning Commission of the
District of Columbia
441 4th Street N.W., Washington, DC 20001

RE: Amended Proffers in ZC Case No. 10-23, 4600 and 4614 Wisconsin Ave, NW

Dear Chairperson Hood:

Resolved,

ANC 3E respectfully submits this letter resolution asking that the Zoning Commission (ZC) substitute the attached amended proffers and conditions ("Joint Conditions") for the amended proffers and conditions submitted by Applicant Douglas Development ("Applicant's Original Amended Conditions"), and adopt same. Applicant has agreed to join this request.

The ANC asked the ZC on February 11, 2013, for leave to respond to the Applicant's Original Amended Conditions after the deadline set by the ZC for responding. The ZC notified the ANC, via e-mail from Donna Hanousek on February 12, 2013, that it had granted leave to the ANC to respond by noon on February 20th.

We believe that the attached Joint Conditions come closer to the spirit of the Memorandum of Understanding (MOU) between the ANC and Applicant that was submitted to the ZC while also being specific and enforceable. We offer comments on selected portions of the Joint Conditions below.

B.3. The proposed language states that the ANC may designate alternative amenities if utility undergrounding cannot be completed, and the Applicant will ask the ZC to amend the PUD to reflect the alternative amenities. The language does not impinge in any way on the ZC's authority ultimately to decide whether the proposed alternative amenities are appropriate.

B.9. The proposed language includes a bonding provision to help ensure that Applicant performs its promises regarding qualification for LEED Gold status. The language is substantially similar to, but more specific than, language the ZC adopted in Z.C. ORDER NO. 06-31 (5220 Wisconsin Ave., NW), at page 18.

B.4.e. The proposed language includes a reference to the MOU provisions creating third-party beneficiaries. By merely referencing the agreement, the ZC would not create any rights independent of those created in the MOU.

For the above reasons and others, ANC 3E respectfully asks the ZC to adopt the attached Joint conditions.

This letter resolution passed by a vote of 3-0-2 at a properly noticed meeting held on February 19, 2013, at which a quorum was present, with Commissioners Bender, Frumin, Haile, Quinn, and Serebin in attendance.

ANC 3E

By Jonathan Bender, Chairperson

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing instrument was served on February 19, 2013, by email to the following:

Ward 3 Vision
c/o Steve Seelig
(E-mail to hal.ninek@verizon.net)

Tenleytown Neighbors Association, Inc.
c/o Juliet Six, President
3807 Alton Place, N.W.
Washington DC 20016
(E-mail to juliesixdc@gmail.com)

Cityline at Tenley Condominium Association
(E-mail to Susan Kimmel (mgrcityline@verizon.net))

Douglas Development
c/o Carolyn Brown
Holland & Knight
(E-mail to carolyn.brown@hklaw.com)

Jonathan Bender

Jemal's Babe's, L.L.C.
Z.C. Case No. 10-23
4600 and 4614 Wisconsin Ave., N.W.

Proffer	Condition
<p>NEW MULTI-USE DEVELOPMENT</p> <p>27. The Applicant's program includes approximately 48,830 square feet of residential space for 55-65 apartments on five new levels. Approximately 11,977 square feet of gross floor area will be devoted to retail uses on the ground and basement levels. An additional 7,717 square feet of retail space will be located on the cellar level (and not counting toward FAR).</p> <p>28. Above the first story, which occupies nearly the entire site, the project's massing is roughly rectangular in shape, with a small ell at the southwest corner of the new building. An open court above the first floor is positioned at the northwest corner. A rear yard extends from the northwest corner of the ground floor to the centerline of the mid-block alley. The building mass rises five stories above the first floor to a height of approximately 71 feet. As originally designed, the penthouse would rise 18.5 feet above the main roof. In response to comments raised by the Commission, the penthouse was redesigned and reduced to a height of 12.5 feet. The overall height of the building and penthouse fall below the 90-foot height limit allowed under a PUD for the proposed C-3-A District.</p> <p>29. The residential entrance is located on Wisconsin Avenue at the northeast corner of the site. Access to the ground floor retail space occurs along Wisconsin Avenue through a series of projecting storefront bays and recessed entrances. Entrance to the retail basement level is located along Brandywine Street from a new areaway. Access to the loading and service area is from Brandywine Street with a re-aligned curb cut at the southwest corner of the site.</p> <p>33. Retail uses will occupy most of the ground floor and will be accessed from Wisconsin Avenue. The existing floor construction is tiered in three increments as it steps down from an elevation highpoint at the southeast corner to the north, following the descending slope of the sidewalk. An</p>	<p>A.1. The PUD shall be developed in accordance with the plans and materials submitted by the Applicant, dated October 12, 2012, and marked as Exhibits 36A1 and 102A in the record, as modified by the guidelines, conditions and standards of this Order.</p> <p>A.2. In accordance with the Plans, the PUD shall be a mixed-used project with a consisting of approximately 60,815 square feet of gross floor area. Approximately 48,838 square feet of gross floor area will be devoted to residential uses at approximately 60 units, and 11,977 square feet of gross floor area will be devoted to retail and service uses.</p>

Proffer	Condition
<p>entrance is provided at each tier for flexibility in leasing the space. At the northeast corner the residential lobby is entered from Wisconsin Avenue. The existing B-1 level will provide space for additional retail uses and for building services including an enclosed loading berth and platform at the southwest corner. Access to the retail space will occur along Brandywine Street from a new areaway and outdoor patio.</p>	
<p>38. <u>Burying of Utility Lines</u>: The PUD includes the burying of existing utilities currently located overhead on utility poles along the street frontages of the PUD. The corner of Brandywine and Wisconsin Avenue is the first point at which utility lines come above-ground. The Applicant's proposal to extend the "undergrounding" along its street frontage is an important step in burying all the lines along the Wisconsin Avenue corridor. This effort not only eliminates unsightly electrical and cable lines, it significantly reduces the chances of power outages. The Applicant pledged up to \$600,000 to fund this effort in coordination with PEPCO. The Commission finds this to be a significant benefit of the PUD, which has considerable value to the immediate neighborhood and the community at large.</p>	<p>B.3. Burying of Utility Lines. Prior to issuance of a building permit for the PUD, the <u>Within 60 days after issuance of the PUD Order,</u> Applicant shall pay up to \$600,000 to <u>PEPCO or its designated entity to</u> fund the "undergrounding" of all utility lines along the Brandywine Street and Wisconsin Avenue frontages of the PUD ("Utility Pledge"). "Undergrounding" means the construction of underground vaults; installation of the utility lines presently located above ground on existing utility poles, and other appurtenant equipment in those vaults; and removal of all utility poles, in cooperation and coordination with PEPCO and other utility providers using the poles, such as cable and internet service providers. If 36 months have passed after issuance of the PUD order and construction work on <u>PEPCO is not ready to commence the</u> Undergrounding has not commenced, the ANC may, after consultation with Douglas, <u>work, the ANC shall, after consultation with Applicant, shall consult with the ANC to</u> designate an alternative community benefit or benefits ("Alternative") for a fixed amount of \$500,000. If the ANC designates an Alternative, the <u>The</u> Applicant shall promptly seek a modification of the PUD to redirect the \$500,000 fixed amount to the Alternative. Similarly, if the Utilities Pledge can be performed for less than \$400,000, then the ANC <u>ANC Applicant</u> shall, after consultation consult with the ANC, to designate an Alternative for the difference between the actual cost of performing the Utilities Pledge and \$400,000, and the Applicant shall promptly seek a modification of the PUD to redirect these funds to the Alternative. ===== <u>Prior to the issuance of a certificate of occupancy for the PUD, the</u> <u>Within 30</u> 12 months days after issuance of the</p>

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	<p><u>PUD Order or prior to issuance of a certificate of occupancy for the project, whichever is sooner.</u> <u>a</u>Applicant shall purchase a performance bond in the amount of \$600,000 <u>for the benefit of the ANC District of Columbia</u> to guarantee the promises in this condition, <u>provided that if an appeal is filed, the bond shall be purchased upon the sooner of the resolution of the appeal or issuance of a certificate of occupancy.</u></p>
<p>39. <u>Urban Design, Architecture, and Landscaping.</u> The exterior architectural treatment of the building provides a quality design that is not normally achieved under matter-of-right projects. The terra cotta exterior finish, painted aluminum panels and select glass adds a premium to the building above what would be likely under a matter-of-right development, with an added value of approximately \$600,000 (Exh. 36E and 102C). The project also includes the following amenities along the street frontages of the building: special entrance pavement; street edging and borders of mixed ground covers and perennials; four new street trees on Brandywine Street; five new street trees on Wisconsin Avenue; four bike racks on Wisconsin Avenue; streetscape furniture, including benches, tables with seating and trash receptacles; an outdoor patio/seating area along Brandywine Street for the adjacent retail/service use space; and a new fountain wall and planter at the ground level of the building. These improvements add approximately \$100,000 to the cost of the project. Across Wisconsin Avenue, the Applicant will improve with landscaping the triangular park known as Reservation 503 and the public space at the northeast corner of Wisconsin Avenue and Brandywine Street. Both would be planted with trees, shrubs and groundcovers. The corner area would also include the concrete pad for a Capital Bikeshare station, as well as funding for installation of the station. Consistent with its previous holdings (see Exh. 102C), the Commission finds these features of the PUD to be significant in their breadth, quality and value in comparison to what is typically achieved in a matter of right project.</p>	<p>A.1. The PUD shall be developed in accordance with the plans and materials submitted by the Applicant, dated October 12, 2012, and marked as Exhibits 36A1 and 102A in the record, as modified by the guidelines, conditions and standards of this Order.</p> <p>B.2. Public Space Improvements. <u>Prior to issuance of a certificate of occupancy for the PUD, and subject to approval by DDOT, which Applicant will make all reasonable attempts to obtain,</u> the PUD shall provide public space improvements along the street frontage of the building, which shall include the following:</p> <ol style="list-style-type: none"> a. Special entrance pavement; b. Street edging border of mixed ground covers and perennials; c. Four new street trees on Brandywine Street, N.W.; d. Five new street trees on Wisconsin Avenue, N.W.; e. Four bike racks on Wisconsin Avenue, N.W.; f. Streetscape furniture, including 4-foot bench and trash can, and table with two seats; g. An outdoor patio/seating area along Brandywine Street, N.W., for the adjacent retain/service use space; and h. A new fountain wall and planter at the ground level of the building. <p>B.10. Improvements to Parks on the East Side of Wisconsin Avenue. The<u>Prior to issuance of a certificate of occupancy for the PUD, the</u> Applicant shall undertake landscape improvements to the south portion of the triangular park known as Reservation 503 and to the public space are at the northeast corner of Brandywine Street and Wisconsin Avenue, N.W., as shown on the drawing marked as Exhibit 36A2 to the record, and subject</p>

Proffer	Condition
	<p>to obtaining any necessary governmental approvals or permits. <u>Applicant shall make all reasonable efforts as soon as the PUD Order is issued to obtain the necessary governmental approvals or permits for same. If the necessary governmental approvals or permits are delayed or otherwise not issued through no fault of the Applicant, the certificate of occupancy for the PUD may still be issued to the Applicant.</u> The Applicant shall maintain the landscaping for a period of five years. The landscape improvements at the corner of Brandywine Street and Wisconsin Avenue will include a concrete pad to allow for the future installation of a Capital Bikeshare station by DDOT. If DDOT does not commit funds to install the bikeshare station within 24 months after issuance of the PUD order, Douglas shall raise the funds for the installation or and prior to the issuance of a certificate of occupancy for the PUD, the Applicant shall pay for the installation itself.</p>
<p>40. <i>Transportation Features:</i> The PUD includes several transportation demand management measures that help mitigate the lack of parking on site and benefit the project and the community. The PUD will designate a resident transportation coordinator, whose responsibility would be to inform residents of alternative modes of transportation available and how to access them. Based on availability, a digital multimodal display being developed by DDOT will be installed in the lobby, providing information on Metrobus and Metrorail, and locations of bike and car share stations. Under the PUD's bicycle usage program, there will be secure storage for 60 bikes in a convenient location in the residential portion of the building (one per residential unit). Another 12 bike storage spaces will be located inside the building for use by retail employees. A secure shower facility will also be provided for the employees' use. Each initial resident and employee within the building will receive a \$100.00 SmartTrip Card. Each initial resident of the building will receive a one-year ZipCar membership valued at \$85.00. A car-sharing space will be located either directly in front of or within one block of the PUD. The Applicant and DDOT have also agreed to designate the Property as</p>	<p>B.4. Transportation Demand Management ("TDM") Measures. <i>Prior to issuance of a certificate of occupancy for the PUD,</i> the Applicant shall implement the following TDM measures at the PUD:</p> <ol style="list-style-type: none"> a. <u>Resident Transportation Coordinator:</u> The Applicant shall designate one site management employee as the Resident Transportation Coordinator ("RTC"). The RTC will be responsible for providing information to residents (particularly those incoming residents) regarding transit opportunities and schedules, as well as the location of Bike Share stations within the area, and bicycle parking provisions within the building. The RTC will generally encourage non-private auto usage and will have related information prominently displayed in the offices, community rooms, and other appropriate common space. b. <u>Digital Multimodal Display:</u> The Applicant shall install a digital multimodal display in the lobby of the residential building that provides schedule information of Metrobus and Metrorail service, and locations of bike share and car share stations, among other transportation related information. This

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<p>ineligible for the residential parking permit (RPP) program.</p>	<p>display is being developed by DDOT, and is referred to as "NextBus" Display. The installation at the PUD will be dependent on the progress made by the District on the display, its costs and its availability for installation.</p> <p>c. <u>Bicycle Usage Program</u>: The Applicant shall provide 60 bicycle parking spaces in a secure, convenient location in the PUD that will be accessible to residents at all times. Another 12 bike storage spaces will be located inside the building for use by retail employees. A secure shower facility will also be provided for the employees' use. The Applicant shall provide a one-time Capital Bikeshare annual membership fee for each initial tenant of the building.</p> <p>d. <u>Car Sharing</u>: The Applicant shall provide a one-time Zipcar membership and application fee (totaling \$85.00) to each initial residential tenant of the PUD. The Applicant shall also secure at least one car-sharing parking space, either directly in front of or within one block of the Property. If sSuch space is provided shall <u>be on the a street fronting on the Property, it shall not be</u> subject to rush hour or other restrictions.</p> <p>e. <u>Transit Subsidies</u>: The Applicant shall provide a one-time \$100.00 transit fare card to each initial tenant and employee in the building to encourage non-auto mode usage.</p> <p><u>Residential Parking Permit Program Exclusion</u>: The Applicant shall take such steps as are necessary to ensure that Residents do not receive RPPs <u>a residential parking permit ("RPP")</u>, including without limitation (i) placing a clause in emphasized type in all leases for residential units prohibiting any resident from applying for or obtaining a residential parking permit ("RPP") <u>RPP</u>, or using an RPP guest pass within one mile of the PUD, upon pain of mandatory lease termination, to the full extent permitted by law; (ii) ensuring that <u>ensuring that</u> requesting <u>requesting</u> DDOT removes <u>to removes</u> the Property from the list of properties eligible for RPPs, or if presently not on the list, classifying it as ineligible for RPP, <u>and the Applicant</u></p>

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	<p><u>shall obtain from DDOT written confirmation that it will not grant RPPs to residents of the PUD, and the Applicant shall obtain from DDOT written confirmation that it will not grant RPPs to residents of the PUD;</u> (iii) should the Applicant sell any units at the Property, adding a covenant that runs with the land to the deed for the units prohibiting residents from applying for or obtaining RPPs, <u>to the full extent permitted by law;</u> and (iv) executing a covenant that runs with the land for the Property generally that embodies the provisions of this condition. <u>Applicant has entered into an agreement with the ANC providing that in the event DDOT does not remove the Subject Property from the RPP list or classify it as ineligible for RPPs, any resident of ANC 3E may take legal action ("Suit") as a third-party beneficiary of this Agreement to compel Douglas to terminate the lease of any Resident who violates the RPP prohibition, if Douglas has failed promptly to take such action on its own initiative. A resident of ANC 3E that substantially prevails in a Suit shall be entitled to an award of its reasonable attorney's fees. Furthermore, if Douglas loses three or more Suits, it shall be required to donate \$10,000 to a non-profit organization identified by the ANC for each subsequent Suit it loses.</u></p> <p>f. <u>In the event DDOT does not remove the Subject Property from the RPP list or classify it as ineligible for RPPs, any resident of ANC 3E may take legal action as a third-party beneficiary of the Agreement to compel the Applicant to terminate the lease of any resident who violates the RPP prohibitions, if the Applicant has failed promptly to take such action on its own initiative. A resident of ANC 3E who substantially prevails in a lawsuit shall be entitled to an award of his or her attorney's fees. If the Applicant loses three or more such lawsuits, the Applicant shall be required to donate \$10,000 to a non-profit organization identified by the ANC for each subsequent lawsuit the Applicant loses.</u></p>

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	<p>g. <u>Unlawful Parking/Stopping</u>: The Applicant will place a provision in the leases for all commercial tenants requiring them to actively discourage visitors to their establishments from unlawfully stopping or parking automobiles in front of the establishment or elsewhere in the neighborhood in connection with visits to the establishment. The provisions shall note, without limitation, (i) that a pattern of unlawful stopping or parking in connection with visits to the establishment may, in the Applicant's discretion, be cause for lease termination, and (ii) that should the ANC receive complaints about unlawful stopping or parking in connection with visits to the establishment, the ANC may send a written notification to the establishment concerning same, and the establishment shall ensure that a senior representative thereof will attend the next ANC meeting to address such complaints.</p> <p>h. <u>Metered Parking Demand</u>: The Applicant shall work with DDOT to match the supply of and restrictions on metered parking spaces adjacent to the building to the parking demand.</p> <p>B.5. TDM Performance Monitoring: The Applicant shall implement the following TDM performance monitoring measures:</p> <ul style="list-style-type: none"> a. Annual surveys to document trip generation and modal split for a period to DDOT's satisfaction where the PUD-generated trips and parking demand is believed to have stabilized; b. Annual monitoring and documentation of registration/usage of the bikeshare program by the tenants of the PUD; c. Annual monitoring and documentation of the registration/usage of the carshare program by the tenants of the PUD; d. A mechanism to monitor the number of vehicles owned by tenants to determine the actual parking demand in the vicinity; e. Annual parking occupancy surveys for the metered parking spaces along the roadways that are included in the Applicant's Transportation Impact Study to compare the baseline results submitted in the TIS to the results after the PUD is built and occupied;

Proffer	Condition
	f. Documentation showing the implementation of the proposed TDM measures and any others that were not initially proposed.
<p>41. <u>Sustainability Features</u>: The PUD will achieve approximately 62 LEED points, the equivalent of a LEED-Gold rating under the USGBC 2009 Version Three, which incorporates a more stringent prerequisite and rating system than the previous version. Using proven marketplace technologies, the project's sustainable features can be grouped into three general categories: (i) High Performance Building Envelope; (ii) Energy-Efficient Mechanical, Electrical and Plumbing Systems; and (iii) Water Conservation Measures. The PUD will achieve greater thermal efficiency of the building envelope. The project will include a high performance clear, low-E insulated glazing. Additionally, a continuous thermal break system will be incorporated with window walls and punched windows. Water conservation methods will include the use of low flow plumbing fixtures throughout the building and energy-star rated appliances. Approximately 50 percent of the project's site area will be covered with green roof and/or planters that will feature native plant species. Combined, these measures will reduce overall energy consumption and reduce water consumption. The project's LEED scorecard is rounded out by points that relate to an urban site redevelopment; transportation and connectivity; materials sourcing and recycled content. Perhaps the most significant aspect of LEED certification equivalency is the reuse of the existing building structure, which is suitable for adaptation to retail base for a new an apartment building. No costs or materials will be wasted in demolishing the structure, and the building's soundness obviates the need for wasting time, energy and materials replicating it (Exh. 40). The Commission has consistently found that LEED-Silver- and LEED-Gold-designed buildings exceed what is otherwise achievable under a matter-of-right project and thus the LEED-Gold design of this building constitutes a benefit of the PUD.</p>	<p>B.9. LEED Qualification: The Applicant commits that the resulting building will qualify for a LEED-Gold rating subject to scoring by a qualified party unaffiliated with the project selected by the ANC ("Qualified Party"). A "Qualified Party" would include an architectural or engineering firm or other professionals as agreed to by the ANC with LEED certified personal at a cost of up to \$10,000.00. <u>Prior to the issuance of a certificate of occupancy</u>, the Applicant <u>agrees to deposit into an escrow account an amount equal to 2% of the construction costs for the PUD, such construction cost amount being that identified on the building permit application. At the same time, Applicant will deliver to the ANC and Zoning Commission a statement of its total construction cost for the PUD, executed under oath by an officer of Applicant. When the Qualified Party certifies the PUD would qualify for LEED-Gold Certification, the security will be released to the Applicant. In the event that the Applicant does not demonstrate to the satisfaction of the Qualified Party that the project would not qualify for LEED-Gold Certification within 24 months after the date the certificate of occupancy for the PUD is issued, the security will be released to the District of Columbia ("District"), unless the District Department of Environment or another agency designated by the Mayor determines that the sustainable features, as built, provide value substantially equivalent to or exceeding the environmental value of sustainable features that would qualify for LEED Gold status. If such finding is made, the District, in its sole discretion, shall determine whether the security shall be released in part to the District and in part to the Applicant. <u>shall submit a certified LEED checklist demonstrating compliance with the LEED-Gold rating.</u></u></p>
<p>52. The MOU requires the Applicant to: (i) restrict the types of commercial retail and services uses in the PUD to ensure they reflect the needs and</p>	<p>B.1. Restricted Uses. <i>For the life of the PUD</i>, the Applicant shall prohibit the following retail and services uses or sales in the PUD, unless otherwise</p>

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<p>desires of the community; (ii) insert a clause in the residential forbidding tenants from obtaining an RPP or using a guest RPP to park in the neighborhood; (iii) provide transit and alternative mode subsidies, including car-sharing and bike-sharing memberships to initial tenants; (iv) market the residential units to prospective tenants that wish to live a car-free lifestyle; (v) make all commercially reasonable efforts to obtain 20 offsite parking spaces available to tenants on a monthly basis for ten years, in the unlikely event that some residents ultimately need or demand a parking space; (vi) provide validated parking for the first hour for commercial tenants with more than 3,500 square feet of space; (vii) "underground" utilities at a cost of up to \$600,000; (viii) design the building to LEED-Gold standards; (ix) make numerous streetscape improvements immediately adjacent to the site and in the public park and public space across Wisconsin Avenue to the east; (x) restrict construction hours; and (xi) ensure prompt trash removal at the property.</p> <p>The Applicant agreed to include these commitments and obligations as conditions in the PUD, if approved by the Commission.</p>	<p>agreed to by the Applicant and ANC, as evidenced by a formal vote at a duly-noticed ANC meeting:</p> <ul style="list-style-type: none"> a. The sale of pornographic material; b. check-cashing establishment; c. pawnbroker; d. night club; e. drycleaners; f. bank; g. mattress store; h. convenience store; i. professional office; j. a "chain" store that has five or more of the same-named establishments in the District of Columbia; k. a drug store; and l. any store that sells products that weigh 40 or more pounds each, unless the store makes such products available by shipping or delivering to the customer. <p>B.4.f. Residential Parking Permit Program Exclusion: Insert Previous B.4.f Language The Applicant shall take such steps as are necessary to ensure that Residents do not receive RPPs, residential parking permit ("RPP"), including without limitation (i) placing a clause in emphasized type in all leases for residential units prohibiting any resident from applying for or obtaining a residential parking permit ("RPP"), RPP, or using an RPP guest pass within one mile of the PUD, upon pain of mandatory lease termination, to the full extent permitted by law; ... (ii) requesting DDOT to remove the Property from the list of properties eligible for RPPs, or if presently not on the list, classifying it as ineligible for RPP; (iii) should the Applicant sell any units at the Property, adding a covenant that runs with the land to the deed for the units prohibiting residents from applying for or obtaining RPPs, to the full extent permitted by law; and (iv) executing a covenant that runs with the land for the Property generally that embodies the provisions of this condition.</p> <p>B.4.d. Car Sharing: The Applicant shall provide a one-time Zipcar membership and application fee (totaling \$85.00) to each initial residential tenant of the PUD. The Applicant shall also secure at least one car-sharing parking space, either directly in</p>

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	<p>front of or within one block of the Property. if Such space shall be on a street is provided on the street fronting on the Property, it shall not be subject to rush hour or other restrictions.</p> <p>B.4.e. Transit Subsidies: The Applicant shall provide a one-time \$100.00 transit fare card to each initial tenant and employee in the building to encourage non-auto mode usage.</p> <p>B.4.c. Bicycle Usage Program: The Applicant shall provide 60 bicycle parking spaces in a secure, convenient location in the PUD that will be accessible to residents at all times. Another 12 bike storage spaces will be located inside the building for use by retail employees. A secure shower facility will also be provided for the employees' use. The Applicant shall provide a one-time Capital Bikeshare annual membership fee for each initial tenant of the building.</p> <p>B.2. Public Space Improvements. <i>Prior to issuance of a certificate of occupancy for the PUD, and subject to approval by DDOT, which Applicant shall timely make all reasonable efforts to obtain,</i> the PUD shall provide public space improvements along the street frontage of the building, which shall include the following:</p> <ol style="list-style-type: none"> a. Special entrance pavement; b. Street edging border of mixed ground covers and perennials; c. Four new street trees on Brandywine Street, N.W.; d. Five new street trees on Wisconsin Avenue, N.W.; e. Four bike racks on Wisconsin Avenue, N.W.; f. Streetscape furniture, including 4-foot bench and trash can, and table with two seats; g. An outdoor patio/seating area along Brandywine Street, N.W., for the adjacent retain/service use space; and h. A new fountain wall and planter at the ground level of the building. <p>B.6. Reserved Residential Parking Spaces; Validated Parking for Business Patrons: The Applicant commits that at the time the PUD receives<i>Prior to the issuance of a certificate of occupancy, it will</i> for the PUD, the Applicant shall have in place agreements with <u>parking</u> facilities within a 500-yard radius to provide<u>make available</u></p>

Proffer	Condition
	<p>20 off-site parking spaces to residents of the PUD to rent for a fee. Such agreements shall have at least an annual duration and the Applicant will make all commercially-reasonable efforts to renew or replace them annually or on some other term for a period of up to ten years from the date the certificate of occupancy issues. The Applicant will not market the residential units to prospective tenants who have automobiles. The Applicant shall record all requests by residents for parking spaces by residents, and shall notify the ANC in writing within 30 days of its inability to provide the requested parking space. In the event the Applicant is not able to provide the required parking, the Applicant shall pay annually to a non-profit organization designated by the ANC an amount of 150% of the market rate cost per parking space not provided. If there is no demand for some or all of such spaces as determined by the ANC and the Applicant, then this requirement shall be reduced accordingly. The Applicant shall also arrange for validated parking for patrons of any commercial businesses business or businesses at the PUD with 3,500 square feet of space or more at a facility within 500 yards of the PUD, prior to the issuance of a certificate of occupancy for that commercial business. Such validated parking shall permit patrons to park for free for the first hour of parking.</p> <p>B.3. Burying of Utility Lines. Insert Previous B.3 Language Here Prior to issuance of a building permit for the PUD, the The Applicant shall pay up to \$600,000 to PEPCO or its designated entity to fund the "undergrounding" of all utility lines along the Brandywine Street and Wisconsin Avenue frontages of the PUD ("Utility Pledge"). "Undergrounding" means the construction of underground vaults; installation of the utility lines presently located above ground on existing utility poles, and other appurtenant equipment in those vaults; and removal of all utility poles, in cooperation and coordination with PEPCO and other utility providers using the poles, such as cable and internet service providers. If 36 months have passed after issuance of the PUD order and construction work on PEPCO is not ready to commence the Undergrounding has not commenced, the ANC may, after consultation with</p>

Proffer	Condition
	<p>Douglas, work, the Applicant shall consult with the ANC to designate an alternative community benefit or benefits ("Alternative") for a fixed amount of \$500,000. If the ANC designates an Alternative, the Applicant shall promptly seek a modification of the PUD to redirect the \$500,000 fixed amount to the Alternative. Similarly, if the Utilities Pledge can be performed for less than \$400,000, then the ANC Applicant shall consult with the ANC to designate an Alternative for the difference between the actual cost of performing the Utilities Pledge and \$400,000, and the Applicant shall promptly see a modification of the PUD to redirect these funds to the Alternative. Prior to the issuance of a certificate of occupancy for the PUD, the Applicant shall purchase a performance bond in the amount of \$600,000 for the benefit of the ANC to guarantee the promises in this condition.</p> <p>B.9. LEED Qualification: INSERT Previous B.9 language here The Applicant commits that the resulting building will qualify for a LEED Gold rating subject to scoring by a qualified party unaffiliated with the project selected by the ANC ("Qualified Party"). A "Qualified Party would include an architectural or engineering firm or other professionals as agreed to by the ANC with LEED certified personal at a cost of up to \$10,000.00. Prior to the issuance of a certificate of occupancy, the Applicant agrees to deposit into an escrow account an amount equal to 2% of the construction costs for the PUD, such construction cost amount being that identified on the building permit application. When the Qualified Party certifies the PUD would qualify for LEED Gold Certification, the security will be released to the Applicant. In the event that the Applicant does not demonstrate to the satisfaction of the Qualified Party that the project would not qualify for LEED Gold Certification within 24 months after the date the certificate of occupancy for the PUD is issued, the security will be released to the District, unless the District determines that the sustainable features, as built, provide value. Is such finding is made, the District, in its sole discretion, shall determine whether the security shall be released in part to the District and in part to the Applicant shall submit a certified LEED checklist</p>

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	<p>demonstrating compliance with the LEED-Gold rating;</p> <p>B.10. Improvements to Parks on the East Side of Wisconsin Avenue. The<i>Prior to issuance of a certificate of occupancy for the PUD,</i> the Applicant shall undertake landscape improvements to the south portion of the triangular park known as Reservation 503 and to the public space are at the northeast corner of Brandywine Street and Wisconsin Avenue, N.W., as shown on the drawing marked as Exhibit 36A2 to the record, and subject to obtaining any necessary governmental approvals or permits. If the necessary governmental approvals or permits are delayed or otherwise not issued through no fault of the Applicant, the certificate of occupancy for the PUD may still be issued to the Applicant. The Applicant shall maintain the landscaping for a period of five years. The landscape improvements at the corner of Brandywine Street and Wisconsin Avenue will include a concrete pad to allow for the future installation of a Capital Bikeshare station by DDOT. If DDOT does not commit funds to install the bikeshare station within 24 months after issuance of the PUD order, Douglas shall raise the funds for the installation and prior to the issuance of a certificate of occupancy for the PUD, the Applicant shall pay for the installation itself.</p> <p><u>INSERT PREVIOUS B.10. Language above</u></p> <p>B.7. Construction Hours: <i>During construction of the PUD,</i> the Applicant, its tenants, and contractors will not engage in any construction activities, other than emergency repairs, before 7:00 a.m. and after 8:00 p.m., Monday through Friday, or before 8:00 a.m. and after 8:00 p.m. on Saturday. The Applicant and its contractors will not engage in any construction work, other than repairs, on Sunday.</p> <p>B.8. Trash Removal: <i>During the life of the PUD,</i> the Applicant or its tenants will promptly remove all trash and debris from the public space located between the property line and the adjacent curb.</p>

Document comparison by Workshare Professional on Monday, February 04, 2013 11:04:53 AM

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