

# Holland & Knight

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March 4, 2020

## **VIA EMAIL**

Zoning Commission  
of the District of Columbia  
441 4th Street, N.W., Suite 210S  
Washington, D.C. 20001  
zcsubmissions@dc.gov

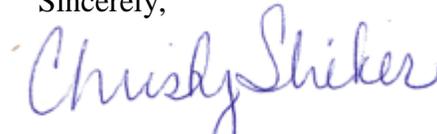
Re: **Zoning Commission Case No. 18-21**  
**Certified Copy of PUD Covenant**

Dear Members of the Commission:

On behalf of the Applicant in the above-referenced case, enclosed please find a certified copy of the PUD Covenant that was recorded with the Recorder of Deeds on March 3, 2020, as Instrument Number 2020029446. The filing of a certified copy of the PUD Covenant is required by Paragraph No. 6 in the PUD Covenant, Decision No. D.2 of Zoning Commission Order No. 18-21(1), and Subtitle X § 311.3 of the Zoning Regulations. By copy of this letter, a certified copy of the PUD Covenant is also being sent to the Zoning Administrator, as required.

Should you have any questions or need additional information, please do not hesitate to have staff call me.

Sincerely,



Christine M. Shiker

Enclosure

cc: Matthew Le Grant, Zoning Administrator, D.C. Department of Consumer & Regulatory Affairs (w/enclosure, via Hand Delivery)



2020029446-57

**PLANNED UNIT DEVELOPMENT COVENANT**

**Z.C. CASE NO. 18-21**

**PO 8<sup>th</sup> STREET LP<sup>1</sup>**

**(Consolidated Planned Unit Development and Related Map Amendment @  
Squares 3832 and 3835)**

THIS PLANNED UNIT DEVELOPMENT COVENANT (this “**Covenant**”), is made by **PO 8<sup>TH</sup> STREET LP**, a Delaware limited partnership (the “**Owner**”) for the benefit of the **DISTRICT OF COLUMBIA**, a municipal corporation (the “**District**”), effective as of the date of last signature executing this Covenant.

**W I T N E S S E T H:**

WHEREAS, Owner owns in fee simple title to that certain real property in the District of Columbia known as Lot 15 in Square 3832 and Lot 804 in Square 3835 (together, the “**PUD Site**”), as is more particularly described in Exhibit A attached hereto and incorporated herein.

WHEREAS, pursuant to Chapter 3 of Subtitle X of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “**Zoning Regulations**,” to which all references herein are made unless otherwise specified), the Zoning Commission for the District of Columbia (the “**Commission**”) approved an application for a consolidated planned unit development (“**PUD**”) and a related Zoning Map amendment for the PUD Site by Zoning Commission Order No. 18-21, which was corrected by Zoning Commission Order No. 18-21(1) (collectively with Order No. 18-21, the “**Order**”), both dated June 10, 2019, and both of which became final and effective on the date of original publication in the D.C. Register on November 22, 2019).

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<sup>1</sup> The Applicant in Z.C. Case No. 18-21 was known as Hanover R.S. Limited Partnership and was authorized by the owners of the PUD Site to file and process the application. The PUD Site is now owned by PO 8<sup>th</sup> Street LP, who is the signatory to this Covenant.

WHEREAS, Subtitles X § 311.3 and Z § 702.10 require that Owner enter into this Covenant with the District binding the Owner, and its successors and assigns in title, to construct on and use the PUD Site in accordance with the Order, including all modifications, alterations or amendments thereto approved by the Commission.

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

1. Approved Plans, Terms and Conditions. The terms and conditions of the Zoning Commission's approval of the PUD and related Zoning Map amendment for the PUD Site in the Order (as the same may be amended and/or modified from time to time), are incorporated herein by reference and made a part hereof as Exhibit B and shall be considered a part of this Covenant. The PUD Site shall be developed and used in accordance with the plans approved by the Order and in accordance with the conditions and restrictions contained in the Order, subject to such changes thereto as the Zoning Administrator of the District of Columbia may authorize pursuant to Subtitle A § 304.5, or changes made by the Zoning Commission pursuant to Subtitle Z §§ 703 or 704. Owner covenants that it shall use the PUD Site only in accordance with the terms of the Order, as the same may be further amended and/or modified from time to time, subject to the terms and conditions contained herein and the provisions of Subtitle X, Chapter 3 of Title 11 DCMR.

2. Additional Time to Construct PUD. The Commission may consider an application filed by Owner demonstrating good cause to extend the validity period of the Order and the time period requirements for filing a building permit application and commencing construction in accordance with Decision No. D(3), in accordance with and subject to the limitations of Subtitle Z § 705.

3. Default. In the event that Owner fails to file for a building permit for and/or to commence construction of the approved PUD within the time specified in Subtitle Z §§ 702.2 and 702.3 and the Order, or within any extension of time granted by the Zoning Commission for good cause shown pursuant to Subtitle Z § 705, the benefits granted by the Order shall terminate pursuant to Subtitle Z § 702.6 and this Covenant shall be deemed null and void.

4. Future Conveyance. Owner covenants that if any conveyance of all or any part of the PUD Site takes place, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns, to develop and use the PUD Site in accordance with the terms and conditions of this Covenant and the grantee, its successors and assigns shall be considered a declarant to this Covenant.

5. Covenants to Run with the Land. The covenants and restrictions contained herein shall be deemed real covenants running with the land and shall bind the Owner, and its successors and assigns, and shall inure to the benefit of the Owner and the District, their successors and assigns. Such covenants are not binding upon any party who no longer has a property interest in the PUD Site. In the event that all or part of the PUD Site is sold or otherwise conveyed by the Owner, the purchaser or transferee and its successors and assigns shall be considered the Owner hereunder, and the District shall continue to be deemed the beneficiary of the Covenant for the purposes of enforcing all covenants, conditions and restrictions contained herein applicable to the PUD Site and/or the Owner.

6. Recordation. Owner shall record this Covenant, as fully executed by the parties hereto, among the land records of the District of Columbia (the “**Land Records**”), and shall file a certified copy of this Covenant with the Zoning Administrator and the Zoning Commission.

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

8. Rescission/Alteration of Covenant. If the Commission modifies or amends the Order, no formal amendment of this Covenant shall be required, provided that Owner, or its successors or assigns, records a notice of modification in the Land Records together with a copy of the written order authorizing the modification or amendment. No other amendment of the obligations created by this Covenant is permitted without the written consent of the District and, if determined by the Office of the Attorney General to be necessary, without the prior approval of the Zoning Commission.

**[SIGNATURES ON FOLLOWING PAGES]**

IN WITNESS WHEREOF, PO 8<sup>th</sup> Street LP, a Delaware limited partnership, has caused this Covenant to be executed by PO 8<sup>th</sup> Street G.P. LLC, a Delaware limited liability company, its General Partner, which has, in turn, caused this Covenant to be signed by Kathy K Binford, its duly authorized Vice President, on behalf of said limited liability company in its capacity as general partner on behalf of PO 8th Street LP, a Delaware limited partnership.

**OWNER:**

**PO 8TH STREET LP,**  
a Delaware limited partnership.

By: **PO 8TH STREET G.P. LLC,**  
a Delaware limited liability company,  
its general partner

By: Kathy K. Binford (SEAL)  
Name: Kathy K. Binford  
Title: Vice President

STATE OF Texas

CITY/COUNTY OF Harris, to-wit:

The foregoing instrument was acknowledged before me, the undersigned Notary Public, in the jurisdiction aforesaid, this 6 day of February, 2020, by Kathy K. Binford, Vice President of PO 8th Street G.P. LLC, a Delaware limited liability company, on behalf of said limited liability company in its capacity as general partner on behalf of PO 8th Street LP, a Delaware limited partnership.

My Commission Expires: 02-23-2021

Leticia Leija  
Notary Public

(NOTARIAL SEAL)



APPROVED:

*Matthew Le Grant*

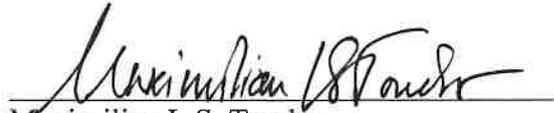
Matthew LeGrant, Zoning Administrator,  
Department of Consumer and Regulatory Affairs

*2-19-20*

Date

(PUD Covenant pursuant to Subtitles X § 311.3 and Z § 702.10 for Lot 15 in Square 3832 and Lot 804 in Square 3835 for a Consolidated PUD approved by Z.C. Order Nos. 18-21 and 18-21(1))

**APPROVED AS TO LEGAL SUFFICIENCY:**

  
\_\_\_\_\_  
Maximilian L.S. Tondro

\_\_\_\_\_  
Date 2/25/20

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

(PUD Covenant pursuant to Subtitles X § 311.3 and Z § 702.10 for Lot 15 in Square 3832 and Lot 804 in Square 3835 for a Consolidated PUD approved by Z.C. Order Nos. 18-21 and 18-21(1))

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PUD SITE**

All that certain property situate, lying and being in the District of Columbia and more particularly described as follows:

Lot 15 in Square 3832 in a subdivision made by ABDO Warehouse, L.L.C., as per plat recorded in Liber 199 at folio 39 in the Office of the Surveyor for the District of Columbia.

And

All that certain lot or parcel of land, with improvements thereon and appurtenances thereto belonging, lying and being in the District of Columbia and more particularly described as follows:

Part of Lot numbered Fourteen (14) in a subdivision of "Metropolis View" made by Berry and Middleton, Trustees, as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber Governor Shepherd at Folio 41, and a portion of Irving Street (Closed) as shown on plat recorded in the aforesaid Surveyor's Office Plat Book 138 at page 99, all being more particularly described as follows:

Beginning for the same at a point forming the southwest corner of Lot 801 in Square 3832, and running thence East, 136.38 feet to a point; thence South 00 degrees 23 minutes 00 seconds East, 48.44 feet to a point; thence South 01 degree 07 minutes 00 seconds West, 99.37 feet to a point; thence South 01 degree 51 minutes 00 seconds West, 99.40 feet to a point; thence South 03 degrees 01 minute 00 seconds West, 99.40 feet to a point; thence South 00 degrees 53 minutes 01 seconds West, 77.16 feet to a point; thence North 28 degrees 59 minutes 00 seconds West, 93.78 feet to a point; thence West, 79.92 feet to a point; and thence North, 341.66 feet to the point of beginning.

SAVING AND EXCEPTING therefrom, that portion of the property conveyed in Deed recorded April 7, 1998 as Instrument No. 98000025031 described as follows:

Beginning for the same at a point forming the southwest corner of Lot 802 in Square 3835 and thence running the following five (5) courses:

1. Due North 19.00 feet to a point of intersection with chain link fence, thence:
2. South 88 degrees 23 minutes 04 seconds East 83.95 feet along said fence to a point, thence:

3. South 14 degrees 54 minutes 55 seconds East 47.54 feet along fence to a point of intersection with northeastern line of Lot 1 in Square 3836, thence:

4. North 28 degrees 59 minutes 00 seconds West 33.50 feet along said northeastern line to a point of intersection north line of Lot 1 in Square 3836, thence:

5. Due West 79.92 feet along said north line to the point of beginning containing 1655.43 square feet, more or less.

NOTE: at the date hereof the above described property is designated on the Records of the Assessor for the District of Columbia for assessment and taxation purposes as Lot numbered Eight Hundred Four (804) in Square numbered Thirty-Eight Hundred Thirty-Five (3835).

**EXHIBIT B**

**ZONING COMMISSION ORDER NO. 18-21(1)**

[appended]

GOVERNMENT OF THE DISTRICT OF COLUMBIA



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION CORRECTED<sup>1</sup> ORDER NO. 18-21(1)

Z.C. Case No. 18-21

Hanover R.S. Limited Partnership

(Consolidated Planned Unit Development and Related Map Amendment @  
Squares 3832 and 3835)

June 10, 2019

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on April 25, 2019, to consider the application of Hanover R.S. Limited Partnership (the "Applicant") for a consolidated planned unit development ("PUD") and a related Zoning Map amendment (the "Application") for property which is located at Square 3832, Lot 15 and Square 3835, Lot 804 (collectively the "Property"). The Commission considered the Application pursuant to Subtitle X, Chapter 3, and Subtitle Z of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the "Zoning Regulations", to which all references are made unless otherwise specified). For the reasons stated below, the Commission hereby **APPROVES** the Application.

**FINDINGS OF FACT**

**Notice**

1. On February 28, 2019, the Office of Zoning ("OZ") sent notice of the hearing to:
  - Advisory Neighborhood Commission ("ANC") 5E, the "affected" ANC pursuant to Subtitle Z § 101.8;
  - ANC Single Member District ("SMD");
  - Office of Planning ("OP");
  - District Department of Transportation ("DDOT");
  - Department of Consumer and Regulatory Affairs ("DCRA");
  - District of Columbia Housing Authority ("DCHA");
  - Office of the Attorney General ("OAG");
  - Department of Energy and the Environment ("DOEE");
  - the DC Council; and
  - Property owners within 200 feet of the Property. (Exhibit ["Ex."] 19.)
2. OZ also published notice of the hearing in the *D.C. Register* on March 8, 2019 (66 DCR 2736) as well as through the calendar on OZ's website. (Ex. 17.)

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<sup>1</sup> Corrected to remove Finding of Fact No. 95a. that was previously stated at Finding of Fact No. 92b. and to remove staff notes that were inadvertently left in Findings of Fact Nos. 61, 62, and 86.

### Parties

3. The parties to the case were the Applicant and ANC 5E, the ANC in which the Property is located. There were no requests for party status.

### The Property

4. The Property has a total land area of 90,293 square feet and is bounded by the Washington Metropolitan Area Transit Authority ("WMATA") tracks to the east and 8<sup>th</sup> Street, N.E. to the west. Kearny Street, N.E. is located to the northwest of the Property, and Irving Street, N.E. is located to the southwest of the Property.
5. The southern portion of the Property is presently improved with a vacant industrial building that was most recently used by a nonprofit. The northern portion of the Property is occupied by industrial uses. Approximately one-half of the Property is a machine laydown yard leased by a construction rental company. The remainder of the Property contains two free-standing, light-weight sheet metal warehouse buildings. These buildings are used predominantly to store construction equipment and building supplies. Individual warehouse bays within these structures are leased to trade contractors in the construction business.
6. Directly to the north of the Property is the District Artspace Lofts, which was approved as a PUD (Z.C. Case No. 09-08, subsequently modified by Z.C. Case Nos. 09-08A and 09-08B). The PUD included new facilities for Dance Place, which has been located in the neighborhood since 1986. The District Artspace Lofts is a four-story building that is 48 feet in height and includes open space between the buildings generally at the terminus of Kearney Street.
7. Further to the north is the Brookland-CUA Metrorail station and adjacent to the Metrorail is Monroe Street Market, which was approved as a PUD (Z.C. Case No. 08-24, subsequently modified by Z.C. Case Nos. 08-24B through 08-24C). The Monroe Street Market PUD is a development on five separate "blocks" and includes buildings with a maximum height of 90 feet.
8. These two PUDs, as well as the PUD that is the subject of the Application, create a spine of development that traverses from Michigan Avenue to the Brookland-CUA Metrorail station and down 8<sup>th</sup> Street along the WMATA tracks.
9. To the west of the Property is the Edgewood neighborhood, which is predominantly residential in character. Existing industrial uses are clustered along the east side of 8<sup>th</sup> Street, which are incompatible with the longstanding residential neighborhood to the west. Further to the south along Edgewood Street (which is a continuation of 8<sup>th</sup> Street south of Hamlin Street) is the Tolson Campus of the Hope Community Public Charter School (the "Hope Community Charter School"). Two additional schools (DC Prep Edgewood Elementary School and City Arts and Prep Public Charter School) are located south of Franklin Street.

10. Since the majority of 8<sup>th</sup> Street between the Brookland-CUA Metrorail station and the school is improved with industrial uses, the streetscape along 8<sup>th</sup> Street does not include sidewalks to provide a connection between the schools to the south and the Metrorail station and Dance Place to the north, which serve the schools' transportation and after-school enrichment needs, respectively.
11. The area is served well by various transportation options. The Brookland-CUA Metrorail station is located 0.3 miles to the north of the Property. In addition, Michigan Avenue to the north of the Property is also well served by five Metrobus routes (80, H1, H2, H3, and H4).
12. The Metropolitan Branch Trail ("MBT") generally traverses the western side of the WMATA tracks and Metrorail red line from Union Station up to Franklin Street. The MBT turns west along Franklin Street and terminates at 7<sup>th</sup> Street. Since the MBT begins again at the intersection of Monroe Street and 8<sup>th</sup> Street to the north of the Property, 8<sup>th</sup> Street serves as an unmarked portion of the MBT. As a result, DDOT is studying options for implementing an extension of the MBT immediately adjacent to the Property.
13. The Property is currently zoned PDR-1.

#### **The Application**

14. On October 30, 2018, the Applicant filed the Application with the Commission for the consolidated review and approval of a PUD and a related Zoning Map amendment from the PDR-1 zone to the MU-4 zone for the Property. (Ex. 1-2L.)
15. The Applicant proposes to construct two multifamily residential buildings separated by a landscaped entry plaza, with a total of approximately 377 units (the "Project"). (Ex. 2, 3A1-3A10.)
16. While the buildings will function as a single residential development, the Project includes two separate buildings in order to break down the scale of the PUD and appropriately site the Project within the surrounding residential neighborhood.
17. Though each building includes its own residential lobby accessed from the landscaped entry plaza, the amenities for the buildings' residents will be located primarily in the north building. This includes amenity space on the ground floor as well as third-floor amenity space adjacent to the outdoor pool in the north building's courtyard. The south building includes two outdoor courtyards above the second level, with landscaping, paving, and seating.
18. The two buildings will include approximately 325,050 square feet of gross floor area, or a density of 3.6 floor area ratio ("FAR"), calculated based on the overall Property. The maximum height of the both buildings is 65 feet as measured to the top of the parapet. Each building also includes setbacks at the sixth story and the courtyards above the second level fronting on 8<sup>th</sup> Street act as additional setbacks, breaking up the façade along 8<sup>th</sup> Street.

Both buildings in the Project include a habitable penthouse with a maximum height of 12 feet and a mechanical penthouse with a maximum height of 18 feet, 6 inches. All portions of the penthouses will be set back 1:1 in accordance with the Zoning Regulations and will comply with the other penthouse requirements set forth in Subtitle C, Chapter 15.

19. The north building is “U” shaped, and the south building is “E” shaped. The massing of both buildings is weighted towards the tracks, which shields the surrounding lower-density residential uses in the vicinity of the Property from the WMATA tracks to the east. The building wings open towards the street to minimize the buildings’ scale and the double order fenestration helps to minimize the perceived height of the buildings.
20. The Project is designed within the framework of the Brookland-CUA Small Area Plan (“SAP”) and specifically within the recommendations of the Commercial Area South of Metro Station Subarea. Both buildings include a .5:1 setback at approximately 50 feet in height as called for in the SAP. (*See* SAP at 52 [“Building facades facing a public street in the sub area should step back in height at a ratio of one half (1/2) to one above 50 feet.”].) The buildings are further stepped back at the penthouse level and the overall building scale is compatible with the spine of development that is clustered along Michigan Avenue and 8<sup>th</sup> Street to the north of the Property.
21. The buildings’ wings include asymmetrical composition, and the materials include glass and dark panel grid projections contrasting with recessed textured punched openings in the main brick façades. This asymmetrical theme is carried up and around the building façade façades and the dark grid is also carried through to the buildings’ penthouses in order to minimize the penthouse from view.
22. Each residential building has a two-story base that relates to the two-story rowhomes across 8<sup>th</sup> Street. While the two buildings are related in the architecture, they vary slightly in brick color to create distinct identities while fostering a coherent vision for the entirety of the Property. The brick layering and detailing provided on both buildings further relate the Project to the surrounding rowhome aesthetic as does the inclusion of bays, stoops, canopies, wood doors, and street level gardens. The inclusion of private stoops along with tiered foundation plantings at the base of both buildings further compliment the scale and character of the surrounding neighborhood. The Project also includes “townhouse-style” units along 8<sup>th</sup> Street, N.E. that further activate and enliven the streetscape.
23. The Project is designed to LEED-Gold standards and the similarly intends to seek LEED- Gold certification of the Project under the LEED v4-Multifamily Midrise standard. The LEED v4-Multifamily Midrise standard is tailored to the unique aspects of multifamily buildings and includes prescriptive requirements for onsite testing and performance. In addition to the standard LEED features and credit categories, the Multifamily Midrise standard requires mandatory compartmentalization, reduced duct leakage, and verified performance of exhaust and ventilation systems, all of which are unique in comparison with LEED BD+C for New Construction.

24. The Project is designed to integrate a host of sustainable features including a minimum of 2,750 square feet of solar panels that are anticipated to generate approximately one percent of the energy for the Project.
25. The green area ratio ("GAR") will be met by way of intensive and extensive green roof, bioretention, permeable pavers, grass and plantings, and solar panels. These best management practices will be implemented throughout the Project, both on and around the proposed buildings.
26. The below-grade parking garage provides approximately 186 parking spaces, which exceeds the 63 spaces required for the Project. (*See* Subtitle C § 702.1.) the Project includes two loading berths at 30 feet, two 100-square-foot platforms, and one service/delivery space at 20 feet. The loading berths have been designed to achieve front-in/front-out access from the public street for all loading vehicles.
27. The Project includes 125 long-term bicycle parking spaces in an enclosed bike storage area in the below-grade garage and will include 20 short-term bicycle parking spaces in the public space adjacent to the Property.
28. All access to parking and loading for the Project is from a curb cut on the north side of the Property along 8<sup>th</sup> Street, N.E. A private driveway provides access to the parking garage entrance on the north side of the north building on the Property, and the loading facilities will be located along the eastern portion of the Property adjacent to the WMATA tracks. All truck turning maneuvers will occur on the Property. Locating the parking entrance and loading facilities away from 8<sup>th</sup> Street minimizes pedestrian and vehicular conflicts as well as conflicts with the MBT that may be located adjacent to the Property.
29. The proposed buildings will be separated by a landscaped entry plaza that aligns with Jackson Street and breaks up the massing of the Project. This plaza will be the focal point at the terminus of Jackson Street while also masking views of the WMATA tracks to the east. The plaza features a wedged geometry that widens from the WMATA tracks towards 8<sup>th</sup> Street. The plaza width ranges from 30 feet to 55 feet similar to the Arts Walk at Monroe Street Market and includes approximately 5,150 square feet.
30. The leasing office and the amenity spaces of both buildings will be oriented towards the plaza to activate this space. The plaza will be well-lit and landscaped and will include seating for the public and buildings' residents. In addition, the primary residential entrances are located in the central landscaped entry plaza separating the two buildings. At the request of the Department of Parks and Recreation ("DPR"), the Applicant will provide a public drinking fountain in the entry plaza for use by runners, bikers and pedestrians.
31. Since the entry plaza is located between the two residential buildings, the plaza has been designed for more passive use in order to limit noise and activity that may impact the adjacent residential units. As a result, the plaza includes several types of seating to host

groups of various sizes and provides ample opportunities for neighbor interaction, while also limiting any adverse impacts on the building's residents.

32. Layers of evergreen trees and shrubs will be mixed in with leafy deciduous planting to provide year-round tree cover. Drip irrigation is proposed for all plantings, which is a best management practice to promote plant health while preserving water. Several bio-retention planters will utilize roof runoff for irrigation as they filter the water and slow the conveyance and impact on the public storm sewer. The extensive use of permeable pavers for the driveway on the northern portion of the Property will greatly reduce storm runoff and reinforce the Applicant's commitment to green practices. The Project also includes a landscaped dog run in the rear of the south building that will be made available to the buildings' residents
33. The Property site is located in a connected, previously developed neighborhood with connections to existing infrastructure, services and public transportation options, such as the MBT, which is a vital artery for alternative forms of transportation and commuting throughout the District.
34. The Project includes improvements to the public space along 8<sup>th</sup> Street adjacent to the fronts of each building, which will enliven the streetscape and provide a safe walking environment both for residents in the area as well as the children that travel between Dance Place to the north of the Property and the Hope Community Charter School to the south of the Property. The 8<sup>th</sup> Street streetscape includes an eight-foot-wide planting strip with ornamental trees. (Ex. 25A1-25A6, Sheets L03-L07.) Moreover, the 8<sup>th</sup> Street sidewalk will be 10 feet wide and will be improved with benches and bicycle racks. The Applicant will also provide a one-foot clearance on both sides of the Property's proposed sidewalk to accommodate the future design and location of the MBT.

#### **First Application Revision – Response to Comments at Setdown**

35. On February 25, 2019, the Applicant submitted a Prehearing Submission which included revised architectural drawings in response to questions raised by OP Setdown Report and the Commission at the setdown meeting, including: (Ex. 13-15J.)
  - a. Additional information regarding vinyl windows and cementitious panels;
  - b. Additional information regarding the proposed landscaping for the project, including additional information on the landscape entry plaza;
  - c. Additional information regarding the Applicant's environmental and LEED commitments;
  - d. Updated information regarding the Applicant's proffered public benefits and project amenities;
  - e. Updated information regarding the Applicant's community outreach;

- f. Updated information regarding the Applicant work with relevant District agencies;  
and
  - g. Additional information regarding the provision of three-bedroom units in furtherance of the District's goals of providing more family-sized affordable units.
36. In response to comments from the Commission during the Setdown meeting, the Applicant replaced the proposed cementitious panels with metal panel and stucco. ACM metal panel is included on the base and middle of the buildings, and corrugated metal is included on the top of the buildings.
37. The proposed stucco is a full three-coat stucco system with a 7/8" thickness. The Applicant is not proposing an exterior insulation and finish system ("EIFS"), which is meant to resemble stucco. The proposed stucco is comprised of a lath, brown and scratch coat, and a finish coat. In addition to the traditional stucco installation, the Applicant is proposing to use a continuous drainage mat that works by creating an air gap that promotes rapid drainage of potential moisture. As a result, the proposed stucco is a high quality and long-lasting material that will age appropriately over time since it includes an integral color to prevent it from fading.
38. The Applicant's Statement explained that the proposed vinyl windows are low-profile and a dark color. These modern vinyl windows are steel-reinforced, which allows for a slimmer profile than traditional vinyl windows and provides for increased durability. While the proposed windows are a dark color, technological advancements in vinyl window construction allow them to be fade- and scratch-resistant such that they are more durable than traditional white or beige vinyl windows. In addition, the vinyl windows provide comparable or better energy efficiency than aluminum windows. As a result, the proposed vinyl windows are also a high quality and long-lasting material.
39. The Applicant also revised the design such that Juliette- and full-sized balconies are included on approximately half the units. The addition of balconies provides additional outdoor space for the building's residents and also enhances the residential character of the building.
40. The Application stated that the Applicant attended an Interagency PUD meeting (the "Interagency Meeting") on February 6, 2019. Representatives from the DOEE, DHCD, OP's Design Development Team, the Office of the State Superintendent of Education ("OSSE"), and Fire and Emergency Medical Services Department Emergency ("FEMS") attended the meeting.
41. The Application stated that at the Interagency Meeting, representatives of FEMS raised certain questions regarding fire hydrants, fire truck access to the Property, and emergency responder radio coverage. In subsequent discussions, the Applicant's team confirmed that the Property complies with the fire hydrant requirements of the DC Fire Code (IFC § 507).

Additionally, the Applicant confirmed that the Property has been designed to provide the required access for fire trucks (IFC § D103) and apparatuses. Moreover, the Applicant confirmed that it will comply with DC Fire Code § 510.1, which requires emergency responder radio cover in new buildings. (Ex. 15.)

42. The Application stated that at the Interagency Meeting, DOEE discussed the Applicant's LEED proffer, including the Applicant's previous success with achieving LEED certification, compliance with the GAR requirements, and the Applicant's sustainable design features, including the provision of solar panels. (Ex. 15.)

#### **Second Application Revision**

43. On April 4, 2019, the Applicant submitted a Supplemental Prehearing Submission with revised architectural drawings, which provided updated information regarding: (Ex. 25-25F.)
  - a. The proposed landscaping for the Project, including additional information on the landscaped entry plaza in response to OP's requests for additional information at the Interagency Meeting;
  - b. Access to the Project and a revised loading dock layout due to the elongation of the access drive along the eastern portion of the Property;
  - c. Revised building materials (replacing stucco and masonry segments with metal panels) and taller courtyard guardrails;
  - d. The Applicant's proffered public benefits and project amenities, specifically updates to the contributions to McKinley Tech Track Club and 1way2rise;
  - e. Revised development flexibility which would permit the Applicant to make changes to the streetscape features and to vary the approved sustainable features of the Project;
  - f. An updated list of witnesses;
  - g. A revised certificate of service for the Applicant's Prehearing Submission; and
  - h. The Applicant's Transportation Demand Management ("TDM") measures.

#### **Third Application Revision – Response to OP's Hearing Report**

44. The Applicant also submitted a separate response to the OP Hearing Report on April 25, 2019, which included: (Ex. 33.)
  - a. A revised inclusionary zoning ("IZ") unit location plan showing the MFI levels for each unit and designating one of the "townhouse" style units as an IZ unit;

- b. Additional information regarding the landscaped entry plaza including the Applicant's commitment to provide a water fountain for runners, bikers, and pedestrians; and
  - c. A revised signage plan that includes the materials for the proposed signage.
45. In response to DHCD's comments contained in the OP Hearing Report, the Applicant revised the IZ unit location plan to include an IZ unit as a "townhouse style" unit along 8<sup>th</sup> Street, N.E. These "townhouse style" units are designed to mimic the design of townhouses on the exterior but are single level units with an in-board bedroom (constituting a one-bedroom unit under the Building Code and as a studio for IZ purposes). Each unit includes access from the interior corridor as well as 8<sup>th</sup> Street, N.E. (Ex. 33.)

**Development Flexibility Requested - Map Amendment and GAR Flexibility**

46. The Property is currently zoned PDR-1. The Application requests to rezone the Property from the PDR-1 Zone to the MU-4 Zone to allow for the proposed development. Subtitle X § 303.12 provides that a PUD-related Zoning Map amendment shall be considered flexibility against which the Commission shall weigh the benefits of the PUD.
47. The PDR-1 zone is intended to permit medium-density commercial and production distribution, and repair ("PDR") activities employing a large workforce and requiring some heavy machinery under controls that minimize any adverse impacts on adjacent, more restrictive zones. (Subtitle J § 200.2.)
48. The PDR-1 zone permits a maximum height of 50 feet, with a maximum height of 60 for a PUD. (Subtitle J § 203.1; Subtitle X § 303.7.) The PDR-1 zone permits a maximum FAR of 2.0 for restricted uses and 3.5 FAR for permitted uses. (Subtitle J § 202.1.) The maximum FAR for a PUD in the PDR-1 Zone is 2.4 for restricted uses and 4.2 for permitted uses. (Subtitle X § 303.3.)
49. Multifamily residential use is not permitted in the PDR-1 zone. New residential uses are limited to either: (1) an apartment unit for a caretaker watchman, or janitor employed on the premises; or (2) an apartment unit that is integrated with and accessory to an artist studio. (Subtitle U § 801.1(v).)
50. The MU-4 zones are intended to permit moderate-density mixed-use development. (Subtitle G § 400.3(a).) In addition, the MU-4 zones are located in low- and moderate-density residential areas with access to main roadways or rapid transit stops. (Subtitle G § 400.3(c).)
51. The MU-4 zone permits a maximum matter-of-right height of 50 feet, with no limit on the number of stories. (Subtitle G § 403.1.) The maximum permitted FAR is 2.5, with up to 3.0 FAR for IZ projects, and with a maximum non-residential FAR of 1.5. (Subtitle G § 402.1.)

52. Under the PUD guidelines for the MU-4 zone, the maximum height is 65 feet and the maximum FAR is 3.6, with a maximum non-residential FAR of 2.01. (Subtitle X §§ 303.7, 303.3.)
53. A tabulation of the PUD's development data is included on Sheets G08 and G09, titled "Zoning Analysis", submitted with the Applicant's Supplemental Prehearing Submission, and marked as Exhibit 25A of the record. The architectural drawings titled "Hanover 8<sup>th</sup> Street," prepared by KTG Architecture and dated April 4, 2019, and marked as Exhibits 25A1-28A6 of the record, as revised by the "Revised Signage Plan," marked as Exhibit 33B, are collectively referred to hereinafter as the "Plans."
54. The Applicant also requests technical flexibility to allow the GAR requirements to be satisfied based on the entire Property and not based on each individual building and theoretical lot, as would otherwise be required. (Subtitle C § 302.4.) The minimum GAR of 0.3 is met for the Property, which is consistent with the Zoning Regulation.

### **Project Impacts**

55. The Application contends that the Project will not result in unacceptable impacts on the surrounding area or on the operation of city services and facilities, but instead the impacts are either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project.
56. With respect to transportation issues, the Applicant prepared a Comprehensive Traffic Assessment ("CTR") to evaluate potential impact. (Ex. 22.) The CTR identified potential adverse impacts and proposed mitigation for the same. DDOT evaluated those impacts and the proposed mitigation and requested additional mitigation, to which DDOT and the Applicant came to agreement. (Ex. 32.) At the hearing, DDOT confirmed its determination that the identified project impacts were capable of being mitigated through the Applicant's robust TDM Plan and the Loading Management Plan discussed below. (Transcript of the April 25, 2019 Public Hearing ["Hrg. Tr.,"] at 67.)

### **Transportation Mitigations**

57. **Transportation Demand Management:** The Applicant will provide a TDM Plan as follows:
  - a. The Applicant will identify a TDM Leader (for planning, construction, and operations) at the building, who will act as a point of contact with DDOT/Zoning Enforcement with annual updates. The TDM Leader will work with residents to distribute and market various transportation alternatives and options. The TDM Leader shall receive training from goDCgo to learn about TDM conditions for the Project and available options for implementing the TDM Plan. The TDM Leader will also subscribe to goDCgo's residential newsletter;
  - b. The Applicant will share the full contact information of the TDM Leaders for the Project with DDOT and goDCgo (info@godego.com);

- c. The Applicant will provide TDM materials to new residents in the Residential Welcome Package materials, which at a minimum shall the Metrorail pocket guide, Capital Bikeshare coupon or rack card, Guaranteed Ride Home (“GRH”) brochure, and the most recent DC Bike Map;
- d. The Applicant will work with DDOT and goDCgo (DDOT’s TDM program) to implement TDM measures at the Property;
- e. The Applicant will post all TDM commitments online for easy reference;
- f. The Applicant will exceed Zoning requirements by providing 125 long-term bicycle parking spaces in the Project’s garage. The long-term bicycle storage room will accommodate non-traditional bicycles including, but not limited to cargo, tandem, and children’s bicycles;
- g. The Applicant will provide 20 short-term bicycle parking spaces along 8th Street, N.E. adjacent to the Property;
- h. All parking on the Property will be priced at market rates, at minimum, defined as the average cost for parking in a one-quarter-mile radius from the Property;
- i. The Applicant will unbundle the cost of residential parking from the cost of lease or purchase of each unit;
- j. The Applicant will provide a \$100 SmarTrip Card for the first two years of occupancy of the buildings to each incoming unit. A proactive marketing strategy shall be provided to ensure residents are aware of this benefit;
- k. The Applicant will provide a bicycle repair station to be located in the bicycle storage room;
- l. The Applicant will provide an on-site business center to residents with access to internet services;
- m. The Applicant will install a Transportation Information Center Display (electronic screen) within the residential lobby of each building. At a minimum the Transportation Information Center Display shall include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles.
- n. The Applicant will provide at least seven shopping carts in the residential buildings for residents to use for running errands and grocery shopping;

- o. The Applicant will provide at least three vehicle charging stations within the Project's garage;
  - p. The Applicant will not lease unused residential parking spaces to anyone aside from buildings' tenants;
  - q. The Applicant will install two expansion plates of four docks each to the Capital Bikeshare station at 10<sup>th</sup> and Monroe Street, N.E. The maximum amount the Applicant will pay for this benefit is \$12,000;
  - r. The Applicant will offer a one-year Capital Bikeshare membership to each unit during the initial lease up; and
  - s. The Applicant will provide residents who wish to carpool with detailed carpooling information and will refer them to other carpool matching services sponsored by Metropolitan Washington Council of Governments ("MWCOG") or other comparable service if MWCOG does not offer this in the future.
58. Loading Management: The Applicant will provide a Loading Management Plan as follows:
- a. A loading dock manager will be designated by building management. The dock manager shall coordinate with vendors and tenants to schedule deliveries and will be on duty during delivery hours;
  - b. All residents will be required to schedule deliveries that utilize the loading docks – defined here as any loading operation conducted using a truck 20 feet in length or larger;
  - c. The dock manager(s) will schedule deliveries for trucks using the loading berths such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time when a berth will be available so as to not impede the drive aisle that passes in front of the loading dock;
  - d. The dock manager(s) will monitor inbound truck maneuvers and will ensure that trucks accessing the loading dock do not block vehicular traffic except during those times when a truck is actively entering the loading facilities;
  - e. Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to the Title 20, Chapter 9, Section 900 (Engine Idling), of the District of Columbia Municipal Regulations ("DCMR"), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System; and

- f. The dock manager(s) will be responsible for disseminating suggested truck routing maps to residents and to drivers from delivery services that frequently utilize the loading dock. The dock manager(s) will also distribute flyers materials as DDOT's Freight Management and Commercial Vehicle Operations document to drivers as needed to encourage compliance with idling laws. The dock manager(s) will also post these documents in a prominent location within the service area.

### **Public Benefits and Amenities**

59. The Application presented the following public benefits to balance the requested development flexibility and potential project impacts:

- Housing, including affordable housing,
- Transit-oriented development,
- Accommodation of the MBT, and
- Support for the arts-related uses,

All of which are supported by the Comprehensive Plan ("CP") (Title 10-A of the DCMR) and the Small Area Plan ("SAP").

### **CP Consistency**

60. The Application asserted that the Project met the standards for a PUD approval and was not inconsistent with the CP, various aspects of which would be furthered by the Project, as follows.

*Urban Design and Architecture (Subtitle X § 305.5(a)); Site Planning and Efficient Economical Land Utilization (Subtitle X § 305.5(c))*

61. The Project is designed to be compatible with the adjacent residential community as the building design is also oriented away from the neighboring residences to the north and west. Moreover, the buildings are set back at the sixth story in accordance with the SAP. (See SAP at 52 ["Building facades facing a public street in the sub area should step back in height at a ratio of one half (1/2) to one above 50 feet."].) In addition, the replacement of an underutilized site with the Project constitutes a significant benefit since it increases safety in the Edgewood neighborhood and replaces a use that is not compatible with the surrounding residential community. The Project will also bring the Property into compliance with the goals of the Future Land Use Map ("FLUM") and CP, since the current PDR zoning is inconsistent with the Property's designations as Moderate Density Residential and Low Density Commercial on the FLUM.

*Housing (Subtitle X § 305.5(f)) and Affordable Housing (Subtitle X § 305.5(g))*

62. The Project results in the creation of new housing consistent with the goals of the Zoning Regulations, the CP, the SAP, and the FLUM. Overall, the Project will replace an underutilized industrial site with approximately 377 units. This amount of housing exceeds the amount that would have been provided if the Property was developed as a matter of

right under the existing PDR zoning as no multifamily residential use is permitted in PDR Districts. (Subtitle X § 305.5(f)(1).)

63. The Applicant will set aside approximately 12% of the net residential floor area (approximately 35,322 square feet of net residential floor area) of the overall Project (i.e., based on the residential use provided in both the building and the penthouse) as affordable units at varying levels of the MFI, which will create a mixed-income community. Based on this net residential floor area, it is anticipated that approximately 47 units will be set aside as IZ units. The affordable housing will be set aside as follows: 6% of the affordable net residential floor area at 30% MFI, 14% of the affordable net residential floor area at 50% MFI, 67% of the affordable net residential floor area at 60% MFI, and 13% of the affordable net residential floor area at 80% MFI.
64. The Project creates a greater amount of IZ units that are reserved at the deeper levels of affordability than would be required for a matter-of-right development in the MU-4 zone. This affordable housing represents a substantial increase in the amount of affordable residential floor area when compared to the fact that no affordable housing would be generated if the Property was developed as a matter of right. (Subtitle X § 305.5(g) [“Affordable housing; except that affordable housing provided in compliance with the Inclusionary Zoning requirements of Subtitle C, Chapter 22, shall not be considered a public benefit except to the extent it exceeds what would have been required through matter-of-right development under existing zoning.”].)
65. The Applicant will reserve two of the three-bedroom units in the Project as IZ units. In addition, the Applicant will reserve one of the “townhouse-style” units on the ground floor fronting on 8<sup>th</sup> Street, N.E. as an IZ unit.

*Environmental and Sustainable Benefits (Subtitle X § 305.5(k))*

66. The Project is designed to integrate a host of sustainable features including a minimum of 2,750 square feet of solar panels that are anticipated to generate approximately one percent of the energy for the Project. The Project is designed to LEED-Gold standards and the similarly intends to seek LEED-Gold certification of the Project under the LEED-v4 Multifamily Midrise standard.

*Streetscape Plans (Subtitle X § 305.5(l))*

67. The Applicant has focused on creating a pedestrian-friendly streetscape, especially along 8<sup>th</sup> Street, N.E. The design proposal includes substantial streetscape improvements including new paving for the sidewalks, street lighting fixtures, new and replacement shade trees, and 20 bike parking spaces in public space. Since the Property is presently improved with industrial uses, the streetscape adjacent to the Property is unimproved. In addition, a majority of the streetscape along 8<sup>th</sup> Street is also unimproved, which provides an unsafe environment for the students at the Hope Community Public Charter School and at those schools further to the south who commute to school via the Brookland-CUA Metrorail station or who use the after-school enrichment programs at Dance Place. As a result, the

Project will include substantial streetscape improvements that will help provide safe pedestrian access for students attending school in the vicinity of the Project.

*Transportation Features (Subtitle X § 305.5 (o))*

68. The Applicant worked with DDOT to ensure that the Project coordinates with potential future improvements to the MBT that are planned for 8<sup>th</sup> Street adjacent to the Property. Specifically, the Applicant will provide a one-foot clearance on both sides of the Property's proposed sidewalk to accommodate the future design and location of the MBT.
69. The Project has been designed to create safe vehicular and pedestrian access and to use the existing public transportation network. In addition to its proximity to the MBT, the Project is proximate to multiple bus routes and has access to the Brookland-CUA Metrorail station.
70. The Applicant has studied the anticipated parking demand and has sought to provide the appropriate number of parking spaces to accommodate expected demand, which exceeds the base requirement under the Zoning Regulations. The Applicant will also provide TDM measures in excess of the mitigations required as a result of the Project.
71. Based on discussions with the community, the Applicant has agreed to remove the PUD from the District's Residential Parking Permit ("RPP") program in order to alleviate on-street parking concerns of the surrounding neighborhood. The Applicant will include a rider in all residential leases that restricts residential tenants from obtaining RPPs.
72. In an effort to monitor whether residents are abiding by this lease restriction, the Applicant will require that the PUD's property manager submit a request pursuant to the Freedom of Information Act, DC Code §§ 2-531 to 2-539 to the District of Columbia Department of Motor Vehicles annually to confirm whether any building tenant has registered a vehicle at the address of the PUD. If the property manager determines that any car has been registered by a tenant and/or that the tenant has received an RPP, the property manager will notify the tenant that it must surrender the RPP in accordance with the residential lease rider.

*Uses of special value to the neighborhood or the District of Columbia as a whole (Subtitle X § 305.5(q))*

73. Beacon House: The Applicant will contribute \$10,000 to Beacon House, which engages over 300 boys and girls in the Edgewood neighborhood annually in an award-winning program. The Applicant's contribution will support Beacon House's summer camp, which serves approximately 90 children over five weeks. The camp seeks to address demand from the Edgewood community for a low-cost, high-quality summer camp and includes academic, athletic, arts, cultural and other lessons. The Applicant's contribution will cover the full cost of attendance for at least eight campers. The Applicant will comply with Subtitle X § 305.3(d) such that no final certificate of occupancy for the PUD will be issued unless the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided.

74. Edgewood Street Festival: The Applicant will contribute \$24,000 to the Edgewood Civic Association for the creation of an Edgewood Street Festival. There is currently no street festival in the Edgewood neighborhood and the Applicant's contribution will fund a festival that will bring together the residents of the surrounding neighborhood and highlight all that Edgewood has to offer. Specifically, the Applicant's contribution will fund various elements, including but not limited to, the cost of an event coordinator, equipment rental, food and beverage services, activities, and required permits. The contribution will be spread out over three years (\$8,000 per year), which is estimated to fund the event in large part. The Applicant anticipates that, at a minimum, the first two years of contributions will be made prior to the issuance of a final certificate of occupancy for the PUD. Thus, the Applicant will comply with Subtitle X § 305.3(d) such that no final certificate of occupancy for the PUD will be issued unless the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided. In the likely event that the third annual contribution cannot be made prior to the issuance of the final certificate of occupancy, the Applicant will fully fund an escrow account setting forth delivery of the funds for the final year and will provide evidence of that escrow account prior to the issuance of a final certificate of occupancy for the Project in accordance with Subtitle X § 305.3(d).
75. Hope Community Public Charter School, Tolson Campus: The Applicant will contribute \$50,000 to the Hope Community Charter School to help revitalize the school's campus. The Hope Community Charter School is located in the Edgewood neighborhood, just south of the Property, and is the learning community for 470 scholars in grades PK3 through 8. The majority of the students at the Hope Community Charter School are from Ward 5. The Applicant's contribution will help revitalize the school's outdoor space to the north side of its building. This new multipurpose outdoor space will promote and support outdoor activities as well as support the Hope Community Charter School's programming, afterschool athletics, and activities programs. Specifically, the Applicant's contribution will fund the following: (i) \$30,000 to resurface, seal, and paint blacktop on the north side of the Hope Community Charter School building; (ii) \$5,000 to remove the concrete platform in front of the Hope Community Charter School building entrance that has been an ongoing safety concern; (iii) \$4,000 to purchase and install two in ground basketball hoops; (iv) \$600 to purchase and install a bicycle rack; (v) \$3,000 to purchase large planters, supplies, and tools to create a garden space for the STEAM program; (vi) \$6,600 to repair and improve fencing on north side of the school building; and (vii) \$1,400 for minor landscaping on west side of the school building. In the event that there are excess funds, those funds will be used to paint an artistic mural on the front entrance side of the Tolson Campus building. The estimated cost of the mural is between \$5,000 and \$7,000. The Applicant will comply with Subtitle X § 305.3(d) such that no final certificate of occupancy for the PUD will be issued unless the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided.
76. McKinley Tech Track Club (Fast Lane): The Applicant will contribute \$20,000 to a non-profit organization that supports the McKinley Tech Track Club (Fast Lane). Specifically, the Applicant's contribution will fund the following: (i) \$5,200 for the Track Club's

participation in the Penn Relays Meet including bus transportation and lodging costs; (ii) \$10,750 for the Track Club's participation in the National Capitol Invitational Meet including a timer, security, officials, venue fees, clerks, and a starter; (iii) \$1,850 for uniforms and equipment; and (iv) \$2,200 for other meet and administrative fees. The Penn Relays is the world's first and most widely recognized annual meet hosted at the University of Pennsylvania. Over the course of the three-day meet, top high school, collegiate, and professional athletes compete in the events. The National Capitol Invitational Meet is hosted at McKinley Technology High School. While the meet was hosted in 2017, it was not hosted in 2018 as a result of a lack of funds. The Applicant's contribution will provide vital funds to ensure that the meet can remain an annual event. The Applicant's contribution will fund the above expenses during the school year in which the donation is made or in the school year immediately following the school year in which the donation is made. In the event that there are excess funds, those funds will be devoted to additional meet and administrative fees. While the above breakdown is the intended distribution of the contribution, the actual distribution of the funds may vary based on the actual costs at the time the funds are spent. The Applicant will comply with Subtitle X § 305.3(d) such that no final certificate of occupancy for the PUD will be issued unless the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided.

77. 1way2rise: The Applicant will contribute \$20,000 to 1way2rise, which will fund tutoring and afterschool services that will occur during the construction of the Project. 1way2rise is a non-profit organization licensed to do business in the District of Columbia. Its mission is to educate at-risk, teens and adults through technology training, job training, and sports development programs. The focus of the programming is intended for families and residents of ANC 5E. Specifically, the Applicant's contribution will fund the following:
- a. \$14,500 for educational supplies and programming for the afterschool youth and teen tutoring services, which may include but not be limited to book bags, pens, pencils, composition books, flash drives, lecturer and workshop fees, facility rental fees, and volunteer expenses;
  - b. \$4,000 for sporting equipment, which may include but not be limited to rugby equipment, tennis equipment, lacrosse equipment, and chess equipment; and
  - c. \$1,500 for STEM/robotics supplies and equipment, which may include but not be limited to scientific calculators.

In the event that there are excess funds, those funds will be used for miscellaneous educational expenses related to the afterschool program or a scholarship for one senior at McKinley Technology High School who is pursuing post-secondary education. In the event 1way2rise is unable to administer these services, the Applicant will contribute \$20,000 to Beacon House for the provision of similar services. The Applicant will comply with Subtitle X § 305.3(d) such that no final certificate of occupancy for the PUD will be issued

unless the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided.

*Arts Uses in Furtherance of the Brookland-CUA Small Area Plan (Subtitle X § 305.5(r))*

78. To foster artistic uses in the neighborhood as called for in the SAP, the Applicant will contribute \$75,000 to Dance Place. Dance Place is an important arts-focused nonprofit in the neighborhood that offers performances, dance classes for adults and kids, and arts in education programs for youth.
79. The Applicant's contribution will help fund the Energizers Program that is centered on-site at Dance Place's home campus in Ward 5. This program targets youth from the surrounding neighborhood and includes an after-school program, a teenage leadership program, as well as a creative arts camp during the summer months.
80. The Applicant's contribution will be \$25,000 per year for three years (\$75,000 total). Specifically, the \$25,000 per year will fund eight scholarships for camp, 20 weeks of job training for 14 teenagers, and five scholarships for the Energizers Afterschool Program.
81. The multi-year support ensures the continued delivery of these services and on-going value to the neighborhood, and the multi-year nature of the contribution is critical to Dance Place to ensure the funding provides the greatest amount of support to these programs.
82. The Applicant intends to commence the initial contribution prior to the issuance of a building permit for the Project and will continue annual contributions for the following two years.
83. The Applicant anticipates that, at a minimum, the first two years of contributions will be made prior to the issuance of a final certificate of occupancy for the PUD. Thus, the Applicant will comply with Subtitle X § 305.3(d) such that no final certificate of occupancy for the PUD will be issued unless the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided.
84. In the likely event that the construction timeframe and the fiscal years for Dance Place do not align in such a way as to allow the third annual contribution to be accepted and used by Dance Place prior to the issuance of the final certificate of occupancy, the Applicant will fully fund an escrow account setting forth delivery of the funds for the final year and will provide evidence of that escrow account prior to the issuance of a final certificate of occupancy for the Project in accordance with Subtitle X § 305.3(d).

**Design Flexibility from the Final Plans**

85. The Applicant also requests design flexibility to make minor modifications to the final plans in the following additional areas:
  - a. To provide a range in the number of units of 377 plus or minus 10%;

- b. To vary the location and design of all interior components, including amenities, partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, elevators, escalators, and toilet rooms elevators, provided that the variations do not change the exterior configuration of the building;
- c. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, so long as the number of parking spaces does not decrease below the minimum level required by the Zoning Regulations;
- d. To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed in the approved plans;
- e. To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior design shown on the approved plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
- f. To vary the color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the approved plans;
- g. To vary the number and mix of inclusionary units if the total number of dwelling units changes within the range of flexibility requested, provided that the location and proportionate mix of the IZ units will substantially conform to the layout shown on the IZ Unit Location Plan included as Exhibit 33A of the record;
- h. To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division; and
- i. To vary the approved sustainable features of the Project, provided the total number of LEED points achievable for the Project does not decrease below the minimum required for the LEED standard specified by the order.

### Responses to Application

Office of Planning (“OP”)

- 86. On December 7, 2018, OP submitted a report recommending setdown of the Application. (Ex. 11.)
- 87. The OP Setdown Report stated that the Project “would generally not be inconsistent with the maps and written elements of the Comprehensive Plan.” (Ex. 11 at 1.) OP requested that the Applicant provide:

- a. An IZ unit location plan;
  - b. A proposed lighting and signage plan;
  - c. Detailed plans for the landscaped entry plaza; and
  - d. Additional information and specificity regarding the Applicant's proffered public benefits and project amenities.
88. The Applicant provided the information and clarification requested in the OP Setdown Report in its Pre-Hearing Statement of February 25, 2019. (Findings of Fact ["FF"] at 35-42.)
89. On April 15, 2019, OP submitted a hearing report. (Ex. 29.) The OP Hearing Report determined that the PUD "would not be inconsistent with the Comprehensive Plan." (Ex. 29 at 5.) The OP Hearing Report recommended approval of the Application and advised the Applicant:
- a. To submit a revised IZ unit location plan, which includes the median family income ("MFI") levels for each IZ unit;
  - b. To reconsider the provision of vinyl windows; and
  - c. Indicate the material for the proposed signage. (Ex. 29.)
90. The OP Hearing Report noted that the Application was referred to DOEE, DDOT, DHCD, DPR, the Department of Public Works, the DC Public Schools, FEMS, the Metropolitan Police Department, the Washington Metropolitan Area Transit Authority, DC Water, the DC Public Library, OSSE, the Department of Aging and Community Living ("DACL"), and the Department of Employment Services.
91. Other than DDOT, which submitted its comments directly to the record, DHCD, and DACL, no District agency submitted comments expressing concerns regarding potential impacts of the project.
92. DHCD submitted two comments to OP that were appended to the OP Hearing Report. (Ex. 29, Appendix B.)
- a. DHCD discussed the Applicant's IZ proffer and commented on the Applicant's commitment to providing three-bedroom IZ units; and
  - b. DHCD also requested that one of the "townhouse-style" units along 8<sup>th</sup> Street be reserved as an IZ unit.

93. DACL requested, in comments to OP, that an IZ unit be reserved for residents that are ages 65 years or older. (Ex. 29.)
94. The Applicant responded to the comments of OP and DHCD in its Supplemental Pre-Hearing Statement of April 25, 2019. The Applicant provided additional information regarding the location and MFI levels of the designated IZ units and clarified that the entry plaza is intended for more “passive uses” but that the Applicant will provide a water fountain for public use. (FF 45-46.)

Department of Transportation

95. On April 15, 2019, DDOF submitted a hearing report (the “DDOT Report”), which expressed no objection to the Application subject to the Applicant implementing the loading management plan proposed in the CTR and the Applicant enhancing the TDM measures to include the following elements: (Ex. 28.)
  - a. Provide three charging stations in the garage for any additional electric vehicle (“EV”) stations in the future;
  - b. The Applicant will not lease unused residential parking spaces to anyone aside from tenants of the building;
  - c. Install two expansion plates of four docks each to the Capital BikeShare station at 10th and Monroe, to bring it up to DDOT minimum size;
  - d. Distribute welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, Capital Bikeshare coupon or rack card, GRH brochure, and the most recent DC Bike Map;
  - e. Transportation Coordinators will receive TDM training from goDCgo to learn about TDM conditions for this project and available options for implementing the TDM Plan;
  - f. Provide a Transportation Information Center Display that, at a minimum, should include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles;
  - g. Installation of Transportation Information Center Display screens in the lobbies of each of the two residential buildings;
  - h. Provide residents who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by MWCOG or other comparable service if MWCOG does not offer this in the future;
  - i. Transportation coordinator will subscribe to goDCgo's residential newsletter;

- j. Long-term bicycle storage rooms should accommodate non-traditional-sized bikes including cargo, tandem, and kids' bikes;
  - k. Provide bicycle repair stations to be located within the bicycle storage room;
  - l. Provide one shopping cart (utility cart) for every 50 residential units to encourage residents to walk to the grocery shopping and run errands. The Applicant is recommended to provide seven carts for the development; and
  - m. Dedicate two parking spaces in the vehicle parking garage for carsharing services to use with right of first refusal. If an agreement has not been reached with a carsharing service to occupy all of the dedicated spaces, the Applicant will provide a one-year Capital Bikeshare membership to each resident after the building has opened.
96. The Applicant responded to the DDOT Report by memorandum dated April 24, 2019, prepared by Gorove/Slade Associates and as supplemented by the testimony of Mr. Andres at the hearing. (Ex. 32-32A.) The Applicant agreed to all of DDOT's additional TDM measures except in lieu of providing carshare space within the Project's parking garage, the Applicant will offer a one-year Capital Bikeshare membership to each unit at the initial lease up.

**Advisory Neighborhood Commission**

97. ANC 5E submitted a resolution indicating that at a duly noticed public meeting on November 20, 2018, at which notice was properly given and a quorum was present, ANC 5E voted to support the Application subject to the provisions of the Community Benefits Agreement (the "ANC Report"). (Ex. 10.) The ANC Report did not state any issues or concerns with the Application.

**Edgewood Civic Association ("ECA")**

98. The ECA reviewed the Project and community benefits package at several meetings, including its September 24, 2018 and October 22, 2018 public meetings.
99. As noted in the ANC Report, at its October 22, 2018 public meeting, the ECA voted unanimously to support the Project and the community benefits proffered by the Applicant. (Ex. 10.)

**Persons in Support**

100. A total of 15 residents in the neighborhood surrounding the Property signed a letter in support of the Project. (Ex. 26.)

**Persons in Opposition**

101. Derek Schultz submitted a letter in opposition to the Project and noted his concerns including:

- a. The overall height and massing of the Project;
- b. The heights the proposed street trees and their interference with the overhead power lines;
- c. Traffic calming measures along 8<sup>th</sup> Street; and
- d. The proposed exterior materials and compatibility with the surrounding residential neighborhood. (Ex. 30.)

**Setdown Meeting of December 17, 2018**

102. At the public meeting on December 17, 2018, OP presented the Application and recommended that the Commission set it down for a public hearing. OP noted that the proposal appeared to not be inconsistent with the proposed zoning district and with the CP. (Transcript of December 17, 2018 Public Meeting [“Mtg. Tr.”] at 33.)
103. Commissioners May and Turnbull noted their concerns regarding the Project’s material choices, including the “extensive use” of cementitious panels and with the use of vinyl windows. (Mtg. Tr. at 33-35.)
104. Commissioner Miller reiterated OP’s request that some of the three-bedroom units be designated as IZ units. (Mtg. Tr. at 34)
105. The Commission voted to set down the case for a hearing with its comments noted in the record. (Mtg. Tr. at 35.)

**Public Hearing of April 25, 2019**

106. The Applicant presented five principal witnesses at the hearing, including Dan Gordon, on behalf of the Applicant; Aaron Wilke, an expert in landscape architecture, on behalf of GWH Landscape Architects; Benjamin Kasdan, an expert in architecture, on behalf of KTG Architecture + Planning, the architects for the Project; Erwin N. Andres, an expert in transportation planning and analysis, on behalf of Gorove/Slade Associates, Inc.; and Shane L. Dettman, an expert in land use and zoning, on behalf of Holland & Knight LLP. Based upon their professional experience, as evidenced by the resumes submitted for the record, Mr. Wilke, Mr. Kasdan, Mr. Andres, and Mr. Dettman were qualified by the Commission as experts in their respective fields.
107. Anne Fothergill testified on behalf of OP in support of the Project. (Hrg. Tr. at 39) Ms. Fothergill reiterated that OP “recommend[s] approval of this PUD and related map amendment.” (Hrg. Tr. at 65.) Ms. Fothergill stated that “[OP] did raise some concerns and questions for clarification, and the applicant has mentioned that they have provided clarification and additional information that we requested.” (Hrg. Tr. at 65.)
108. Cynthia Lin of DDOT testified that “the [A]pplicant addressed all of the Comments in

DDOT's April 15, 2019, staff report." (Hrg. Tr. at 67.) As a result, Ms. Lin testified that "DDOT has no objection to the approval of the consolidated PUD and related map amendment application." (Hrg. Tr. at 68.)

109. ANC Commissioner Nick Cheolas (the Single Member District Representative) testified on behalf of ANC 5E and indicated that the ANC supported the Project, stating that "converting light commercial and industrial space into home for people, particularly in the Edgewood...is a good thing." (Hrg. Tr. at 71.)
110. Gordon Chaffin also testified in support of the Project, specifically noting the need for new development providing IZ units. (Hrg. Tr. at 79-81.)
111. Derek Schultz testified in opposition to the Project and reiterated the concerns raised in his written testimony. (Hrg. Tr. at 82-85.)
112. In response to the issues regarding the height and massing of the project, the Applicant explained that the Project was in line with the recommendations of the SAP which recommended moderate density, infill development and that the use of setbacks was expected to mitigate impacts on the surrounding residential areas from the height of the new buildings. (Hrg. Tr. at 43-45.)
113. In response to Mr. Schultz's testimony expressing concerns that the overhead electrical and telecommunications lines would prevent large shade trees from reaching full maturity and height and suggesting that the lines should be underground, Mr. Dan Gordon stated:

[T]he trunk line along 8th Street runs down the east side of the street, which is the side of the street on which we're building our building. There is no trunk line that runs down the west side of the street... In order to bury all of those we would have to tear up every single yard. We have to underground two different sets of transformers. We would have to get easements from the apartment building and all lived in different row houses. We really did look at this and aesthetically we understand why the neighborhood wanted it. But it very honestly would be a logistical nightmare to try and do this. So, it's an unfortunate situation where it just would be a very, very challenging, close to impossible logistically to accomplish this.

(Hrg. Tr. at 50-51.)

114. In response to the concerns regarding the proposed building materials, the Applicant provided testimony clarifying the type of stucco to be used and provided additional information about the proposed vinyl windows. (Hrg. Tr. at 16-18.)
115. In response to the Commission's additional comments regarding the use of vinyl windows, Stephen Luna testified on behalf of the Applicant that the Applicant has used vinyl windows on many of their residential midrise projects and that "these windows are actually

steel reinforced much like some of the commercial projects that you would get in a curtain wall.” (Hrg. Tr. at 23.) Mr. Luna also testified that the use of steel helps with the rigidity of the windows, which allows for the incorporation of “larger glass windows...” and that the Applicant has not had any issues with vinyl windows “on a consistent basis.” (*Id.* at 24-25.) Mr. Kasdan testified that the vinyl windows “are indistinguishable from an aluminum window from any kind of vantage point.” (*Id.* at 18.) Moreover, the proposed vinyl windows are low-profile and a dark color. These modern vinyl windows are steel-reinforced, which allows for a slimmer profile than traditional vinyl windows and provides for increased durability. While the proposed windows are a dark color, technological advancements in vinyl window construction allow them to be fade- and scratch-resistant such that they are more durable than traditional white or beige vinyl windows.

116. The Commission requested additional information regarding whether specific IZ units could be set aside for senior housing. (Hrg. Tr. at 36-37.)
117. At the request of the Commission, OP stated that it would reach out to DHCD and DACL about the implementation of senior IZ units. (Hrg. Tr. at 65.)
118. At the conclusion of the hearing, the Commission took proposed action to approve the Application. The Commission left the record open for the Applicant’s Post-Hearing Submission, as well as ANC 5E’s, OP’s, and DDOT’s response to the Applicant’s Post-Hearing Submission.

#### **Post Hearing Submissions**

119. The proposed action was referred to the National Capital Planning Commission (“NCPC”) on April 30, 2019, pursuant to § 492 of the Home Rule Act. NCPC’s Director of Urban Design and Plan Review, by letter dated May 28, 2019, found that the Project was exempt from NCPC review. (Ex. 45.)
120. On May 9, 2019, the Applicant submitted a Post-Hearing Submission in response to the Commission’s comments at the hearing. (Ex. 41.) The Post-Hearing Submission included:
  - a. Additional information regarding the Applicant’s proffer to remove the PUD from the District’s RPP program in order to address concerns raised by the community about potential on-street parking by residents of the Project;
  - b. Additional information on the provision of a senior IZ unit; and
  - c. A summary of how the Project complies with the PUD standards of Subtitle X § 304 and the Applicant’s mitigations of the Project’s adverse impacts.
121. The Applicant engaged with OP, DACL and DHCD to determine whether the Applicant can set aside one of the IZ units for senior residents. While the Applicant was prepared to make this commitment, as confirmed in the OP Supplemental Report, DHCD indicated that

it is unable at this time to administer IZ units that are set aside for seniors because its rules only provide for certification as to income and household size. DACL also indicated that it does not currently have a program in place to administer affordable units that are set aside for seniors. Based on the discussions among the agencies and given the importance of senior housing in the District, DHCD and DACL indicated that they would work together to determine how to implement such programs going forward. However, at this time, the agencies agreed that without a program in place, the set aside for this project could not be administered. (Ex. 4, 43.)

122. As requested by the Commission, on May 16, 2019, OP submitted a supplemental report. (Ex. 43.) The OP Supplemental Report indicated that neither OP, nor DHCD, had any concerns regarding the Applicant's IZ unit location plan. In addition, the OP Supplemental Report again recommended approval of the Applicant.

### CONCLUSIONS OF LAW

1. Pursuant to Subtitle X § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:
  - a. Results in a project superior to what would result from the matter-of-right standards;
  - b. Offers a commendable number or quality of meaningful public benefits; and
  - c. Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider the Application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

### Compliance with PUD Standards

3. The Commission concludes that the Application complies with the standards for a PUD set forth in Subtitle X, Chapter 3.
4. The Property, of approximately 90,293 square feet, exceeds the minimum area requirements of 15,000 square feet for a PUD in the MU-4 zone. (Subtitle X § 303.1.)
5. In deciding a PUD application, the Commission must "judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the

specific circumstances of the case.” (Subtitle X § 304.3.) Moreover, pursuant to Subtitle X § 304.4, the Commission must find that the proposed development:

- a. Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;
  - b. Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and
  - c. Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.
6. The Commission concludes that the Project is of exceptional merit and in the best interest of the city. The Project will significantly improve the existing area by virtue of the exceptional architectural design and the replacement of an underutilized site with uses that are not inconsistent with the CP or the SAP. The Project offers a high level of public benefits and project amenities. The Commission concludes that with these benefits and amenities, when compared with the amount of development flexibility requested and project impacts, the Application satisfies the balancing test required in Subtitle X § 304.3, as is further discussed below.

**Not Inconsistent with the Comprehensive Plan (“CP”)**

7. As set forth in the Applicant’s Summary of Compliance with the CP and the reports of the OP, the Commission finds the Project not inconsistent with the objectives and policies of the CP, including the land use designation assigned to the Property on the FLUM, and the general policy designation on the Generalized Policy Map (the “GPM”). (Ex. 2H, 11, 29.)
8. The purposes of the CP are six-fold:
  - a. To define the requirements and aspirations of District residents, and accordingly influence social, economic, and physical development;
  - b. To guide executive and legislative decisions on matters affecting the District and its citizens;
  - c. To promote economic growth and jobs for District residents;
  - d. To guide private and public development in order to achieve District and community goals;
  - e. To maintain and enhance the natural and architectural assets of the District; and

- f. To assist in conservation, stabilization, and improvement of each neighborhood and community in the District. (D.C. Official Code §1-245(b).)
9. The Commission concludes that the Project significantly advances these purposes by promoting the social, physical and economic development of the District through the provision of two high-quality residential buildings on the Property. The proposed buildings will help improve the surrounding neighborhood through the replacement of incompatible industrial uses and will assist the District in achieving its housing and transportation goals by providing new housing, including affordable housing, and improvements to the public space adjacent to the Property. The Applicant is also working with DDOT to ensure that the Project coordinates with potential future improvements to the MBT that are planned for 8<sup>th</sup> Street adjacent to the Property.

Future Land Use Map ("FLUM"):

10. The FLUM, which represents the land use policies set forth in the Land Use Element, sets forth a generalized depiction of intended land uses over a period of approximately 20 years. (D.C. Official Code §1-306.02.) The Framework Element of the CP states that the FLUM is not a zoning map. (CP § 226.1(a); *see also* Z.C. Order No. 11-13, Z.C. Order No. 10-28.) Whereas zoning maps are parcel-specific and establish detailed requirements for setback, height, use, parking, and other attributes, the FLUM does not follow parcel boundaries and its categories do not specify allowable uses or dimensional standards. (*Id.*) By definition, the FLUM is to be interpreted broadly. (*Id.*) Decisions on requests for rezoning shall be guided by the FLUM read in conjunction with the text of the CP (Citywide and Area Elements) as well as SAP pertaining to the area proposed for rezoning. (*Id.* at § 226(1)(d).)
11. The FLUM designates the Property as Mixed Use (Low Density Commercial/Moderate Density Residential). A "Mixed Use" designation on the FLUM is not intended to be interpreted in terms of its separate land use designation. Rather, "Mixed Use" on the FLUM is a specific land use category unto itself and is assigned to areas where the mixing of two or more land uses is encouraged but is not mandatory. It is generally applied to:
  - a. Established, pedestrian-oriented commercial areas that also include substantial amounts of housing;
  - b. Commercial corridors or districts which may not currently contain substantial amounts of housing but where more housing is desired, such as the Property; and
  - c. Large sites where opportunities for multiple uses exist but a plan dictating the precise location of these uses has yet to be prepared.

(CP § 225.18.)

12. The Low Density Commercial designation is used to define shopping and service areas that are generally low in scale and character. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw

primarily from the surrounding neighborhoods to larger business districts that draw from a broader market area. Their common feature is that they are comprised primarily of one- to three-story commercial buildings. The corresponding zone districts are generally C-1 and C-2-A, although other districts may apply. (CP § 225.8.)<sup>2</sup>

13. The Moderate Density Residential designation is used to define the District's row house neighborhoods and its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single-family homes, two- to four-unit buildings, row houses, and low-rise apartment buildings. The R-3, R-4, and R-5-A Zone Districts are generally consistent with the Moderate Density Residential category; the R-5-B Zone District and other zones may also apply in some locations. (CP § 225.4.)<sup>3</sup>
14. The Commission finds that the Applicant's proposal to rezone the Property to MU-4 is not inconsistent with the Mixed Use FLUM designation for the Property. For areas with a Mixed Use designation, the general density and intensity of development is determined by the specific mix of uses shown. If the desired outcome is to emphasize one use over the other, the FLUM may note the dominant use by showing it at a slightly higher density than the other use(s) in the mix. (CP § 225.19.) In this case, the Property is designated as Mixed Use (Low Density Commercial/Moderate Density Residential); and therefore, the desired outcome favors greater residential use than commercial use.
15. The proposed MU-4 zoning is not only expressly identified as corresponding to the Low Density Commercial component of the Property's land use designation on the FLUM, but is also described within the Zoning Regulations as being "intended to permit moderate-density mixed-use development" and "be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops." (Subtitle G § 400.3.)
16. Furthermore, consistent with the FLUM's desired outcome for greater residential than commercial density on the Property, the MU-4 zone favors residential development by allowing all permitted density to be devoted to residential use while limiting the amount of density that can be devoted to non-residential use. (See Subtitle G § 400.3(a).) Since the PDR-1 zone would not permit residential use, the Commission finds the existing zoning is inconsistent with the FLUM designation.
17. In addition, the density and height permitted under the requested MU-4 zone do not substantially differ from the density and height permitted under existing zoning. Specifically, if the Applicant proposed a PUD within the existing PDR-1 zone, the maximum FAR would be 4.2 (for permitted uses) and the maximum building height would be 60 feet. The MU-4 zone permits a maximum overall density of 3.6 FAR, of which 2.01

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<sup>2</sup> The current CP was adopted prior to the Zoning Regulations and thus refers to the zone districts contained in the 1958 Zoning Regulations. Under the Zoning Regulations, the zone districts that correspond to those identified in the Framework Element description of the Low-Density Commercial designation include MU-3 and MU-4.

<sup>3</sup> Under the Zoning Regulations, the corresponding zones would be R-3, RF-1, and RA-1, with RA-2 applying in some locations.

FAR can be devoted to non-residential use, and a maximum building height of 65 feet. As a result, the maximum permitted density for a PUD in the MU-4 zone is less than that permitted under existing zoning, and the building height permitted for a PUD in the MU-4 zone is only five feet greater than what is permitted for a PUD under existing zoning.

18. Pursuant to the Home Rule Charter, zoning shall not be inconsistent with the CP. The existing PDR zoning of the Property is inconsistent with the Mixed Use designation on the FLUM. The Project will bring the zoning of the Property into conformance with the CP.
19. As shown on the 2006 version of the FLUM, the area between 8<sup>th</sup> Street, N.E. and the CSX WMATA tracks from Monroe Street to Rhode Island Avenue was designated as PDR.

#### Brookland-CUA Small Area Plan

20. The CP requires zoning to be “interpreted in conjunction with...approved Small Area Plans.” (CP § 266.1(d).) The CP also states that small area policies appear in “separately bound Small Area Plans for particular neighborhoods and business districts. As specified in the city’s municipal code, Small Area Plans provide supplemental guidance to the CP and are not part of the legislatively adopted document.” (CP § 104.2.) The SAP encourages moderate-density mixed-use development on vacant and underutilized properties and, consistent with the Upper Northeast Area Element, calls for long-term land use changes on industrially zoned land in the station vicinity, particularly in the area to the southwest along 8<sup>th</sup> Street. (SAP at 11.)
21. In March 2009, the Council adopted the SAP in response to a 2006 Industrial Land Use Study prepared by OP titled “Industrial Land in a Post-Industrial City”. The SAP contains land use change recommendations for the area south of the Brookland-CUA Metrorail station, and specifically states that “development south of Kearny Street should consist of low to moderate density residential and limited commercial facilities.” (SAP at 52.)
22. The SAP generally references moderate-density development as having building heights between 60 and 70 feet, with appropriate heights to transition to adjacent lower-scale residential structures. (*Id.* at 47.) Moreover, the SAP specifically calls for building setbacks of  $\frac{1}{2}$  to one above 50 feet, which the Applicant is providing. (*Id.* at 52.)
23. As such, the Commission finds that the Applicant’s proposal, and specifically the proposed Zoning Map amendment, is consistent with the SAP since it consists of moderate-density zoning and development with limited commercial facilities.
24. The SAP also encourages “work with community residents and ANCs to address design and scale issues of new development through the PUD process.” (See SAP at p. A3, note 3.) The Commission concludes that the Applicant has engaged in extensive community outreach, which has informed elements of the Project’s design as well as the proffered public benefits and project amenities.

25. The PUD also includes the fulfillment of the Commercial Area South of Metro Station subarea's "Framework Plan," which calls for new residential infill development, improved streetscape, landscape and lighting, integration of MBT, and buffering and screening from tracks and PDR uses. In addition, the Applicant will contribute \$75,000 to Dance Place for their Energizers Program as detailed in the Applicant's statement in support of the Application. This contribution will foster artistic uses in the neighborhood as called for in the SAP. (SAP at 52.)

Upper Northeast Area Element ("UNE"):

26. The Property is located within the boundaries of the Upper Northeast Area Element. The UNE calls for capitalization on the presence of the Metro station at Brookland-CUA to provide new transit-oriented housing. (See Policy UNE-1.1.3 Metro Station Development.)
27. The Project includes the creation of approximately 377 dwelling units, including approximately 47 IZ units, within 0.3 miles of the Brookland-CUA Metro station.
28. In addition, the UNE encourages compatible residential infill development that is consistent with the FLUM and includes housing for persons of low incomes. (See Policy UNE-1.1.2: Compatible Infill.)
29. As stated above, the proposed MU-4 is consistent with the FLUM and the PUD includes units that will be reserved for households at varying levels of MFI, including for households earning equal to or less than 30% MFI. The UNE also supports long-term land use changes on industrially zoned land in the station vicinity, particularly southwest of the Brookland-CUA Metro station along 8<sup>th</sup> Street. (See Policy UNE-2.6.3: Long-Term Land Use Changes.)
30. As a result, the Commission finds that the Project is not inconsistent with the policies of the UNE.

Generalized Policy Map ("GPM"):

31. The purpose of the GPM is to categorize how different parts of the District may change between 2005 and 2025. It highlights areas where more detailed policies are necessary, both within the CP and in follow-up plans, to manage this change. (CP § 223.1.) The GPM is intended to "guide land use decision-making in conjunction with the Comprehensive Plan text, the FLUM, and other Comprehensive Plan maps." (*Id.* at § 223.2.) Boundaries on the map are to be interpreted in concert with these other sources, as well as the actual physical characteristics of each location shown. (*Id.*)
32. The GPM designates the Property as a Neighborhood Conservation Area. The guiding philosophy for Neighborhood Conservation Areas is to conserve and enhance established neighborhoods. The diversity of land uses and building types in these areas should be maintained and new development and alterations should be compatible with the existing scale and architectural character of each area. Densities in Neighborhood Conservation Areas are guided by the FLUM. (CP § 223.5.)

33. The proposed Zoning Map amendment will help implement the policies embodied in the GPM by allowing for a new residential development that is not inconsistent with the FLUM, is consistent with the height and density contemplated in the SAP, and fits in well with surrounding development patterns and land uses.

Compliance with Guiding Principles of the Comprehensive Plan:

34. Through its consistency with the policies of the citywide and area elements of the CP, the Commission finds the Project to be not inconsistent with the CP guiding principles relating to managing growth and change, creating successful neighborhoods, increasing access to education and employment, connecting the city, and building green and healthy communities, as follows:

Managing Growth and Change

35. The Project is consistent with several of the principles that focus on overcoming physical, social, and economic obstacles to ensure that the benefits and opportunities available to District residents are equitably distributed. Specifically, the CP encourages, growth in both residential and non-residential sectors, with residential uses comprising a range of housing types to accommodate households of varying sizes and income levels, and nonresidential uses that include services that support residents.
36. The CP also states that redevelopment and infill opportunities along corridors and near transit stations are an important part of reinvigorating and enhancing District neighborhoods as well as the surrounding region.
37. The Commission finds the Project will replace an underutilized industrial site that is incompatible with the surrounding residential community with two residential buildings including affordable housing units in proximity to public transportation. The proposed buildings will help grow the District's tax base and help reinvigorate the existing neighborhood fabric. The new residential units will greatly assist in addressing the continuing demand for additional housing, including affordable housing, in the District.

Creating Successful Neighborhoods:

38. One of the guiding principles for creating successful neighborhoods is to protect and stabilize neighborhood businesses, retail districts, parks, and other facilities, and to reinforce neighborhood identity and provide destinations and services for residents.
39. In addition, noting the crisis of affordability that has resulted from the continued housing boom in the District, the guiding principles recognize the importance of preserving existing affordable housing and producing new affordable housing to avoid deepening of racial and economic divides in the city. Citizen participation and quality, responsive neighborhood services are also recognized as keys ingredients to creating successful neighborhoods, such participation includes garnering public input in decisions about land use and development, from development of the CP to implementation of the CP's elements.

40. The Application notes that the Applicant attended approximately nine community meetings to solicit feedback from the surrounding community prior to filing this Application. The Applicant also states that it will continue to work closely with ANC 5E, the ECA, and other neighborhood stakeholders and associations to ensure that the Project provides uses that respond to the neighborhood's current demands.
41. The Commission concludes that the Project responds to the community's input by providing a substantial number of additional residential units, including affordable units at various levels of MFI, within a walkable environment that is in close proximity to several modes of transit, including Metrorail and the MBT.

Increasing Access to Education and Employment:

42. The CP recognizes the importance of improving access to education and jobs by capitalizing on the city's location at the center of the region's transportation systems. Providing more efficient, convenient, and affordable transportation for residents increases resident access to jobs within the District and the surrounding region.
43. The Project will advance the District's goals of improving access to jobs and education by redeveloping an underutilized site with two residential buildings that will provide a substantial amount of new housing adjacent to the MBT, and in close proximity to other modes of public transportation. The close proximity to transit will increase residents' ability to access educational opportunities and jobs without owning a vehicle and without the added expenses associated with vehicle ownership. This is especially relevant to those residents living in the affordable dwelling units that will be integrated into the Project.

Connecting the City:

44. The Property is well served by public transportation, including numerous Metrobus routes and is in close proximity to the Brookland-CUA Metrorail station (0.3 miles).
45. The Project includes streetscape improvements that will improve mobility and circulation around the Property and throughout the neighborhood, including for students walking from the schools to the south of the Property to the after-school enrichment programs at Dance Place and the Metrorail station. The streetscape and landscape design for the Project fosters a pedestrian-friendly environment along the perimeter of the Property. The Applicant is also working with DDOT to ensure that the Project coordinates with potential future improvements to the MBT that are planned for 8<sup>th</sup> Street adjacent to the Property.

Building Green and Healthy Communities:

46. The Commission finds that the Project is consistent with the CP's guiding principles pertaining to building green and healthy communities.
47. A major component to successfully building green and healthy communities is the use of sustainable building construction and renovation techniques that minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment.

48. The Project is designed to integrate a host of sustainable features including a minimum of 2,750 square feet of solar panels that are anticipated to generate approximately one percent of the energy for the Project.
49. In addition, the Project is designed to LEED-Gold standards under the LEED-v4 Multifamily Midrise standard and the Applicant intends to seek LEED certification for the Project.

CP Land Use Element:

50. As set forth in the Applicant's Summary of Compliance with the CP and the reports of OP, the Commission finds the Project not inconsistent with the objectives and policies of the Land Use Element. (Ex. 2H, 11, 29.)
51. Specifically, the Commission finds that Project furthers the following policies and objectives of Land Use Element: Policy LU-1.3 Transit-Oriented and Corridor Development; Policy LU-1.3.1: Station Areas as Neighborhood Centers; Policy LU-1.3.2: Development Around Metrorail Stations; Policy LU-1.3.3: Housing Around Metrorail Stations; Policy LU-1.3.4: Design to Encourage Transit Use; Policy LU-1.4.1: Infill Development; Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods; and Policy LU-2.2.4: Neighborhood Beautification.

CP Transportation Element:

52. As set forth in the Applicant's Summary of Compliance with the CP and the reports of OP, the Commission finds the Project not inconsistent with the objectives and policies of the Transportation Element. (Ex. 2H, 11, 29.)
53. Specifically, the Commission finds that Project furthers the following policies and objectives of Transportation Element: Policy T-1.1.4: Transit-Oriented Development; Policy T-2.3.1: Better Integration of Bicycle and Pedestrian Planning; Policy T-2.3.3: Bicycle Safety; Policy T-2.4.1: Pedestrian Network; Policy T-2.4.2: Pedestrian Safety; and Policy T-3.1.1: Transportation Demand Management (TDM) Programs.

CP Housing Element:

54. As set forth in the Applicant's Summary of Compliance with the CP and the reports of OP, the Commission finds the Project not inconsistent with the objectives and policies of the Housing Element. (Ex. 2H, 11, 29.)
55. Specifically, the Commission finds that Project furthers the following policies and objectives of Housing Element: Policy H-1.1.1: Private Sector Support; Policy H-1.1.3: Balanced Growth; Policy H-1.1.5: Housing Quality; and Policy H-1.2.3: Mixed Income Housing.

CP Environmental Protection Element:

56. As set forth in the Applicant's Summary of Compliance with the CP and the reports of OP, the Commission finds the Project not inconsistent with the objectives and policies of the Environmental Protection Element. (Ex. 2H, 11, 29.)
57. Specifically, the Commission finds that Project furthers the following policies and objectives of Environmental Protection Element: Policy E-1.1.1: Street Tree Planting and Maintenance; Policy E-1.1.3: Landscaping Policy E-2.2.4: Alternative Energy Sources Landscaping; Policy E-3.1.2: Using Landscaping and Green Roofs to Reduce Runoff; and Policy E-3.2.1: Support for Green Building.

CP Urban Design Element:

58. As set forth in the Applicant's Summary of Compliance with the CP and the reports of OP, the Commission finds the Project not inconsistent with the objectives and policies of the Urban Design Element. (Ex. 2H, 11, 29.)
59. Specifically, the Commission finds that Project furthers the following policies and objectives of Urban Design Element: Policy UD-2.2.1: Neighborhood Character and Identity; Policy UD-2.2.5: Creating Attractive Facades; Policy UD-2.2.7: Infill Development; Policy UD-3.1.11: Private Sector Streetscape Improvements; and Policy UD-3.2.5: Reducing Crime Through Design.

CP Arts and Culture Element:

60. As set forth in the Applicant's Summary of Compliance with the CP and the reports of OP, the Commission finds the Project not inconsistent with the objectives and policies of the Arts and Culture Element. (Ex. 2H, 11, 29.)
61. Specifically, the Commission finds that Project furthers the following policies and objectives of Arts and Culture Element: Policy AC-1.1.1: Enhancement of Existing Facilities; and Policy AC-2.2.2: Neighborhood Fairs.

Contested Issues

62. With regard to the contested issues raised during the hearing, the Commission concludes as follows:
63. With respect to the overall height and massing and the proposed exterior materials, the Commission finds that the proposed height and massing as well as the proposed exterior materials are consistent with the surrounding residential neighborhood. Specifically, each building includes a setback at approximately 50 feet as recommended in the SAP. Moreover, the buildings include courtyards at the third floor in order to break down the massing of each building. Finally, the building façade along 8<sup>th</sup> Street, N.E. has been designed such that it resembles townhomes with the inclusion of stoops, bays, and individual entrances, which are found throughout the surrounding residential neighborhood. As stated in the OP Hearing Report, “[t]he proposed buildings have been

designed to provide a transition to the residential buildings of lower height and smaller scale and density across the street on the west side of 8<sup>th</sup> Street.” (Ex. 29 at 11.)

64. With respect to the proposed materials, the Commission finds that all of the proposed materials are found in the immediate context, including stucco which is utilized on Dance Place directly to the north of the Property. While the proposed brick is not the exact color as the brick on the townhomes located across the street from the Property, the materials provided are complimentary to the surrounding residential community. Moreover, the Commission finds that the proposed design relates to the current industrial uses of the Property while providing for a design that is also compatible with the existing townhomes located across 8<sup>th</sup> Street from the Property.
65. In response to the concerns about the presence of the existing above-ground power lines, the Commission credits the hearing testimony of Mr. Gordon and concludes that it would not be practical for the Applicant to underground the power lines. In addition, the provided streetscape trees will be in accordance with DDOT standards for trees located underneath power lines.
66. With regards to the claims of existing unsafe speeds of cars traveling along 8<sup>th</sup> Street and the general hostile environment for pedestrians, the Commission acknowledges the legitimate concerns regarding unsafe speeds, but concludes that this issue is not a result of the Project but is an existing condition of the neighborhood. The Commission also concludes that the TDM plan provided by the Applicant mitigates any potential adverse effects on the surrounding area from the Project. In addition, the Project includes substantial streetscape improvements adjacent to the Property, including the construction of sidewalks where none exist, which will help provide safe pedestrian access for students attending schools in the vicinity of the Project.
67. Development of the Property carries out the purposes of Subtitle X, Chapter 3, to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
68. Approval of the PUD is appropriate because the Project is consistent with the present character of the area and is not inconsistent with the CP. In addition, the Project will promote the orderly development of the Property 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.
69. The Commission concludes that the Project complies with the applicable height, bulk, and density standards of the Zoning Regulations. The mix of uses for the Project is appropriate for the Property.

70. The Commission concludes that the Applicant's requests for flexibility are not inconsistent with the CP. Moreover, the PUD benefits and amenities are reasonable tradeoffs for the requested development flexibility.
71. As stated in the OP Hearing Report, the Application was referred to the DOEE, DDOT, DHCD, DPR, the Department of Public Works, the DC Public Schools, FEMS, the Metropolitan Police Department, WMATA, DC Water, the DC Public Library, OSSE, DACL/DCOA, and the Department of Employment Services. Other than DDOT, no District agency submitted comments expressing concerns regarding potential impacts of the project. (Ex. 29.)
72. To the extent that the rezoning of the Project and the slight increase in height resulted in potential adverse impacts, the Applicant has mitigated such impacts by incorporating design gestures that are supported by the SAP, including building includes a setback at approximately 50 feet. Moreover, the buildings include courtyards at the third floor in order to break down the massing of each building from neighboring residential properties along 8<sup>th</sup> Street. Finally, the building façade along 8<sup>th</sup> Street, N.E. has been designed such that it resembles townhomes with the inclusion of stoops, bays, and individual entrances, which are found throughout the surrounding residential neighborhood.
73. The Commission also notes that the monetary contributions proffered by the Applicant comply with the requirements of Subtitle X § 305.3(d) since the items or services funded can be provided prior to the issuance of certificate of occupancy for the Project. With respect to the Applicant's contributions to Dance Place and the ECA, the first two years of the Applicant's contributions are public benefits since they will occur prior to the issuance of a certificate of occupancy for the Project in accordance with Subtitle X § 305.3(d). With respect to the Applicant's contributions to Beacon House, the Hope Community Charter School, the McKinley Tech Track Club, and 1way2rise, the Commission finds that these proffers comply with the requirements of Subtitle X § 305.3(d) since the items or services funded can be provided prior to the issuance of certificate of occupancy for the Project.
74. Given the minimal amount of impacts resulting from the rezoning, the public benefits and project amenities outweigh the degree of development incentives requested in this case.
75. The Application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

**“Great Weight” to the Recommendations of OP**

76. Pursuant to § 13(d) of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), the Commission must give “great weight” to the recommendation of OP.
77. As explained above, the Commission finds persuasive OP's recommendations, in its reports and testimony, to grant the Application subject to the conditions and concurs in that judgement.

**“Great Weight” to the Written Report of the ANC**

78. Pursuant to § 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)) and Subtitle Z §406.2, the Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC. To satisfy this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978).)
79. As the ANC Report expressed no issues or concerns with the Application, there are no issues or concerns to which the Zoning Commission can give great weight. (*See Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

**DECISION**

In consideration of the record and the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application for a Consolidated PUD and the related Zoning Map amendment to rezone the Property from the PDR-1 zone to the MU-4 zone, subject to the following guidelines, conditions, and standards (whenever compliance is required prior to, on, or during a certain time, the timing of the obligation is noted in **bold and underlined text**):

**A. PROJECT DEVELOPMENT**

1. The PUD shall be developed in accordance with the plans titled “Hanover 8<sup>th</sup> Street,” prepared by KTG Architecture + Planning, dated April 4, 2019, and marked as Exhibits 25A1-25A6 of the record, as revised by the “Revised Signage Plan,” marked as Exhibit 33B of the record (collectively, the “Approved Plans”).
2. The Applicant is granted flexibility from the GAR requirements of the Zoning Regulations, consistent with the Approved Plans and as discussed in the Zoning Flexibility section of this Order.
3. The Applicant shall have flexibility with the design of the PUD in the following areas:
  - a. To provide a range in the number of units of 377 plus or minus 10%;
  - b. To vary the location and design of all interior components, including amenities, partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, elevators, escalators, and toilet rooms elevators, provided that the variations do not change the exterior configuration of the building;

- c. To make refinements to the garage configuration, including layout, number of parking spaces, and or other elements, so long as the number of parking spaces does not decrease below the minimum level required by the Zoning Regulations;
- d. To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed in the Approved Plans;
- e. To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior design shown on the Approved Plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
- f. To vary the color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the Approved Plans;
- g. To vary the number and mix of inclusionary units if the total number of dwelling units changes within the range of flexibility requested, provided that the location and proportionate mix of the inclusionary units will substantially conform to the layout shown on the IZ Unit Location Plan included as Exhibit 33A of the record;
- h. To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division; and
- i. To vary the approved sustainable features of the Project, provided the total number of LEED points achievable for the Project does not decrease below the minimum required for the LEED standard specified by the order.

**B. PUBLIC BENEFITS**

1. Prior to the issuance of a final certificate of occupancy for the Project, the Applicant shall construct an approximately 5,150-square-foot landscaped, publicly-accessible entry plaza with improvements as shown on Sheets L08 through L09 of the Approved Plans. (Ex. 25A5.)
2. Prior to the issuance of a final certificate of occupancy for the Project, the Applicant shall install a public drinking fountain in the entry plaza for use by runners, bikers, and pedestrians.
3. The Applicant shall provide the affordable housing as set forth in this condition:
  - a. For the life of the Project, the Applicant shall provide the following housing and affordable housing set forth in the following chart:

Residential Unit Type	Net Residential Square Feet/ Percentage of Total	Units	Reserved for household earning equal to or less than	Affordable Control Period	Affordable Unit Type
Total	294,347 (100%)	377	N A	N A	N A
Market Rate	259,025 sf (87.9%)	341	Market Rate	N A	Rental
IZ	4,592 sf (1.6%)	6*	Up to 80% MFI	Life of the project	Rental
IZ	23,666 sf (8%)	31*	Up to 60% MFI	Life of the project	Rental
IZ	4,945 sf (1.7%)	6*	Up to 50% MFI	Life of the project	Rental
IZ	2,119 sf (0.7%)	3*	Up to 30% MFI	Life of the project	Rental

\*The number of IZ units is approximate based on the current dwelling unit count and layout. In accordance with the flexibility requested by the Applicant, the mix of IZ units may change if the total number of dwelling units changes within the range of flexibility requested, provided that the location and proportionate mix of the inclusionary units substantially conforms to the layout shown on the IZ Unit Location Plan included as Exhibit 33A of the record;

- b. For the life of the Project, the Applicant shall reserve two of the three-bedroom units as IZ units;
  - c. For the life of the Project, the Applicant shall reserve one of the "townhouse style" units on the ground floor fronting on 8<sup>th</sup> Street, N.E. as an IZ unit; and
  - d. The covenant required by D.C. Official Code §§ 6-1041.05(a)(2) (2012 Repl) shall include a provision or provisions requiring compliance with this Condition.
4. The Applicant shall submit with its building permit application, a checklist evidencing that the Project has been designed to LEED-Gold standards under the LEED-v4 Multifamily Midrise standard.
  5. Prior to issuance of a final certificate of occupancy for the Project, the Applicant shall provide a signed affidavit to the Zoning Administrator evidencing that the Applicant has registered the Project under the LEED-v4 for Multifamily Midrise standard. The signed

affidavit shall also include the steps taken by the Applicant towards certification of the Project under the LEED- v4 for Multifamily Midrise standard.

6. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall install approximately 2,750 square feet of solar panels on the building's roof, as shown on Sheet A20 through A22 of the Approved Plans. (Ex. 25A3.)
7. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall construct the streetscape and landscape improvements as shown on Sheets L02 through L10 of the Approved Plans. The sidewalk shall be 10 feet wide. All sidewalks and elements in public space shall be built to DDOT standards and shall be subject to DDOT approval. (Ex. 25A4-25A5.)
8. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall provide a one-foot clearance on both sides of the Property's proposed sidewalk, to accommodate the future design and location of the MBT.
9. **During the operation of the Project's buildings**, the Applicant shall include a rider in all residential leases that restricts residential tenants from obtaining RPPs. In an effort to monitor whether residents are abiding by this lease restriction, the Applicant shall require that the PUD's property manager submit a request pursuant to the Freedom of Information Act, DC Code §§ 2-531 to 2-539 to the District of Columbia Department of Motor Vehicles annually to confirm whether any building tenant has registered a vehicle at the address of the PUD. If the property manager determines that any car has been registered by a tenant and/or that the tenant has received an RPP, the property manager shall notify the tenant that it must surrender the RPP in accordance with the residential lease rider.
10. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall contribute \$50,000 to Dance Place, which represents two years of the Applicant's contribution. The Applicant's contribution of \$25,000 per year shall fund eight scholarships for camp, 20 weeks of job training for 14 teenagers, and five scholarships for the Energizers Afterschool Program. The Applicant shall provide proof to the Zoning Administrator that the funds have been donated and that the items described in this condition have been or are being provided **prior to the issuance of a final certificate of occupancy for the Project**.
11. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has created an escrow account and funded it with \$25,000, which represents the third year of the Applicant's contribution. The escrow account shall be structured such that the funds shall be released to the Dance Place to fund eight scholarships for camp, 20 weeks of job training for 14 teenagers, and five scholarships for the Energizers Afterschool Program.
12. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall contribute \$10,000 to the Beacon House to support the Beacon House's summer

camp. The Applicant's contribution shall fund the cost of attendance for at least eight campers in the Beacon House's 2020 summer camp program. The Applicant shall provide proof to the Zoning Administrator that the funds have been donated and that the items described in this condition have been or are being **provided prior to the issuance of a final certificate of occupancy for the Project.**

13. **Prior to the issuance of a final certificate of occupancy for the Project,** the Applicant shall contribute at least \$16,000 to the Edgewood Civic Association, which represents two years of the Applicant's contribution. The Applicant's contribution (anticipated to be approximately \$8,000 per year) shall fund various elements of the Edgewood Street Festival, including but not limited to, the cost of an event coordinator, equipment rental, food and beverage services, activities, and required permits. The Applicant shall provide proof to the Zoning Administrator that the funds have been donated and that the items described in this condition have been or are being provided **prior to the issuance of a final certificate of occupancy for the Project.**
14. **Prior to the issuance of a final certificate of occupancy for the Project,** the Applicant shall demonstrate to the Zoning Administrator that it has created an escrow account and contributed the remaining funds, up to a total contribution of \$24,000. The escrow account shall be structured such that the funds shall be released to the Edgewood Civic Association to fund various elements of the third year of the Edgewood Street Festival, including but not limited to, the cost of an event coordinator, equipment rental, food and beverage services, activities, and required permits.
15. **Prior to the issuance of a final certificate of occupancy for the Project,** the Applicant shall contribute \$20,000 to a nonprofit organization that supports the McKinley Tech Track Club (Fast Lane), which shall fund the following:
  - a. \$5,200 for the Track Club's participation in the Penn Relays Meet including bus transportation and lodging costs;
  - b. \$10,750 for the Track Club's participation in the National Capitol Invitational Meet including a timer, security, officials, venue fees, clerks, and a starter;
  - c. \$1,850 for uniforms and equipment; and
  - d. \$2,200 for other meet and administrative fees.

In the event that there are excess funds, those funds shall be devoted to additional meet and administrative fees. The Applicant shall provide proof to the Zoning Administrator that the funds have been donated and that the items described in this condition have been or are being provided **prior to the issuance of a final certificate of occupancy for the Project.**

16. **Prior to the issuance of a final certificate of occupancy for the Project,** the Applicant shall contribute \$20,000 to 1way2rise, which shall fund the following:

- a. \$14,500 for educational supplies and programming for the afterschool youth and teen tutoring services, which may include but not be limited to book bags, pens, pencils, composition books, flash drives, lecturer and workshop fees, facility rental fees, and volunteer expenses;
- b. \$4,000 for sporting equipment, which may include but not be limited to rugby equipment, tennis equipment, lacrosse equipment, and chess equipment; and
- c. \$1,500 for STEM robotics supplies and equipment, which may include but not be limited to scientific calculators.

In the event that there are excess funds, those funds shall be used for miscellaneous educational expenses related to the afterschool program or a scholarship for one senior at McKinley Technology High School who is pursuing post-secondary education. In the event Iway2rise is unable to administer these services, the Applicant shall contribute \$20,000 to Beacon House for the provision of similar services. The Applicant shall provide proof to the Zoning Administrator that the funds have been donated and that the items described in this condition have been or are being provided **prior to the issuance of a final certificate of occupancy for the Project.**

17. **Prior to the issuance of a final certificate of occupancy for the Project,** the Applicant shall contribute \$50,000 to the Hope Community Charter School, which shall fund the following:

- a. \$30,000 to resurface, seal, and paint blacktop on the north side of the Hope Community Charter School building;
- b. \$5,000 to remove the concrete platform in front of the Hope Community Charter School building entrance that has been an ongoing safety concern;
- c. \$4,000 to purchase and install two in ground basketball hoops;
- d. \$600 to purchase and install a bicycle rack;
- e. \$3,000 to purchase large planters, supplies, and tools to create a garden space for the STEAM program;
- f. \$6,600 to repair and improve fencing on north side of the school building; and
- g. \$1,400 for minor landscaping on west side of the Hope Community Charter School building.

In the event that there are excess funds, those funds shall be used to paint an artistic mural on the front entrance side of the Hope Community Charter School building. The Applicant

shall provide proof to the Zoning Administrator that the funds have been donated and that the services described in this condition have been or are being provided **prior to the issuance of a final certificate of occupancy for the Project.**

18. **During the operation of the Project (unless otherwise noted).** the Applicant shall provide a TDM Plan as follows;
- a. The Applicant shall identify a TDM Leader (for planning, construction, and operations) at the Project, who will act as a point of contact with DDOT/Zoning Enforcement with annual updates. The TDM Leader shall work with residents to distribute and market various transportation alternatives and options. The TDM Leader shall receive training from goDCgo to learn about TDM conditions for the Project and available options for implementing the TDM Plan. The TDM Leader shall also subscribe to goDCgo's residential newsletter;
  - b. The Applicant shall share the full contact information of the TDM Leaders for the Project with DDOT and goDCgo (info@goDCgo.com);
  - c. The Applicant shall provide TDM materials to new residents in the Residential Welcome Package materials, which at a minimum shall include the Metrorail pocket guide, Capital Bikeshare coupon or rack card, Guaranteed Ride Home ("GRH") brochure, and the most recent DC Bike Map;
  - d. The Applicant shall work with DDOT and goDCgo (DDOT's TDM program) to implement TDM measures at the Property;
  - e. The Applicant shall post all TDM commitments online for easy reference;
  - f. The Applicant shall exceed Zoning requirements by providing 125 long-term bicycle parking spaces in the Project's garage. The long-term bicycle storage room shall accommodate non-traditional bicycles including, but not limited to cargo, tandem, and children's bicycles;
  - g. The Applicant shall provide 20 short-term bicycle parking spaces along 8<sup>th</sup> Street, N.E. adjacent to the Property;
  - h. All parking on Property shall be priced at market rates, at minimum, defined as the average cost for parking in a quarter-mile radius from the Property;
  - i. The Applicant shall unbundle the cost of residential parking from the cost of lease or purchase of each unit.
  - j. The Applicant shall provide a \$100 SmarTrip Card for the first two years of occupancy of the Project to each incoming unit. A proactive marketing strategy shall be provided to ensure residents are aware of this benefit;

- k. The Applicant shall provide a bicycle repair station to be located in the bicycle storage room;
  - l. The Applicant shall provide an on-site business center to residents with access to internet services;
  - m. The Applicant shall install a Transportation Information Center Display (electronic screen) within the residential lobby of each building of the Project. At a minimum, the Transportation Information Center Display shall include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles;
  - n. The Applicant shall provide at least seven shopping carts in each building of the Project for residents to use for running errands and grocery shopping;
  - o. The Applicant shall provide at least three vehicle charging stations within the Project's garage;
  - p. The Applicant shall not lease unused residential parking spaces to anyone aside from Project's tenants;
  - q. The Applicant shall install two expansion plates of four docks each to the Capital BikeShare station at 10<sup>th</sup> and Monroe Streets, N.E. The maximum amount the Applicant will pay for this benefit is \$12,000;
  - r. The Applicant shall offer a one-year Capital Bikeshare membership to each unit during the initial lease up; and
  - s. The Applicant shall provide residents who wish to carpool with detailed carpooling information and will refer them to other carpool matching services sponsored by MWCOC or other comparable service if MWCOC does not offer this in the future.
19. **During the operation of the Project**, the Applicant shall provide a Loading Management Plan as follows:
- a. A loading dock manager shall be designated by the Project's management. The dock manager shall coordinate with vendors and tenants to schedule deliveries and will be on duty during delivery hours;
  - b. All residents shall be required to schedule deliveries that utilize the loading docks – defined here as any loading operation conducted using a truck 20 feet in length or larger;

- c. The dock manager(s) shall schedule deliveries for trucks using the loading berths such that the dock's capacity is 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 when a berth will be available so as to not impede the drive aisle that passes in front of the loading dock;
- d. The dock manager(s) shall monitor inbound truck maneuvers and shall ensure that trucks accessing the loading dock do not block vehicular traffic except during those times when a truck is actively entering the loading facilities;
- 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 Title 20, Chapter 9, Section 900 (Engine Idling) of the DCMR, the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System; and
- f. The dock manager(s) shall be responsible for disseminating suggested truck routing maps to residents and to drivers from delivery services that frequently utilize the loading dock. The dock manager(s) will also distribute flyers materials as DDOT's Freight Management and Commercial Vehicle Operations document to drivers as needed to encourage compliance with idling laws. The dock manager(s) shall also post these documents in a prominent location within the service area.

**D. MISCELLANEOUS**

- 1. During construction of the Project, the Applicant shall abide by the terms of the Construction Management Plan. (Ex. 2K.)
- 2. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. 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. The PUD shall be valid for a period of two years from the effective date of this Order. Within such time an application shall be filed for a building permit, with construction to commence within three years of the effective date of this Order.
- 4. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex,

age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

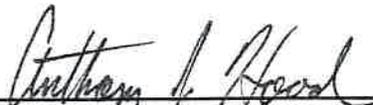
Proposed Action

**VOTE (April 25, 2019):** 5-0-0 (Robert E. Miller, Michael G. Turnbull, Anthony J. Hood, Peter A. Shapiro, and Peter G. May to **APPROVE**)

Final Action

**VOTE (June 10, 2019):** 5-0-0 (Michael G. Turnbull, Peter A. Shapiro, Anthony J. Hood, Robert E. Miller, and Peter G. May to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9, this Order became final and effective upon the original publication date in the *D.C. Register*; that is, on November 22, 2019.

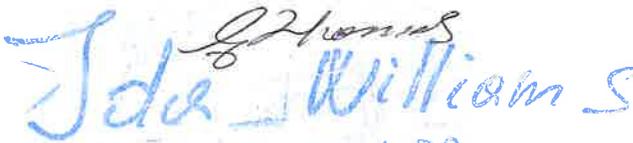
  
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ANTHONY HOOD  
CHAIRMAN  
ZONING COMMISSION

  
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SARA A. BARDIN  
DIRECTOR  
OFFICE OF ZONING

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RECORDING FEES \$25.00  
SURCHARGE \$6.50

THIS IS TO CERTIFY THAT THIS IS A TRUE COPY

  
Ida Williams  
Recorder of Deeds, D.C.

MAR 03 2020