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March 3, 2006

By Hand Delivery

Ms. Carol Mitten
Chairperson, D.C. Zoning Commission
441 4th Street, N.W., Second Floor
Washington, DC 20001

ALLISON C. PRINCE
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**Re: Zoning Commission Case No. 05-19 - Consolidated Review
and Approval of a PUD and Zoning Map Amendment
Application for 4100 Georgia Avenue, NW (Square 2910, Lots
35 and 803) – Draft Order**

Dear Chairperson Mitten and Members of the Commission:

Enclosed please find the draft order of The Neighborhood Development Company, LLC (the “Applicant”), for the above referenced case, as requested at the public hearing for the case. Also enclosed is the First Source Agreement executed by the Applicant and the District of Columbia Department of Employment Services and the letter evidencing Advisory Neighborhood Commission (“ANC”) 4C’s vote in support of the proposed project.

If you have any questions or comments, please do not hesitate to call or email Allison at (202)663-8853 or Jeff at (202)663-8715.

Sincerely,

Allison C. Prince

Jeffrey C. Utz

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D.C. ZONING COMMISSION
District of Columbia
ZONING COMMISSION
Case 05-19
CASE NO. 05-19
EXHIBIT NO. 32

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Enclosures

cc: ANC 4C
Maxine Brown-Roberts
DDOT
The Neighborhood Development Company, LLC

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

ZONING COMMISSION ORDER NO. 05-19

Case No. 05-19

**(Application for the Consolidated Review and Approval of a Planned Unit
Development by The Neighborhood Development Company, LLC)**

March 13, 2006

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on February 6, 2006, to consider an application from The Neighborhood Development Company, LLC, for the consolidated review and approval of a planned unit development application for Lots 803 and 35, and the alley in between them, in Square 2910 located at 4100 Georgia Avenue, NW, pursuant to Chapter 24 and Section 102, respectively, of the District of Columbia Municipal Regulations (DCMR) Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

FINDINGS OF FACT

1. The project site consists of Lots 803 and 35, and the alley in between them, in Square 2910 and has an address of 4100 Georgia Avenue, NW (the “Property”).

2. On June 21, 2005, The Neighborhood Development Company, LLC (the “Applicant”), filed an application with the Zoning Commission (“Commission”) for review and approval of a planned unit development (“PUD”) and a Zoning Map amendment. The Applicant requested the amendment of the Zoning Map from the C-2-A Zone District to the C-3-A Zone District for the Property. The proposed height and lot occupancy of the project are significantly less than the maximum provided under the PUD guidelines in the C-3-A Zone District. The PUD project involves a condominium building with approximately 72 new residential units that are all affordable rental units for at least 60% of the Washington, D.C. Area Median Income (“AMI”). The PUD project also includes approximately 10,486 square feet of retail space. (Exhibit 14, Pre-Hearing Statement of the Applicant (“Pre-Hearing Statement”) at p. 1, 8; Exhibit 18 at p. 2.)

3. At a Special Public Meeting on September 15, 2005, the Commission did not set the project down for a hearing and advised the Applicant to enhance its designs. At a Special Public Meeting on October 16, 2005, the Commission voted to set down the application for a public hearing. The Zoning Commission held a public hearing on the above-mentioned application on February 6, 2006, which was conducted in accordance with the provisions of 11 DCMR § 3022.

4. At the February 6, 2006 public hearing, the Commission accepted Scott Knudson and Marc Feinstein of Weincek and Associates, as experts in architecture based

on a review of their resumes (submitted as Exhibits 22 and 23 in the record, respectively). The Commission also accepted Nicole White of Symmetra Design as an expert in traffic and parking based on previous approval of such expert status for Ms. White. There were other preliminary matters before the Commission involving: (i) waiving of the hearing fee for the Applicant under 11 DCMR § 3042 based on the affordable nature of the project and the letter from the District of Columbia Department of Housing and Community Development (“DHCD”) (Exhibit E to the Applicant’s post-hearing submission dated February 24, 2006 (“Post-Hearing Submission”)); (ii) waiving of the rules under 11 DCMR § 3013.8 to allow the submission of Exhibit 18 to the record, dated January 23, 2006; and (iii) the granting of 11 DCMR § 3013.9 so that the Applicant could slightly amend the project design at the hearing. There were no applications for party status. Advisory Neighborhood Commission (“ANC”) 4C, the ANC in which the Property is located, is automatically a party to this application. The Commission granted the waiver of the hearing fee, waived the rules under 11 DCMR § 3013.8 to allow the submission of Exhibit 18 to the record, dated January 23, 2006, and granted the Applicant’s amendment to the project design at the hearing under 11 DCMR § 3013.9.

PROJECT SITE

5. The Property consists of approximately 17,640 square feet of land area and includes the southern portion of Square 2910 between Kansas Avenue, Georgia Avenue, Taylor Street, and Upshur Street, NW. It is commercially zoned and was used as an automobile lot for a number of decades. (Exhibit 14, Pre-Hearing Statement at p. 4.)

6. The square to the west of the Property includes a self-storage facility, an office building, and an auto repair shop directly across from the Property. To the south is a used car lot with parcels of vacant land adjoining it, lining the whole of the south side of Taylor Street, NW, between Georgia Avenue and Kansas Avenue, NW. Directly to the east of the Property, across Georgia Avenue, NW, is a park. Further still, along the east side of 9th Street, NW, are two churches, a vacant lot, and several other structures. Directly to the north, and adjacent to, the Property along the west side of Georgia Avenue, NW, is a building housing an Internet café and a carry-out restaurant. North of, and adjacent to, the Property along the east side of Kansas Avenue, NW, is a commercial storage structure. North of the retail building and the storage structure, at the intersection of Georgia Avenue and Kansas Avenue, NW, is a gas station. To the southeast of the Property, along the west side of Georgia Avenue, NW, between Taylor Street and Shepherd Street, NW, are retail buildings. Along the east side of Georgia Avenue between Taylor Street and Shepherd Street, NW, is a large, 6-story apartment complex. To the southwest of the Property, along the west side of Kansas Avenue, NW, between Taylor Street and Shepherd Street, NW, are several apartment buildings and along the east side of the block are seven townhouses. (Exhibit 14, Pre-Hearing Statement at p. 5.)

7. The Property is .3 miles (approximately a five-minute walk) to the Georgia Avenue-Petworth Metro Station. A number of new developments, either proposed or approved, are or will be located along Georgia Avenue, NW, between the Property and the Metro station, including 3910 Georgia Avenue (a proposed mixed-use or retail-only

project on 31,000 square feet) of land area, 3646 Georgia Avenue (a proposed development of sit-down restaurants and quick eateries), and a large \$40 million mixed-use project at the Metro station that will include 148 condominiums, 17,000 square feet of retail space, and underground parking. (Exhibit 14, Pre-Hearing Statement at p. 5.)

8. The City's planning objectives call for more residential use in the area of the Property. The site is located in the Low Density Commercial/Moderate Density Residential land use category as shown on the District of Columbia Generalized Land Use Map. The properties to the south of the Property on Georgia Avenue, NW, are in the Moderate Density Commercial/Medium Density Residential land use category. Given its location and prominence on the Georgia Avenue corridor, the Property shares many of the same characteristics of the properties in this land use category. The properties north, west, and south of the Property are also in the Low Density Commercial/Moderate Density Residential land use categories, as is the property one-half block to the east, and the properties to the northeast, northwest, and southwest. The property beyond one-half block to the east is in the Moderate Density Residential land use category, as is the square to the southeast. (Exhibit 14, Pre-Hearing Statement at p. 5-6.)

9. The PUD guidelines for the C-2-A Zone District allow a height of 65 feet and a maximum FAR of 3.0, with a limit of 2.0 of non-residential FAR. The C-2-A Zone District, as a matter-of-right, permits a maximum height of 50 feet, a maximum lot occupancy of 60% for solely residential uses, and a maximum FAR of 2.5, with a limit of 1.5 of non-residential FAR.

10. The PUD guidelines for the C-3-A Zone District allow a height of 90 feet and a maximum FAR of 4.5, with a limit of 3.0 of non-residential FAR. The C-3-A Zone District, as a matter-of-right, permits a maximum height of 65 feet, a maximum lot occupancy of 75% for solely residential uses, and a maximum FAR of 4.0, with a limit of 2.5 of non-residential FAR.

PUD APPLICATION AND PROJECT

11. The Applicant stated that the proposed project will result in the creation of a unique residential building with approximately 72 residential units and a retail space on the ground floor (the "Project"). All of the residential units will be affordable rental units at 60% of AMI. The main lobby for the building will be accessed from the Georgia Avenue entrance. (Exhibit 14, Pre-Hearing Statement at p. 6; Exhibit 18 at p. 2.)

12. The new building will be built to a height of 72 feet, below the maximum height under the PUD guidelines for the requested C-3-A zoning of 90 feet. The building will be a gateway for the Petworth neighborhood of today and will also provide impetus and direction for the development of the Petworth community of the future. The Project is a significant investment in a neighborhood that will greatly benefit from the stimulus. (Exhibit 14, Pre-Hearing Statement at p. 6.)

13. The building will be primarily masonry and Hardiplank cementitious siding. The massing of the building, decorative masonry base, cornice detailing, corner towers, patterned brick, and projecting bays from the face of building will create an expression appropriate to this neighborhood. The building was significantly redesigned in response to the comments of the Commission at the September 15, 2005 and October 17, 2005 setdown meetings and the comments of the Office of Planning ("OP"). The Applicant seeks to implement a design that is both attentive to Commission concerns and brings a fresh energy to Petworth. Different, more subdued, colors are now incorporated in a more cohesive pattern that blends traditional and modern elements. The building materials have been simplified. The first two floors of the building are articulated with a large expanse of brick masonry, including banded brick accents. A muted and complimentary Hardiplank exterior meets the brick base. A top layer of even lighter color, comprised of Hardiplank exterior tops the façade. A hardcoat stucco is used on the bay projections along Taylor Street, NW. The tower elements, have been emphasized and add vibrancy to the Property. All of the stucco is at least two stories above the ground. Windows have been added at the ground level retail along Taylor Street and Georgia Avenue, NW, to create a more inviting space. In addition, the Applicant reduced the unit count from 78 to 72 units, in part to decrease the intensity of the use and the size of the building. The Georgia Avenue elevation's scale has been reduced to be more of a part of the streetscape. The Applicant worked through the design with OP at meetings following the Commission setdown hearings and OP responded favorably to the refinements. The Applicant revised the project design after the February 6, 2006 public hearing, including such items as a redesign of the Georgia Avenue and Kansas Avenue façades and altering the color of the building, as requested by the Commission. (Exhibit 14, Pre-Hearing Statement at p. 6-7; Exhibit A to the Post-Hearing Submission.)

14. The roof of the new building will serve as a recreation terrace that will allow a lively visual ending to the building that, combined with the tower detailing, will create a memorable skyline. The Applicant updated the roof with a green roof. (Exhibit 14, Pre-Hearing Statement at p. 7.)

15. As shown on page 8 of Exhibit A to Post-Hearing Submission, vehicular ingress/egress to the site, including the largely below-grade parking garage of approximately 54 parking spaces, will be onto Kansas Avenue, NW, approximately 75 feet north of Taylor Street, NW (approximately a quarter-way up the block between Taylor Street, NW and Upshur Street, NW). A portion of the parking area is sloped down so that it effectively forms a ramp to slide below the retail space. Residents of the Project can proceed directly from their parking space in the below-grade garage to their units. The main lobby for the residential portion of the building will be accessed from the Georgia Avenue entrance to the Project via a glass entranceway and lobby which creates a visual connection to Georgia Avenue. A pedestrian-only entrance for the retail space will be located on the corner of Georgia Avenue, NW, and Taylor Street, NW. The Project will enliven the street by with its pedestrian access and ground-floor retail. The separation of the vehicular and pedestrian entrances to the Project will reduce overlap and conflicts at the Property. (Exhibit 14, Pre-Hearing Statement at p. 7-8; Post-Hearing Submission at p. 8.)

16. As a result of input from the District of Columbia Department of Transportation ("DDOT"), OP, and community members, the Applicant added 20 spaces to its initial project design and closed a proposed vehicular entrance off of Taylor Street. The 20 spaces were added as a result of the inclusion of the Space Savers parking structure system being employed at the Property. This system incorporates a "pit" at certain parking spaces so that two cars are parked vertically and an elevator raises and lowers the cars to grade. The Applicant is incurring significant cost as a result of the deployment of these Space Saver systems. (Exhibit 21; Post-Hearing Submission, Exhibits A and B.)

17. The proposed Project will include landscape and hardscape improvements on the Property. In addition to a landscaped area on the southwest corner of the building, there will be a green space created along Taylor Street, NW. The result of the landscaping and the exemplary finish on the building will be that the surrounding neighborhood is reinvigorated and the streetscape is energized – all on property that currently detracts from the streetscape and neighborhood in general. (Pre-Hearing Statement at p. 8; Post-Hearing Submission, Exhibit A.)

18. The total gross floor area included in the proposed PUD is approximately 79,467 square feet, for a total Floor Area Ratio ("FAR") of approximately 4.5. The building will have a height of approximately 72 feet, as measured from Georgia Avenue, NW. The proposed Project will have a lot occupancy of approximately 68%. The proposed Project is equal to or smaller than the building envelope permitted under the C-3-A District PUD Guidelines (maximum FAR of 4.5 and a maximum building height of 90 feet). It is necessary to rezone the Property to the C-3-A Zone District in order to allow the proposed 72 foot height and FAR of 4.5. The proposed height and FAR on the Property is critical to allow for the affordable housing. (Pre-Hearing Statement at p. 8; Exhibit B of Exhibit 18.)

19. The Project will have approximately 5,281 square feet of residential recreational space (8% of the residential space), less than the 15% residential recreational space required in the C-3-A Zone District. It will be comprised of space on the roof terrace, a tenant meeting room, lobby space, and landscaped recreation space. (Pre-Hearing Statement at p. 8, Exhibit B of Exhibit 18.)

20. The loading platform and recycling areas will be enclosed within the building and located at the rear side of the building. They will be accessed from a separate loading entrance on Kansas Avenue, NW. (Pre-Hearing Statement at p. 9; Post-Hearing Submission, Exhibit A.)

FLEXIBILITY UNDER PUD GUIDELINES

21. The PUD Process was created to allow greater flexibility in planning and design than is possible under conventional zoning procedures. The PUD regulations specifically allow the Commission to approve any zoning relief that would otherwise require the approval of the Board of Zoning Adjustment ("BZA"). The proposed

development complies with the broad parameters of the C-3-A Zone District. However, the design scheme proposed for the PUD has created a configuration that does not meet all of the exact requirements of this zone. (Pre-Hearing Statement at p. 9.)

22. Specifically, the Applicant seeks to establish 54 parking spaces, rather than the 61 that are required under 11 DCMR § 2101.1. This change is requested and is necessary in order to maintain the affordability of the units, while still constructing a high quality residential project that will satisfy the District and neighborhood planning goals for the area. It would be cost-prohibitive to excavate an additional level of parking on the site. Due to the Property's location so close to the Georgia Avenue-Petworth Metrorail station, as well as Metrobus lines on Georgia Avenue, NW, and because the immediate vicinity of the Property is relatively uncongested, this smaller number of parking spaces will not result in any negative effects. The Applicant's parking report and DDOT support this conclusion. (Pre-Hearing Statement at p. 9-10.)

23. The Applicant requests relief from the residential recreation space requirement of 15% of residential gross floor area required by 11 DCMR § 773. Instead, the Applicant seeks to create residential recreational space in the amount of approximately 8% of the residential gross floor area. This reduction will not conflict with the spirit or intention of the requirement, as the close proximity of the Upshur Recreation Center (an extensively-equipped park including a lighted basketball court, lighted athletic fields, a swimming pool, a playground, and a multi-purpose room) and the ground floor retail space will provide ample diversionary and recreational outlets for residents of all ages to accommodate the gap between the 8% residential recreational space offered by the Project and the 15% required under the Zoning Regulations. In addition, the space that is provided is highly functional and desirable to the tenants. Both the roof deck and the tenants' meeting room are useful spaces. Also, the Project will have a great deal of green space surrounding the building on the Property. Further, the Applicant requests relief from 11 DCMR § 773.6 since it wishes to include areas that are less than 25 feet wide in its calculations of residential recreation space. This is the result of the irregular shape of the roof and will allow for the maximization of the available open space on the roof for tenant enjoyment. (Pre-Hearing Statement at p. 10; Exhibit 18 at p. 2.)

24. The Applicant requires relief from 11 DCMR § 411. The Project has two roof structures – one houses a stairwell and the elevator and the other houses the emergency stairwell. It would be impractical to connect the roof structures and such a connection would lead to a greater appearance of height. Also, the design of the roof structures has been integrated into the design of the tower elements. As a result, the Applicant also requires relief from Section 400.7 of the Zoning Regulations regarding setback of the roof structures. By working the roof structures into the tower elements, the building has become more cohesive and can offer a greater amount of space on the roof for residential recreational space. In addition, the roof structures are not setback from the exterior walls of the building a distance equal to their height in order to enhance the design of the Project and to allow for a greater amount of residential recreational space on the roof. (Pre-Hearing Statement at p. 10-11.)

25. The Applicant requests relief from the requirements of 11 DCMR § 776 regarding the minimum width of courts in buildings with a residential component. The court was created since the elevator shaft has been pushed away from the building in order to give nearby bedrooms windows. The proposed court begins at the top of the first floor's roof and extends 51 feet 8 inches in height. Therefore, a court of 17 feet 3 inches in width would be required. The court provided is 9 feet 6 inches in width. This relief will not violate the intention of the Zoning Regulations and will allow for greater flexibility in design of the building. (Pre-Hearing Statement at p. 10-11.)

26. Applicant requests relief from the provisions of 11 DCMR § 2201.1 requiring a loading space and second loading platform for residential and retail areas. The Project only has one complying loading berth and loading platform. These loading facilities are sufficient due to the smaller size of the Project. There are only 72 units (50 units triggers the loading requirements) and less than 11,000 square feet of retail (5,000 s.f. of retail triggers the loading requirements). By only having one loading berth and platform, the Project economizes the site and allows for more parking. (Testimony of the Applicant.)

27. Finally, the Applicant requests relief from the parking space distribution provisions of 11 DCMR § 2115.4. The Applicant proposes a parking garage that contains one area of three (3) contiguous compact parking spaces rather than the required five (5) contiguous compact parking spaces. Since it is an oddly configured lot and space is at a premium, the arrangement of such parking spaces maximizes all open areas in the most efficient manner. Such a configuration also achieves the OP's desires and allows more parking to be on the site without excavation, which would be cost-prohibitive in an affordable housing development. (Pre-Hearing Statement, Exhibit A.)

28. As detailed in Exhibit E of Exhibit 2 in the record, no adverse environmental impact will result from the construction of the Project. In addition, the increased use of water and sanitary services that will occur as a result of the Project, will have an inconsequential effect on the District's delivery systems. The Property is currently served by all major utilities. The Project's proposed stormwater management and erosion control plans will minimize impact on the adjacent property and existing stormwater systems. The requisite erosion control procedures stipulated by the District will be implemented during construction of the Project.

29. As detailed in Exhibit E of Exhibit 2 in the record, the Project will not have an adverse impact on the public facilities that it will rely on for service. The Property is located within easy walking distance of the Petworth/Georgia Avenue Metrorail station. In addition, numerous Metrobus lines utilize Georgia Avenue, such that the Project is adequately served by public transportation.

30. The Applicant communicated with the community a great deal. D.C. Councilmember Adrian Fenty was vocal in his support of the Project. ANC 4C offered a great deal of support and suggestions for the Project, many of which were incorporated into the plan.

31. The Project is fully consistent with and fosters the goals and policies stated in the elements of the District of Columbia Comprehensive Plan, D.C. Law 12-275, 10 DCMR (Planning and Development) § 100 et seq. (1998) ("**Comprehensive Plan**"). The Project is consistent with the following major themes of the Comprehensive Plan:

- Stabilizing the District's neighborhoods;
- Respecting and improving the physical character of the District; and
- Preserving and ensuring community input.

The Project is also consistent with many Major Elements of the Comprehensive Plan (including the Housing and Urban Design Elements), and fulfills the goals and policies of the Ward 4 Plan. The OP report submitted on January 27, 2006 stated that OP believes that the land use impact of the Project would be favorable to the District. (Pre-Hearing Statement at p. 18-22; Exhibit 19.)

32. Testimony and evidence on behalf of the Applicant was provided by Karl Jentoft, Chief Executive Officer, The Neighborhood Development Company, LLC; Scott Knudson and Marc Feinstein of Weincek & Associates Architects (who testified as an expert in the field of architecture); and Nicole White, of Symmetra Design (who testified as an expert in the field of traffic and parking engineering).

33. As addressed in the Applicant's Pre-Hearing Statement and in the testimony of Mr. Jentoft, Mr. Feinstein, and Mr. Knudson, the following public benefits and project amenities will be created as a result of this Project.

- Housing and Affordable Housing – Pursuant to Section 2403.9(f) of the Zoning Regulations, the PUD guidelines state that the production of housing is a public benefit that the PUD process is designed to encourage. This Project will create approximately 72 new, rental apartments in the Petworth neighborhood. As a whole, the Project will result in the creation of approximately 68,981 square feet of affordable housing units. The units will be available to potential residents with a household income that does not exceed 60% of the Area Median Income for the Washington, D.C. Metropolitan Statistical Area. In addition, the District Department of Housing and Community Development requires that at least fourteen (14) units will be required to be reserved for potential residents with a household income between 31% and 50% of the AMI. Given the current strong interest in the production of affordable housing in the District of Columbia, this is a significant amenity. (Pre-Hearing Statement at p. 14; Exhibit 18 at p. 2; and Post-Hearing Submission at p. 3.)
- Urban Design and Architecture – Section 2403.9(a) lists urban design and architecture as categories of public benefits and project amenities for a PUD. Mr. Jentoft, Mr. Feinstein, and Mr. Knudson noted the significant architectural

quality and superior urban design involved in the PUD project are greater than the same found in a matter-of-right project. As shown in the detailed plans, elevations, and renderings included in Exhibit A of Exhibit __ to the record [Post-Hearing Submission], the proposed Project exhibits all of the characteristics of exemplary urban design and architecture. The high level of building finish, freshness of design, and alternating composition of projecting bays combine to create a sense of energy and visual interest. In addition, the Applicant is providing enhanced landscaping on the Property. The Applicant revised and enhanced the design to address the comments of OP and the Commission. (Pre-Hearing Statement at p. 14; Post-Hearing Submission.)

- Site Planning – Pursuant to Section 2403.9(b) of the Zoning Regulations, "Site planning, and efficient and economical land utilization" are public benefits and project amenities to be evaluated by the Zoning Commission. The proposed Project has been designed to provide residents and their guests with open and inviting spaces, including the roof terrace and landscaped area. In addition, the Project would bring much needed retail space to the area and a great deal of affordable housing to an area close to the Metro. The Project would be an efficient use of the Property and take advantage of its many positive characteristics. (Pre-Hearing Statement at p. 15; Post-Hearing Submission.)
- Effective and Safe Vehicular and Pedestrian Access – The Zoning Regulations, pursuant to Section 2403.9(c), state that "Effective and safe vehicular and pedestrian access" can be considered public benefits and project amenities of a project. The proposed Project will provide a parking garage with approximately 54 parking spaces. The entrance and exit to this garage will be on Kansas Avenue and it will be landscaped and buffered from neighboring properties. Residents of the Project will be able to proceed directly from their parking space in the garage to their units, and patrons of the retail space will be able to park in designated retail parking spaces. The Project will also provide two separate entrances/exits for pedestrians on Georgia Avenue – one for the retail space and one for residents. These separate and distinct vehicular and pedestrian entrances/exits will mitigate any potential pedestrian and vehicular conflicts. (Pre-Hearing Statement at p. 15; Post-Hearing Submission.)
- Environmental Benefits – The Project will include numerous environmentally sensitive features that would not necessarily be included in a matter-of-right project. These attributes include: a green roof system covering part of the building's roof top; a landscaped roof terrace reducing the effects of urban heat islands; and the use of extensive landscaping for most open spaces. (Post-Hearing Submission.)
- Revenue for the District – According to Section 2403.9(i), "uses of special value to the neighborhood or the District of Columbia as a whole" are deemed

to be public benefits and project amenities. The addition of a new building with approximately 72 households and a retail space will result in the generation of significant additional tax revenues in the form of income, sales, use and employment taxes for the District. Further, the provision of new affordable living space will mean that a segment of the District workforce presently being pushed out of the District by increasing housing costs will remain, thereby supporting the businesses where they work. (Pre-Hearing Statement at p. 16.)

- First Source Employment Program – According to Section 2403.9(e), "employment and training opportunities" are representative public benefits and project amenities. Therefore, the Applicant has voluntarily entered into an agreement to participate in the Department of Employment Services ("DOES") First Source Employment Program to promote and encourage the hiring of District of Columbia residents. (Exhibit __ to Exhibit __ *[Final executed copy to be submitted with draft order]*; Pre-Hearing Statement at p. 16.)
- Local Business Opportunity Program – Pursuant to Section 2403.9(e), the use of local firms in the development and construction of the Project is a representative public benefit and project amenity. Therefore, the Applicant will enter into a Memorandum of Understanding ("MOU") with the Department of Small and Local Business Development ("DSLBD") to use the resources of the DSLBD to utilize LSDBEs in the development of this Project. Further, the Applicant is an LSDBE in accordance with the spirit of D.C. Law 12-268. The District should make a particular effort to allow the Applicant this opportunity to grow its business in strength and vitality, and to allow the Applicant to be a key participant in "stimulating economic development in the District." It should be noted that the Property is directly adjacent to the Applicant's headquarters. (Pre-Hearing Statement at p. 16; Post-Hearing Submission, Exhibit D.)
- Consistency with the Comprehensive Plan – According to Section 2403.9(j), public benefits and project amenities include "other ways in which the proposed planned unit development substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan." The Applicant noted that the Project fosters and furthers numerous elements of the Comprehensive Plan as well as numerous major themes of the Comprehensive Plan. (Exhibit 14, Pre-Hearing Statement at p. 17, 18-22.)
- Public Benefits of the Project – Sections 2403.12 and 2403.13 require the Applicant to show how the public benefits offered are superior in quality and quantity to typical development of the type proposed. The Applicant has addressed this issue in the text of the Pre-hearing Statement and during the February 6, 2006 hearing. It is only as a result of the funding provided by DHCD, District of Columbia Housing Finance Authority and the additional

density and height provided through the PUD process that the Applicant is able to construct such a well-designed project and provide so much new affordable housing. The building will be well designed and integrated into its surroundings and equipped with all modern safety amenities as well as parking and recreational space. As a substantial investment, the Project will be a valuable addition to the urban fabric of the Petworth neighborhood. The architectural detailing of the proposed building, landscaping, and the large amount of quality affordable housing provided in this Project set it apart from a matter-of-right residential project. Whereas a matter-of-right project would not be required to provide any affordable housing, the approval of this PUD application will result in the creation of approximately 68,981 square feet of high-quality affordable housing. In addition, the surrounding neighborhoods will greatly benefit from the first floor retail space. The Project is likely to have a highly desirable catalytic effect on development in the immediately surrounding area.

34. At the public hearing and in her transportation impact study and amendment submitted into the record as Exhibit B to Exhibit 14 and as Exhibit 27, the Applicant's traffic engineer, Ms. White, concluded that the proposed Project will have no significant impact on peak hour levels of service at nearby intersections. Ms. White testified that all key intersections around the Property currently operate at acceptable levels of service. The redevelopment of the Property will be adequately accommodated at the key intersections in the study area and have only minimal impact on the delay and volume/capacity ratios in the study area. (Exhibit B to Exhibit 14; Exhibit 27.)

35. In response to issues raised by Commissioners during the public hearing, the record of the case was left open for the Applicant to provide post-hearing materials including: revisions to the site plans including the updated first level plan showing new parking plan and traffic flow; updated elevation for the Project's Georgia Avenue façade; specifics about the Space Saver parking spaces proposed for the parking garage; details on the green roof; drawings that show the elevator tower and the main corner tower at the same height; and details on the affordability program for the Property. The Applicant submitted the required materials on February 24, 2006. (Post-Hearing Submission.)

GOVERNMENT REPORTS

36. OP, in its report dated January 27, 2006, and through its testimony at the public hearing recommended approval of the Project subject to the provision of more information. The OP report noted that the project benefits and amenities are commensurate with the amount of development incentives requested, that the application meets the standards for a PUD, and that the Project is not inconsistent with the Comprehensive Plan. The information and conditions to approval that OP listed are:

- The applicant will provide more detail and articulation along the Kansas Avenue façade.

- The applicant will restrict all loading and unloading from Georgia Avenue and Taylor Street.
- The applicant will provide details of the arrangement regarding the provision of an off-site location for Flexcar for use by residents of the development.
- The applicant will remove the large sign from the side of the building.
- The applicant will provide a signed First Source Agreement with the District of Columbia Department of Employment Services and a Memorandum of Understanding with the Local Business Opportunity Commission prior to the Zoning Commission's final action.

(Exhibit 19.)

37. No District of Columbia agency other than DDOT responded to the OP notice that the application had been filed. (Exhibit 19 at p. 11.)

38. In testimony at the public hearing, representatives of OP noted that the significant amenities of the Project include: the construction of an entirely affordable residential project on a commercially-zoned site; and the site planning and urban design aspects of the Project.

39. The DDOT submitted a report dated February 7, 2006 ("**DDOT Report**"), which supported the Project with a recommendation that it include 57 parking spaces. As stated, the Applicant revised the site plan to include 54 parking spaces. The DDOT Report also requested that the Applicant submit a site plan indicating the size of the loading dock and dimension of the driveway. The Applicant provided such a site plan to DDOT on February 6, 2006. The DDOT Report stated that the Property is well-served by public transportation. (Exhibit 30, p.2.)

ADVISORY NEIGHBORHOOD COMMISSION REPORTS

40. ANC 4C voted to support the Project with no conditions at a regularly scheduled and publicly noticed meeting on February 14, 2006. The letter sent by Joseph Martin, Chairman of ANC 4C, on February 27, 2006, states that the Applicant held community meetings to explain the Project and answer questions. That letter stated that a meeting with Single Member District Commissioner Shanel Anthony did not result in any significant opposition to the Project. The Commission also received two other letters from ANC commissions in support of the Project. No one from ANC 4C was present at the public hearing. (Exhibit 25; Exhibit 26, Exhibit __ *[ANC letter filed after 2/27/06].*)

PARTIES AND PERSONS IN SUPPORT

41. In a letter dated February 23, 2006, the Petworth Action Committee noted its support for the application. (Post-Hearing Submission; Exhibit F.)

42. No persons testified in support of the application at the public hearing.

PARTIES AND PERSONS IN OPPOSITION

43. There were no parties that testified or submitted any materials in opposition to the application.

CONCLUSIONS OF LAW

44. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide public benefits, 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience.” 11 DCMR § 2400.2. The application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

45. Notice of the public hearing was provided in accordance with the Zoning Regulations.

46. Under the PUD process, the Zoning Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards. The Zoning Commission may also approve design elements that are permitted by variance and would otherwise require approval by the BZA. In this application, the Commission finds that:

- The requested flexibility from the requirements of 11 DCMR § 2101.1 regarding parking spaces can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The Project has adequate parking and the site is well serviced by mass transit.
- The requested flexibility from the requirements of 11 DCMR § 773 regarding the provision of 15% residential recreation space can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The Project has adequate space for resident recreation and the surrounding neighborhood offers many opportunities for recreation. In addition, the requested flexibility from 11 DCMR § 773.6 can be granted since the Applicant is attempting to maximize the residential recreation space available on the roof for tenant enjoyment.
- The requested flexibility from the requirements of 11 DCMR § 411 regarding the roof structures and their setbacks can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. It would be impractical to connect the roof structures and detract from the design of the building.

- The requested flexibility from the requirements of 11 DCMR § 776 regarding the minimum width of courts in buildings with a residential component can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The courts were created in an attempt to give certain bedrooms windows. This relief will allow for greater flexibility in design of the building.
- The requested flexibility from the requirements of 11 DCMR § 2201.1 regarding loading space and second loading platform for residential and retail areas can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The Project has sufficient loading facilities due to the smaller size of the Project.
- The requested flexibility from the requirements of 11 DCMR § 2115.4 regarding compact parking space distribution can be granted with no detriment to surrounding properties and without detriment to the zone plan or map. The Project is maximizing the space given on an oddly configured lot. Such a configuration also achieves the OP's desires and allows more parking to be on the site without excavation, which would be cost-prohibitive in an affordable housing development.

47. The development of this Project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right development.

48. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.

49. The Commission agrees with the testimony of the project architect and the representative of the Applicant and finds that this Project does in fact provide superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the affordable housing provided in the Project, the enhanced design and environmental sensitivity of the Project, and the landscape and hardscape improvements provided on the site are significant and substantial project amenities of this PUD application.

50. The Commission finds that the Project relates well to nearby buildings. The Commission finds that the treatment of the lower levels of the building, including residential entry rhythm and scale similar to that of the neighboring properties. The designs of the façades of the building, particularly the Taylor Street, Georgia Avenue and Kansas Avenue façades are consistent with the buildings throughout the neighborhood.

51. Approval of the application 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 Zoning Map of the District of Columbia.

52. The Project will achieve numerous goals of the District. The Project will create a significant affordable residential development and will improve dramatically the appearance of the site. The proposed height and massing of the Project are consistent with recently approved PUD projects in the area and with the District's planning goals for the future of this neighborhood.

53. The Commission evaluates the impact of the Project as follows:

- Land Use Impact – The proposed PUD Project will create a significant residential development along the important Georgia Avenue Corridor and will improve dramatically the appearance of the site. The proposed height and massing of the Project is consistent with the buildings in the area and with the District's planning goals for the future of this area of the City. In fact, the Applicant did not fully use the 90 foot height allowance of the PUD guidelines in the C-3-A Zone District. In order to create a more compatible building with the surrounding neighborhood, the Applicant designed the Project to a height of 72 feet.
- Zoning Impact – The proposed Zoning Map Amendment application can be granted without adversely affecting nearby and adjacent Zone Districts. The proposed C-3-A Zone District is consistent with the Moderate Density Residential/Low Density Commercial Land Use Category designation for the Property and the surrounding Generalized Land Use Map designations. It is particularly consistent with the Medium Density Residential/Moderate Density Commercial Land Use Category designation for the properties on the Georgia Avenue Corridor. Those properties are zoned C-3-A. The rezoning of the Property comports with the District's planning initiatives in the vicinity of the Property. Further, the requested rezoning does not constitute spot zoning. The D.C. Court of Appeals has held that PUDs do not constitute spot zoning. Daro Realty, Inc. v. District of Columbia Zoning Commission, 581 A. 2d 295, 299.
- Environmental Impact – No adverse environmental impact will result from the construction of this Project. The increased use of water and sanitary services that will occur as a result of the Project will have an inconsequential effect on the District's delivery systems. The site is currently served by all major utilities. The Project's proposed stormwater management and erosion control plans will minimize impact on the adjacent property and existing stormwater systems. The requisite erosion control procedures stipulated by the District will be implemented during construction of the Project. Once the Project is completed, it will have the beneficial impact of urban infill. With the Property changed from a vacant used car lot to affordable housing, the Property would be much more efficiently utilized. Further, many of the residents would be District residents displaced by increasing housing costs in other parts of the District. The Project would allow them to live in the District, and utilize the Metro to get to work, rather than move out to the suburbs and commute into the District for work. As a result, the Project would have the effect of keeping more cars off the roads and assisting in curbing sprawl.

- Facilities Impact – The proposed Project will not have an adverse impact on the public facilities that it will rely on for service. As previously mentioned, the Property is located within easy walking distance of the Georgia Avenue-Petworth Metro Station. In addition, Metrobus lines utilize Georgia Avenue, NW, such that the Project is well-served by public transportation.

54. In accordance with D.C. Official Code §1-309.10(d)(2001), the Commission must give great weight to the issues and concerns of the affected ANC. The Commission takes note of ANC 4C's letters in support of the Project, both those representing the whole ANC and those by individual commissioners, and has accorded to the ANC's decision the "great weight" consideration to which it is entitled. The Commission notes the support that the Project received from the Petworth Action Committee. Based on the letters and support from the community, the Commission concludes that the Applicant has been well received by the community.

55. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

56. 11 DCMR § 2403 provides the standards for evaluating a PUD application. 11 DCMR § 2403.9 provides categories of public benefits and project amenities for review by the Commission. The objective of the PUD process is to encourage high quality development that provides public benefits and project amenities by allowing applicants greater flexibility in planning and design than may be possible under matter-of-right zoning. The instant consolidated application will achieve the goals of the PUD process by creating a high quality affordable housing and retail building on the Property which will help to enliven and revitalize the Georgia Avenue Corridor and the Petworth neighborhood of Ward 4.

- Housing and Affordable Housing - Pursuant to 11 DCMR § 2403.9(f), the PUD guidelines state that the production of housing is a public benefit that the PUD process is designed to encourage. This Project will create approximately 72 new, rental affordable residential units in the Petworth neighborhood comprising 68,981 square feet. Given the current strong demand for the production of affordable housing in the District, this is a significant amenity.
- Urban Design and Architecture - 11 DCMR § 2403.9(a) lists urban design and architecture as categories of public benefits and project amenities for a PUD. As shown in the detailed plans, elevations, and renderings included as Exhibit A in the Post-Hearing Submission, the Project exhibits all of the characteristics of exemplary urban design and architecture. The Applicant was successfully responsive to the design issues raised by the Commission in the Project's set-down hearings and the February 6, 2006 public hearing and OP's concerns. The Applicant significantly revised the Georgia Avenue and Kansas façades and altered the colors of the exterior of the building at the request of the Commission. The landscaping, high level of finish, and alternating composition of projecting bays, all combine to create a sense of

scale and visual interest. The design includes many design features that would not be found in a matter of right project. The result is an exemplary design.

- Site Planning - Pursuant to 11 DCMR § 2403.9(b), "Site planning, and efficient and economical land utilization" are public benefits and project amenities to be evaluated by the Commission. The Project is an efficient design that beneficially maximizes the Property without negatively impacting the neighboring properties. The Project offers both residential and retail space with ample parking on the Property. Further, the Project includes a great deal of parking, which has been greatly enhanced by the Applicant utilizing Space Saver parking spaces, at the request of DDOT, OP, and the community.
- Effective and Safe Vehicular and Pedestrian Access - 11 DCMR § 2403.9(c) states that "Effective and safe vehicular and pedestrian access" can be considered public benefits and project amenities of a project. Based on the testimony and report of the Applicant's traffic expert and review of the Applicant's submissions, the Project provides such effective and safe vehicular and pedestrian access. The Project will provide a below-grade parking garage with approximately 54 parking spaces, 17 of which will be Space Saver parking spaces. The vehicular entrance and exit will be accessed from Kansas Avenue and will be appropriately buffered from neighboring properties. Pedestrian only entrances/exits will be constructed on Georgia Avenue for both the retail space and the residential units. These separate and distinct entrances/exits will mitigate any potential pedestrian and vehicular conflicts.
- Revenue for the District – According to 11 DCMR § 2403.9(i), "uses of special value to the neighborhood or the District of Columbia as a whole" are deemed to be public benefits and project amenities. The addition of approximately 72 new households and the proposed retail space will result in the generation of significant additional tax revenues in the form of property, income, sales, use and employment taxes for the District.
- First Source Employment Program - According to 11 DCMR § 2403.9(e), "employment and training opportunities" are representative public benefits and project amenities. The Applicant has voluntarily entered into an agreement to participate in the DOES First Source Employment Program to promote and encourage the hiring of District of Columbia residents.
- Local Business Opportunity Program - Pursuant to 11 DCMR § 2403.9(e), the use of local firms in the development and construction of a project is a representative public benefit and project amenity. Therefore, the Applicant will enter into a MOU with the DSLBD to use the resources of the DSLBD to utilize local business enterprises in the development of the Project. The Applicant is currently negotiating such a document with the DSLBD.

- Comprehensive Plan - According to 11 DCMR § 2403.9(j), public benefits and project amenities include "other ways in which the proposed planned unit development substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan." The Project is consistent with and furthers many elements and goals of the Comprehensive Plan.
- Public Benefits of the Project - 11 DCMR §§ 2403.12 and 2403.13 require the Applicant to show how the public benefits offered are superior in quality and quantity to typical development of the type proposed. The Applicant has addressed this issue in the text of the Pre-Hearing Statement. It is only as a result of the additional density provided through the PUD process that the Applicant is able to construct such a well-designed project that offers the levels of affordability proposed by the Applicant. A matter-of-right project would not provide any affordable housing. The approval of this PUD application will result in the creation of approximately 68,981 square feet of affordable housing and 10,486 square feet of retail.

57. The proposed PUD is consistent with and fosters the goals and policies enumerated in the District of Columbia Comprehensive Plan. The proposed Project significantly advances these purposes by furthering the social and economic development of the District through the creation of approximately 72 new affordable residential units and active ground level retail space on a site that is critically important to the development of the Georgia Avenue Corridor. Further, the Property is vacant and underutilized property near the Metrorail system. The affordability of the units is a realization of a main aspect of the Comprehensive Plan. The Applicant's proposal is consistent with three major themes as follows:

- Stabilizing the District's Neighborhoods – The creation of approximately 72 new residential units which will be rented rather than sold will help stabilize the Petworth neighborhood by providing an opportunity for District residents to live in desirable housing in the District even if they cannot afford or do not wish to buy. The creation of a significant retail and residential development on the Property is also likely to help stimulate additional residential development and further stabilize the neighborhood. The affordability will allow long-time District residents that have been priced out of housing elsewhere in the District maintain a residence in the City. The influx of new residents in the neighborhood will help provide the critical mass of customers needed to patronize existing, and hopefully new, commercial uses along Georgia Avenue, NW. In addition, the first floor retail space will bring much-needed services to the area and begin the active streetscape that the District seeks – particularly if the tenant is a pharmacy/grocer. In addition, the retail space will offer much needed goods and services for the immediate neighborhood. Therefore, the Project will both have a catalytic effect on surrounding areas while respecting the massing and scale of the neighborhood.

- Respecting and Improving the Physical Character of the District – The proposed Project has been designed to improve the site's integration with the surrounding neighborhood, put it to a more beneficial use than the current vacant lot, and to dramatically improve the streetscape Taylor Street, Georgia Avenue and Kansas Avenue. By increasing the density and maximizing the lot usage, the Project will not only contribute to the streetscape along Georgia Avenue, NW, but also create a new streetscape on Taylor Street, NW. While the building will be taller than its immediate neighbors, the Project's architects have used materials, alternating projecting bays, banding, and layering of textures to unite the building with its surroundings and scale. Thus, the Project will not overwhelm the neighborhood, will fit in well with the surrounding buildings, and will create a sense of scale and visual interest.
- Preserving and Ensuring Community Input – Through the PUD process, the Applicant has worked representatives of ANC 4C, as well as the surrounding neighborhood, to create a new residential building and retail space that is a benefit to the neighborhood and the District. The Applicant's further commitment to community input is demonstrated by its dialogue with and the support from Councilmember Fenty.

58. The Comprehensive Plan also contains 11 major elements. The Project furthers the objectives and policies of several of these elements as follows:

- Housing Element – The creation of approximately 72 rental residential units on this currently underutilized property fully satisfies all of the provisions of the Housing Element of the Comprehensive Plan. As previously stated, the Applicant will provide affordable housing in all 68,981 square feet of the Project priced for at least 60% of the AMI. The affordability of the Project is also entirely consistent with the provisions of the Comprehensive Plan and greatly furthers the intent of many of its housing provisions.
- Urban Design Element – As shown in the detailed plans, elevations, and renderings included in Exhibit A to the Pre-Hearing Statement and in post-hearing submissions to the Commission submitted as Exhibit __ of the record, the proposed Project exhibits all of the characteristics of exemplary urban design and architecture. The construction of a well-designed residential building will complement and enhance the neighborhood that surrounds the site. The integration of the site design into a prominent lot at the corner of Georgia Avenue, Kansas Avenue, and Taylor Street, NW, and the offering of street level retail will tie the Project into the neighborhood. The Applicant met with OP several times on the proposed Project. As a result of OP's input and the comments of the Zoning Commission during the setdown hearing, the design was greatly enhanced. The result is an exemplary design that utilizes modern materials for a traditional appearance.

- Generalized Land Use Map – As previously mentioned, the Generalized Land Use Map includes the Property in the Moderate Density Residential/Low Density Commercial Land Use Category. It should be noted that, while the Generalized Land Use Map typically is helpful in determining appropriate uses and density in areas of the city, it is not intended to serve as a “general” zoning map, nor does it mandate a parcel-by-parcel limitation on permitted development. The proposed Project and C-3-A Zone District are consistent with the flexibility that the Moderate Density Residential/Low Density Commercial Land Use category provides for the Property. Such a designation supports the construction of a high-quality affordable housing project with a retail component on the site of a vacant lot. In addition, the Georgia Avenue corridor adjacent to the property is a long stretch designated as Medium Density Residential/Moderate Density Commercial. Therefore, the Project would fit well in the plan for the establishment of Georgia Avenue as a rejuvenated vibrant corridor.

- Ward 4 Goals and Policies – The Ward 4 Element of the Comprehensive Plan seeks to “capitalize on Metrorail station areas as focal points for retail services...and community activities” (10 DCMR § 1501.1(d)), “create and expand retail activity” (10 DCMR § 1505.1(a)), expand development on vacant commercial properties (10 DCMR § 1506.1(a)), maintain, conserve, and expanding the housing stock, particularly of affordable housing, (10 DCMR § 1507.1(a)), provide affordable housing in particular near the Georgia Avenue-Petworth Metro Station (10 DCMR § 1507.3)), provide for the housing needs of moderate-income households (10 DCMR § 1508.1(a)), encourage the private sector to provide new housing (10 DCMR § 1508.1(c)), and support the construction of rental housing (10 DCMR § 1508.1(d)). Furthermore, the Ward 4 Land Use Plan calls for the implementation and upgrading of local neighborhood centers in a small area that includes the Property (10 DCMR § 1530.1 (h)(2)(C)(ii)). The proposed PUD is consistent with these provisions of the Ward 4 Elements of the Comprehensive Plan. It is difficult to imagine a project that better satisfies the goals and objectives of the Ward 4 Element of the Comprehensive Plan.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for consolidated review and approval of a Planned Unit Development application for Lots 35, 803 and the alley in between them, in Square 2910. The approval of this PUD is subject to the following guidelines, conditions and standards:

1. The PUD shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits A to Exhibit 14 submitted with the initial application materials, as amended by Exhibit A to Exhibit 18 submitted on January 23, 2006, as amended by Exhibit 21 submitted at the hearing, and as

amended by Exhibit A to the Post-Hearing Submission submitted on February 24, 2006, as modified by the guidelines, conditions and standards of this order.

2. In accordance with the plans and materials noted above, the approved PUD shall consist of a project that includes a minimum of 72 residential units. The entire Project will include approximately 79,467 square feet of gross floor area resulting in a FAR of approximately 4.5. The Project shall include 68,981 square feet of affordable residential space and 10,486 square feet of commercial space. The new building will have a height of 72 feet and total lot occupancy of the Project of approximately 72%.
3. There will be a minimum of 54 parking spaces comprised a minimum of 37 parking spaces on the surface of the Property and in an underground parking garage and a minimum of 17 Space Saver or Space Saver-like parking spaces, as described in this order.
4. All of the residential units in the Project will be available as affordable units to residents having an income not exceeding 60% of AMI, and consistent with the eligibility requirements and enforcement mechanisms enumerated in the DHCD guidelines and policies. To the extent that minor modifications are needed in the execution of this program to conform to District or Federal housing programs, the applicant will work with DHCD to make such changes comply with the same.
5. The applicant will restrict all loading and unloading from Georgia Avenue and Taylor Street and only perform such activities from Kansas Avenue.
6. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services.
7. The Applicant shall enter into a Memorandum of Understanding with the Office of Local Business Development in substantial conformance with the draft Memorandum of Understanding submitted as Exhibit D to the Post-Hearing Submission.
8. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures;
 - To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction; and
 - To make minor refinements to exterior details and dimensions, including

belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit.

- To make alterations to the parking garage design provided that the parking garage contains a minimum of 54 parking spaces, which requirement may be satisfied with any combination of compact and full-sized spaces;
 - To vary the size and location of retail entrances to accommodate the needs of specific retail tenants; and
 - To make minor adjustments to the site plan, including such areas as the loading areas and driveway, to accommodate DDOT, if necessary.
9. The consolidated PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, an application must be filed for a building permit and construction of the Project must start within three years of the date of the effective date of this order pursuant to 11 DCMR §§2408.8 and 2408.9.
10. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”). This order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sexual discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

For the reasons stated above, the Commission concludes that the applicant has met the burden, it is hereby **ORDERED** that the application be **GRANTED**.

VOTE: ____-____-____

In accordance with the provisions of 11 DCMR 3028, this order shall become final and effective upon publication in the D.C. Register on _____.

ANTHONY HOOD
Vice Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning

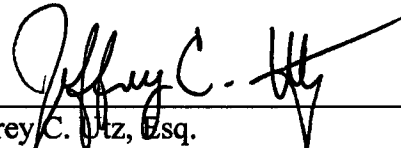
CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of March 2006, I served a copy of the foregoing Proposed Findings of Fact and Conclusions of Law via hand delivery, to:

ANC 4C
c/o Joe Martin
P.O. Box 60847
Washington, DC 20039-0847

Maxine Brown-Roberts
801 North Capitol Street, N.E.
Suite 4000
Washington, D.C. 20002

District of Columbia Department of Transportation
2000 14th Street, N.W.
7th Floor
Washington, D.C. 20009

A handwritten signature in black ink, appearing to read "Jeffrey C. Utz", is written over a horizontal line.

Jeffrey C. Utz, Esq.
Pillsbury Winthrop Shaw Pittman, LLP
2300 N Street, N.W.
Washington, D.C. 20037

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

Office of Employer Services



Karl E. Jentoft
CO-CEO
Neighborhood Development Co.
4110 Kansas Ave., N.W.
Washington, DC 20011

FEB 24 2006

Dear Mr. Jentoft:

Enclosed is your copy of the signed First Source Employment Agreement between the D.C. Department of Employment Services (DOES) and 4100 Georgia Avenue, L. P.

Under the terms of this Agreement, you and your subcontractors are required to use DOES as your first source to fill all new jobs created as a result of the 4100 Georgia Ave., N. W. project. In addition, at least 51% of the newly created jobs must be filled by D.C. residents, as well as, at least 51% apprentices and trainees must be District residents.

You should post your job vacancies to the Department of Employment Services' Virtual One-Stop (VOS) at www.denetworks.org. VOS is an advanced web-based workforce development system, which allows employers to place job orders and search for applicants by skill-set or position. The system also accommodates the employer looking for specific industrial and economic data and has a series of Internet links to a variety of issues and topics of interest to employers. Should you need assistance in posting your job vacancies, please contact Job Bank at (202) 698-6001.

Also, enclosed is a Contract Compliance Form, which must be completed and submitted by you and your subcontractors each month. This form collects data on all new hires employed on the project. A DOES contract monitor will compare the information you provide on this form with your actual employment and payroll records. If you have any questions regarding the Contract Compliance Form, please contact Shirley McKoy at (202) 698-5772.

Thank you for participating in the First Source Employment Agreement Program, and we are looking forward to working with you.

Sincerely,
Susan O. Gilbert

Susan O. Gilbert
Executive Assistant
Workforce Development Bureau

Enclosure

FIRST SOURCE EMPLOYMENT AGREEMENT

Contract Number: _____

Contract Amount: _____

Project Name: RESIDENCES AT GEORGIA AVE

Project Address: 4100 GEORGIA AVE NW Ward: 4

Nonprofit Organization with 50 Employees or Less: (Yes) ____ (No) ____

This First Source Employment Agreement, in accordance with D. C. Law 14-24, D.C. Law 5-93, and Mayor's Order 83-265 for recruitment, referral, and placement of District of Columbia residents, is between the District of Columbia Department of Employment Services, hereinafter referred to as DOES, and 4100 GEORGIA AVENUE L.P., hereinafter, referred to as EMPLOYER. Under this Employment Agreement, the EMPLOYER will use DOES as its first source for recruitment, referral, and placement of new hires or employees for the new jobs created by this project and will hire 51% District of Columbia residents for all new jobs created, as well, as 51% of apprentices employed in connection with the project shall be District residents registered in programs approved by the District of Columbia Apprenticeship Council.

I. GENERAL TERMS

- A. The EMPLOYER will use DOES as its first source for the recruitment, referral and placement of employees.
- B. The EMPLOYER shall require all contractors and subcontractors, with contracts totaling \$100,000 or more, to enter into a First Source Employment Agreement with DOES.
- C. DOES will provide recruitment, referral and placement services to the EMPLOYER subject to the limitations set out in this Agreement.
- D. DOES participation in this Agreement will be carried out by the Office of the Director, with the Office of Employer Services, which is responsible for referral and placement of employees, or such other offices or divisions designated by DOES.

- E. This Agreement shall take effect when signed by the parties below and shall be fully effective for the duration of the contract and any extensions or modifications to the contract.
- F. This Agreement shall not be construed as an approval of the EMPLOYER'S bid package, bond application, lease agreement, zoning application, loan, or contract/subcontract.
- G. DOES and the EMPLOYER agree that for purposes of this Agreement, new hires and jobs created (both union and nonunion) include all EMPLOYER'S job openings and vacancies in the Washington Standard Metropolitan Statistical Area created as a result of internal promotions, terminations, and expansions of the EMPLOYER'S workforce, as a result of this project, including loans, lease agreements, zoning applications, bonds, bids, and contracts.
- H. For purposes of this Agreement, apprentices as defined in D.C. Law 2-156, as amended, are included.
- I. The EMPLOYER shall register an apprenticeship program with the D.C. Apprenticeship Council for construction or renovation contracts or subcontracts totaling \$500,000 or more. This includes any construction or renovation contract or subcontract signed as the result of, but is not limited to, a loan, bond, grant, Exclusive Right Agreement, street or alley closing, or a leasing agreement of real property for one (1) year or more.
- J. All contractors who contract with the Government of the District of Columbia to perform information technology work with a single contract or cumulative contracts of at least \$500,000, let within any twelve (12) month period shall be required to register an apprenticeship program with the District of Columbia Apprenticeship Council.
- K. The term "information technology work" shall include, but is not limited to, the occupations of computer programmer, programmer analyst, desktop specialist, technical support specialist, database specialist, network support specialist, and any other related occupations as the District of Columbia Apprenticeship Council may designate by regulation.

II. RECRUITMENT

- A. The EMPLOYER will complete the attached Employment Plan, which will indicate the number of new jobs projected, salary range, hiring dates, and union requirements. The EMPLOYER will notify DOES of its specific need for new employees as soon as that need is identified.

- B. Notification of specific needs, as set forth in Section II.A, must be given to DOES at least five (5) business days (Monday - Friday) before using any other referral source, and shall include, at a minimum, the number of employees needed by job title, qualification, hiring date, rate of pay, hours of work, duration of employment, and work to be performed.
- C. Job openings to be filled by internal promotion from the EMPLOYER'S current workforce need not be referred to DOES for placement and referral.
- D. The EMPLOYER will submit to DOES, prior to starting work on the project, the names, and social security numbers of all current employees, including apprentices, trainees, and laid-off workers who will be employed on the project.

III. REFERRAL

DOES will screen and refer applicants according to the qualifications supplied by the EMPLOYER.

IV. PLACEMENT

- A. DOES will notify the EMPLOYER, prior to the anticipated hiring dates, of the number of applicants DOES will refer. DOES will make every reasonable effort to refer at least two qualified applicants for each job opening.
- B. The EMPLOYER will make all decisions on hiring new employees but will in good faith use reasonable efforts to select its new hires or employees from among the qualified persons referred by DOES.
- C. In the event DOES is unable to refer the qualified personnel requested, within five (5) business days (Monday - Friday) from the date of notification, the EMPLOYER will be free to directly fill remaining positions for which no qualified applicants have been referred. Notwithstanding, the EMPLOYER will still be required to hire 51% District residents for the new jobs created by the project.
- D. After the EMPLOYER has selected its employees, DOES will not be responsible for the employees' actions and the EMPLOYER hereby releases DOES, and the Government of the District of Columbia, the District of Columbia Municipal Corporation, and the officers and employees of the District of Columbia from any liability for employees' actions.

V. TRAINING

DOES and the EMPLOYER may agree to develop skills training and on-the-job training programs; the training specifications and cost for such training will be mutually agreed upon by the EMPLOYER and DOES and set forth in a separate Training Agreement.

VI. CONTROLLING REGULATIONS AND LAWS

- A. To the extent this Agreement is in conflict with any labor laws or governmental regulations, the laws or regulations shall prevail.
- B. DOES will make every effort to work within the terms of all collective bargaining agreements to which the EMPLOYER is a party.
- C. The EMPLOYER will provide DOES with written documentation that the EMPLOYER has provided the representative of any involved collective bargaining unit with a copy of this Agreement and has requested comments or objections. If the representative has any comments or objections, the EMPLOYER will promptly provide them to DOES.

VII. EXEMPTIONS

- A. Contracts, subcontracts or other forms of government-assistance less than \$100,000.
- B. Employment openings the contractor will fill with individuals already employed by the company.
- C. Job openings to be filled by laid-off workers according to formally established recall procedures and rosters.
- D. Suppliers located outside of the Washington Standard Metropolitan Statistical Area and who will perform no work in the Washington Standard Metropolitan Statistical Area.

VIII. AGREEMENT MODIFICATIONS, RENEWAL, MONITORING, AND PENALTIES

- A. If, during the term of this Agreement, the EMPLOYER should transfer possession of all or a portion of its business concerns affected by this Agreement to any other party by lease, sale, assignment, merger, or otherwise, the EMPLOYER as a condition of transfer shall:
 - 1. Notify the party taking possession of the existence of the EMPLOYER'S Agreement.
 - 2. Notify the party taking possession that full compliance with this Agreement is required in order to avoid termination of the project.

3. EMPLOYER shall, additionally, advise DOES within seven (7) business/calendar days of the transfer. This advice will include the name of the party taking possession and the name and telephone of that party's representative.
- B. DOES shall monitor EMPLOYER'S performance under this Agreement. The EMPLOYER will cooperate in DOES' monitoring effort and will submit a Contract Compliance Form to DOES monthly.
 - C. To assist DOES in the conduct of the monitoring review, the EMPLOYER will make available payroll and employment records for the review period indicated.
 - D. If additional information is needed during the review, the EMPLOYER will provide the requested information to DOES.
 - E. With the submission of the final request for payment from the District, the EMPLOYER shall:
 1. Document in a report to the Contracting Officer its compliance with the requirement that 51% of the new employees hired by the project be District residents; or
 2. Submit a request to the Contracting Officer for a waiver of compliance with the requirement that 51% of the new employees hired by the project be District residents and include the following documentations:
 - a. Material supporting a good faith effort to comply;
 - b. Referrals provided by DOES and other referral sources; and
 - c. Advertisement of job openings listed with DOES and other referral sources.
 - F. The Contracting Officer may waive the requirement that 51% of the new employees hired by the project be District residents, if the Contracting Officer finds that:
 1. A good faith effort to comply is demonstrated by the contractor;
 2. The EMPLOYER is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Statistical Area;

The Washington Standard Metropolitan Statistical Area includes the District of Columbia, the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg; the Virginia Counties of Fairfax, Arlington, Prince William, Loudoun, Stafford, Clarke, Warren, Fauquier, Culpeper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson.

3. The EMPLOYER enters into a special workforce development training or placement arrangement with DOES; or
4. DOES certifies that insufficient numbers of District residents in the labor market possess the skills required by the positions created as a result of the contract.
- G. Willful breach of the First Source Employment Agreement by the EMPLOYER, or failure to submit the Contract Compliance Report, or deliberate submission of falsified data, may be enforced by the Contracting Officer through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract.
- H. Nonprofit organizations with 50 or less employees are exempted from the requirement that 51% of the new employees hired on the project be District residents.
- I. The EMPLOYER and DOES, or such other agent as DOES may designate, may mutually agree to modify this Agreement.
- J. The project may be terminated because of the EMPLOYER'S non-compliance with the provisions of this Agreement.
- IX. Is your firm a certified Local, Small, Disadvantaged Business Enterprise (LSDBE)?
 YES ☒ NO ☐
 If yes, certification number: LSM- 062007-16533
- X. Do you have a registered Apprenticeship program with the D.C. Apprenticeship Council?
☐ YES ☒ NO
 If yes, D.C. Apprenticeship Council Registration Number: _____
- XI. Indicate whether your firm is a subcontractor on this project: ☐ YES ☒ NO
 If yes, name of prime contractor: _____
- Dated this 10th day of FEBRUARY 2006
[Signature]
 Signature Dept. of Employment Services
- [Signature]
 Signature of Employer
- 4100 GEORGIA AVENUE L.P
 Name of Company
- 4110 KANSAS AVE NW, WDC 20011
 Address
- 202-722-6002 EXT 16
 Telephone
- RJENTOFT@NEIGHBORHOODDEVELOPMENT.COM
 E-mail

EMPLOYMENT PLAN

NAME OF FIRM 4100 GEORGIA AVENUE L.P
 ADDRESS 4110 KANSAS AVE NW
 TELEPHONE NUMBER 202-722-6002 FEDERAL IDENTIFICATION NO. _____
 CONTACT PERSON BUNIA BINTIF TITLE DEVELOPMENT MANAGER
 E-mail: BBINTIF@neighborhooddevelopment.com TYPE OF BUSINESS: REAL ESTATE DEVELOPMENT
 ORIGINATING DISTRICT AGENCY Dept. of Housing & Community Development
 CONTRACTING OFFICER: _____ TELEPHONE NUMBER: _____
 TYPE OF PROJECT SOLIDATED DEVELOPMENT FUNDING AMOUNT _____
 PROJECTED START DATE Apr 06 PROJECT DURATION 18 months

NEW JOB CREATION PROJECTIONS (Attach additional sheets, as needed.) Please indicate the new position(s) your firm will create as a result of this project.

	JOB TITLE	# OF JOBS F/T P/T	SALARY RANGE	UNION MEMBERSHIP REQUIRED NAME LOCAL#	PROJECTED HIRE DATE
A	CONCRETE LABORER	FF	\$10-14	N/A	04-06
B	ELECTRICIAN	FT	\$18-20	N/A	04-06
C	MASON	FT	\$15-18	N/A	04-06
D	PLUMBER	FT	\$16-20	N/A	04-06
E	CARPENTER	FT	\$13-15	N/A	04-06
F	PAINTER	FT	\$11-14	N/A	04-06
G	WINDOW INSTALLER	FT	\$13-18	N/A	04-06
H	IRONWORKER	FT	\$19-24	N/A	04-06
I	GENERAL LABORER	FT	\$11-15	N/A	04-06
J	SPRINKLER INSTALLER	FT	\$14-18	N/A	04-06
K					

CURRENT EMPLOYEES: Please list the names and social security numbers of all current employees including apprentices and trainees who will be employed on the project. Attach additional sheets as needed.

[illegible]

**Advisory Neighborhood Commission 4C
P.O. Box 60847
Washington, DC 20039-0842
202-723-6670**

February 21, 2006

**Mr. Baye Binissie
Neighborhood Development Company, LLC
4110 Kansas Avenue NW
Washington, DC 20011**

Dear Mr. Binissie:

With this letter as official notification, we are pleased to inform you that at a properly noticed public meeting of Advisory Neighborhood Commission (ANC) 4C at which a quorum was present, eight of the ten commissioners of ANC 4C voted to support the Neighborhood Development Company's plans for the development of 4100 Georgia Avenue NW. The vote took place on the February 14, 2006 meeting of Advisory Neighborhood Commission 4C.

Commissioner Shanel Anthony (4C07), whose Single Member District includes 4100 Georgia Avenue NW, noted at the February 14th ANC meeting that he had held a meeting to discuss the proposal with his constituents and that he had not heard of any significant opposition. Commissioner Anthony noted also that he had publicized the meeting in his SMD (in which I am aware you and other Neighborhood Development Company representatives participated) by distributing approximately 250 flyers to nearby residents.

Please let us know if you have any questions.

Sincerely,


**Joseph Martin (4C09)
Chairperson**


**Marc Yelberger (4C04)
Secretary**

**Cc: Councilmember Adrian Fenty
Ms. Carol Mitten, Chairperson, D.C. Zoning Commission
et al.**