

BEFORE THE ZONING COMMISSION AND
BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA

FORM 129 – ADVISORY NEIGHBORHOOD COMMISSION (ANC) REPORT

Before completing this form, please review the instructions on the reverse side.

Pursuant to §§ 3012.5 and 3115.1 of Title 11 DCMR Zoning Regulations, the written report of the Advisory Neighborhood Commission (ANC) shall contain the following information:

IDENTIFICATION OF APPEAL, PETITION, OR APPLICATION:

Case No..	13-18	Case Name:	WHEELER RD. PROJECT
Address or Square/Lot(s) of Property:	4129-4131 WHEELER RD. S.E.		
Relief Requested:	PLEASE DO NOT ALLOW THIS DEVIATION FROM A C1-C2B		

ANC MEETING INFORMATION

Date of ANC Public Meeting:	0707M/14	Was proper notice given?:	Yes	☒	No	☐
Description of how notice was given:	LIST SERVE (MPD) LIST SERVE (WARD 8), (FLYER) (PHONE CALLS) NEWS PAPER (THE INFORMER)					
Number of members that constitutes a quorum:	4	Number of members present at the meeting:	6			

MATERIAL SUBSTANCE

The issues and concerns of the ANC about the appeal, petition, or application as related to the standards of the Zoning Regulations against which the appeal, petition, or application must be judged (a separate sheet of paper may be used):

SEE SEPARATE SHEETS OF PAPER

The recommendation, if any, of the ANC as to the disposition of the appeal, petition, or application (a separate sheet of paper may be used):

SEE SEPARATE SHEETS OF PAPER

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2014 NOV 12 PM 4:30

AUTHORIZATION

Recorded vote on the motion to adopt the report (i.e. 4-1-1):	4-1		
Name of the person authorized by the ANC to present the report:	ANTHONY MUHAMMAD		
Name of the Chairperson or Vice-Chairperson authorized to sign the report:	ANTHONY MUHAMMAD		
Signature of Chairperson/ Vice-Chairperson:		Date:	11/12/14

ANY APPLICATION THAT IS FOUND TO BE INCOMPLETE MAY NOT BE ACCORDED "GREAT WEIGHT" PURSUANT TO
11 DCMR §§ 3012 AND 3115.

ZONING COMMISSION
District of Columbia
CASE NO.13-18
EXHIBIT NO.52

INSTRUCTIONS

Pursuant to 11 DCMR §§ 3012.6 and 3115.2, the Zoning Commission and Board of Zoning Adjustment shall give "*great weight*" to the written report of the affected Advisory Neighborhood Commission (ANC), as required by the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000.

- 1 All ANC reports shall be made pursuant to this form. If additional space is necessary, use separate sheets of 8½" x 11" paper to complete the form.
- 2 Present this form and supporting documents to the Office of Zoning at 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001.
- 3 Submission deadlines are as follows:

For Zoning Commission:

- a ANCs must file this form at least seven (7) calendar days in advance of the hearing, if they wish to participate in a contested case under § 3022.
- b ANCs may file this form as long as the case record is open, if they wish to participate in a rulemaking case under § 3021.

For Board of Zoning Adjustment:

- a ANCs must file this form at least seven (7) calendar days in advance of the hearing.



If you need a reasonable accommodation for a disability under the Americans with Disabilities Act (ADA) or Fair Housing Act, please complete a Form 155 - Request for Reasonable Accommodation.



ADVISORY NEIGHBORHOOD COMMISSION 8E
Government of the District of Columbia
Garfield/Congress Heights/SE Bellevue/Southern Ave./Ashford
Court/Henson Ridge/High Point

RE ZC Case NO 13-18 The Wheeler Road Renaissance Project

Chairman Anthony Hood
441 4th St. NW
Washington DC 20005

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Chairman Hood,

ANC 8E voted on July 7, 2014 at its duly constituted general public meeting, whereas, a quorum was established, to oppose The Wheeler Road Project. The vote to oppose the project passed, 6-0. We never change that position. This Developer has proven not to be community/Highland friendly. For the following reasons ANC 8E still Opposes the project.

Off-Street Parking The parking requirement for the property is 43 spaces. The applicant would provide 25 surface spaces at the rear for residential use due to space constraints of providing all the required spaces above grade, and to cost constraints of providing underground spaces which would directly impact the affordability of the proposed rental units. The property is located within a mile of the Congress Heights Metro Station and 30 bike spaces would be provided within the building to encourage an alternate transportation mode.

WBG claimed if a project is built within a mile of a subway station, the parking requirement can be reduced. Congress Heights Subway is 1.1 miles from the project. Zoning: there is a proposed bill that has not been passed that would allow less parking spaces if development was within 800 feet; not 1 mile as expressed by WBG. (§2104, EXCEPTIONS TO THE SCHEDULED OF REQUIREMENTS NEAR METRORAIL STATIONS, is amended by striking the phrase "Except as provided in as follows §2104" as follows:

2104.1 The number of parking spaces shall be seventy-five percent (75%) of the amount otherwise ordinarily required under §2101.1 if the building is located within a radius of eight hundred feet (800 ft) of a Metrorail station entrance and

- (a) The building or structure is located in a nonresidential district and is at least eight hundred feet (800 ft.) from any R-1, R-2, R-3, or R-4 District; and
- (b) The Metrorail station is currently in operation or is one for which a construction contract has been awarded.)

that has not been passed to permit less parking, but the distance is less than a half a mile. DDOT cannot find any reference to reduced parking for property near a subway.

There are seniors and disabled residents in this area who shop at this shopping center, the limited parking is discriminatory, which creates an unfriendly non-inclusive environment, which is a violation of the ADA Federal Act.

Loading: Zoning Regulations (Title 11 DCMR)

The Applicant requests relief pursuant to §2405.6 to reduce the required loading facility for the residential portion of the building. §2201.1 requires a 55-foot loading berth, a 200-square foot platform and a 20-foot service/delivery area. The loading facilities will be shared between the residential and retail uses, as the applicant proposes to provide the 55-foot berth, and the required platform and service delivery area for the residential portion of the project.

The loading facilities would be easily accessed by the largest of the 5 retail spaces (4,419 gsf) shown (Ground Level Floor Plan, pg. 7). The applicant indicates that the smaller spaces would be occupied by the existing tenants of the site who would be retained in the new development. These uses include a sub shop, salon, liquor store, convenience store and a cell phone retailer, which do not currently require large trucks for delivery. The applicant intends that these retailers will move into the new facility (Phase I) perhaps as soon as late 2014.

Non-conforming Setback

The Applicant requests relief for a portion of the penthouse structure which houses the elevator located on the eastern side of the building as it is not in conformity with the 1:1 ratio from bounding walls. Page 11 of the submitted plan shows the penthouse roof plan but there is no single plan that shows measurements that do not meet the required setback. The Applicant should provide drawings more clearly illustrating the areas of non-conformity.

WBG expressed they are unable to conform to requirements of the 18.5 feet setback. They are proposing that they can permit an 11 ft setback, which is unacceptable and unsafe.

Service delivery loading space - an off-street space provided for motor vehicles that are twenty feet (20 ft.) in length or less, and that are making deliveries and/or providing a maintenance service. This space shall not be considered a parking space or a loading berth (3.1 DCR 6585).

§2100.4 Except as provided in §2100.5, when the use of a building or structure is changed to another use that requires more parking spaces than required for the use existing immediately prior to the change or, if the building or structure is vacant, the use that existed immediately prior to the vacancy, parking spaces shall be provided for the additional requirement in the amount necessary to conform to §2101.

§2100.6 When the intensity of use of a building or structure existing before May 12, 1958 is increased by an addition of employees, dwelling units, gross floor area, seating capacity, or other unit of measurement specified in §2101, parking spaces shall be provided for the addition, subject to §§2100.7 through 2100.9.

NUMBER OF PARKING SPACES REQUIRED apartment dwelling

R-5-A, C-1	1 for each dwelling unit
R-5-B, C-2-A	1 for each 2 dwelling units
R-4, R-5-C, R-5-D, C-2-B, W, C-R,	1 for each 3 dwelling units

Wherefore, we concur with all issues raised by Zoning and with our points and authorities, we request all issues be satisfied before approval is given to this project.

Pursuant to the letter/report submitted by DDOT on May 19, 2014, there are traffic impact issues that should be satisfied before approval.

The availability of curbside spaces in the vicinity would not provide sufficient parking when parking demand exceeds available on-site parking supply

- 4100 block of Wheeler Rd, there are currently no parking restrictions next to the bus stops on both sides of the street, except they are bus zones
- The west side of the development has an alley
- The 4200 block of Wheeler Rd, west side has faded signs
- The 4200 block of Wheeler Rd, east side has bus stop and fire hydrant
- The 900 block of Barnaby St, south side, has no parking due to curb cuts for driveways
- The 900 block of Barnaby St, north side, has over crowded parking by residents of the apartment/condo, bus stop and fire hydrant.
- The 4100 and 4200 blocks of 9th St have apartments/condos that utilize the parking spaces
- The alley parking would have a conflict with the parking lot adjacent to the apartment/condo that uses the alley to enter and exit.

FLOOR PLAN

The kitchen needs to be repositioned, it shouldn't be in the bathroom WBG is using the least expensive building material for this project; it will not withstand the test of time

DDOT does not approved the curbside loading per se, thereto, we object to curbside loading the front of the facility is a main thoroughfare, the side street is too narrow, and the rear is the alley The trash bin needs to be only one, please no trash cans all over the alley!

Pursuant to DDOT's recommendation in brief, WBG has not fully satisfied the issues raised

The loading management plan has not been strengthen to minimize the impact of site generated loading activities

The square footage of the entire site does not permit space for a bike share station A bike share station would be a positive addition, however, the configuration of the project does not allow sufficient space for a bike share station

The approximate average city bus length is 14 meters, or between 35 and 45 feet. Bus width is typically between 95 and 105 inches, or 8 to 9 feet The relocation of the bus stop closer to the intersection would only cause hazardous traffic conditions by impeding turning traffic, pedestrian crosswalk and the two-way traffic pattern

The unsuccessful attempt/rejection to realign the windows will present an un-uniformed structure, thereby, an unsymmetrical structure in a neighborhood with symmetrical structures

The increased building height would not conform to the neighborhood. The current C-1 Zoning Regulation permits a maximum height of forty (40) feet. The project would be constructed on land that is already elevated to approximately one additional level above the surrounding structures, which would give the C-1 limit of a 3 story building the appearance of 4 stories The request for the 28-foot flexibility would give the appearance of a 7-foot building, with the penthouse there would be 8 stories, which is doubled the C-1 maximum height. With all of the flexibilities requested, the benefit would not out weight the detriment The project is not compatible with the neighborhood

To reflect a lack of "good faith effort" or "due diligent", the developer submitted a CBA without the involvement of ANC 8E. Mr Denesh admitted to Chairman Muhammad that he plans to sell the building in 3 years, therefore, not wanting to sign the CBA presented by the ANC

See previous filing for (1) Petition Affidavit from adjacent Neighbors, and (2) Review and supplement of contested issues given latest application information

This PUD application was submitted, supplemented or amended, and existing now before the Zoning Commission contravenes the following DC Comprehensive Plan policies, and ANC-8E raises these contested issues, in addition to any already submitted

Cooperative Participation

Given how the applicant, represented by the former Chair of the BZA, is choosing to ignore the ANC, as well as other non-profit entities seeking cooperative engagement on this development, we must raise Comprehensive Plan policies which are being ignored, as follows

Policy IM-1 5 1 Involvement of Advisory Neighborhood Commissions

Policy IM-1 5 2. Promoting Community Involvement; Action Policy ED-4 2 A. Alliances with External Organizations and Entities.

Building Height

The roof deck makes it another floor, the building has too many stories, and it is not in conformity with the comprehensive plan

Community Meeting

The building WBG wanted the community to meet in was unacceptable, picture is attached WBG rejected the new rebuilt chapel on St Elizabeth grounds as a meeting place, but sent their Attorney, but the Attorney couldn't make any decisions on the project.

Respectfully submitted,

CHAIRMAN COMMISSIONER ANTHONY MUHAMMAD,
ANC8E CHAIRMAN

Wheeler Road Renaissance Development

COMMUNITY BENEFITS AGREEMENT

ARTICLE I

Purpose

1.1 The purpose of this Community Benefits Agreement for the **Advisory Neighborhood Commission 8E (ANC), Congress Heights Civic Association (CHCA), Lead the Way Foundation (LTWF), Congress Heights Community Training and Development Corporation (CHCTDC), William Lockridge Foundation (WLF) and Square 5925 WBG Wheeler Road, LLC (“Developer”) High Point Homeowners Association and Ward Eight Council Against Domestic Violence,** is to provide for a concerted and coordinated effort on the part of Developer and A Community Coalition for Responsible Development (ACCORD II) to maximize the benefits of the Development to the community

1.2 With this Community Benefits Agreement, Developer and the Development will generate quality jobs for workers, will create affordable housing for working families and for residents in surrounding communities, will provide for environmentally-sensitive construction and design, will create economic development opportunities for residents of the affected communities, will enhance employment opportunities and job training targeted to community residents in need of employment Case 13-18

1.3 This Community Benefits Agreement is agreed upon this _____ day of September 2014, by and between the parties hereto

ARTICLE II

Definitions

As used in this Agreement, the following capitalized terms shall have the following meanings
All definitions include both the singular and plural form

“**ACCORD II**” shall mean an unincorporated association composed only of the organizations signatory to this Agreement under the ACCORD II Member Organization Signature Pages
These organizations are referred to individually as “Member Organizations” Obligations of a Member Organization shall be obligations only of the organization itself, as distinct from its associated organizations, constituent organizations, or any natural persons

“**Agreement**” shall mean this Community Benefits Agreement, including all attachments

“**Developer**” shall mean **Square 5925 Lots 820 and 821 WBG Wheeler Road, LLC case 13-18**

“**Development**” shall mean the mixed-use community to be constructed on the Site, consisting of residential, office, and retail uses, as developed and constructed in accordance with the Master Plan

“**District**” shall mean Washington, DC

“**Implementation Committee**” shall develop strategies for implementation of the policies and programs set forth in this Agreement

“**Member Organization**” shall have the meaning set forth in the definition of “ACCORD II ”

“**Neighboring Community**” shall mean the area bounded by Advisory Neighborhood Commission 8E

“OPA” shall mean that certain Owner Participation Agreement by and between Developer and the Agencies regarding the Development.

“Project Approvals” shall mean (1) approval by the Agencies of the Master Plan and the OPA for the Development, (2) approval by the Office of Planning and the Agencies (if applicable), of Development Permits for the Development and all plans, drawings and other items submitted in connection therewith, at the Planning Board level, and (4) any other government approvals or permits requested by Developer for construction, development, and operation of the Development, including without limitation, issuance by the District of building permits to implement the Development

“Site” shall mean 4129- 4131 Wheeler Road, S.E. Square 5925, Lots 820 and 821

ARTICLE III

Environmental Commitments

3.1 Green Building Principles

3.2 Green Certifications Developer shall comply with the Washington DC Green Building Act of 2006 and obtain at least certified status for buildings development within the Development, when Developer deems it financially feasible, under the Leadership in Energy and Environmental Design Green Building Rating System for New Commercial and Major Renovations (LEED-NC) (Version 2.1). In addition, Developer shall investigate the feasibility of constructing a building within the Development that achieves a higher LEED level than the certified level (i.e., silver, gold or platinum level)

3.3 Hazardous Substance Remediation Developer shall comply with all applicable local and federal laws in regard to the remediation of hazardous substances

ARTICLE IV

Construction Practices

4.1 Construction Noise and Traffic Developer shall consult with the Implementation Committee to assure that all reasonable steps are taken to minimize noise and traffic congestion during construction

4.2 Security of Site During Construction Developer shall use commercially reasonable efforts to secure and control access to the Site, or the portions thereof, upon which construction is occurring

4.3 Public Complaint Process Developer shall establish a public complaint process, and shall maintain written records of complaints, investigations, and responsive actions taken, all of which shall be made available to ACCORD upon request.

ARTICLE V

Design Review

5.1 Consultation Developer shall hold periodic meetings with the Implementation Committee to review, and to receive input, on proposed land uses, site layout, traffic circulation patterns, and the exterior appearance of units

ARTICLE VI

Employment Opportunities

6.1 Living Wages. This Section shall apply to any Service Contract entered into, awarded, amended, renewed, or extended after the effective date of this Agreement. Compliance with this Section is required during the term of the Service Contract. Service Contracts shall not be subdivided into two or more contracts that logically should be made a single transaction if the purpose of the subdividing is to avoid the requirements of this Section.

1.2.Exempt Contracts Contracts subject to federal or state law or regulations that preclude the applicability of this Section's requirements shall be exempt from such requirements.

1.3.Payment of Living Wage and Provision of Benefits

Covered Employers shall pay Covered Employees a wage of no less than \$15.00 per hour if the Health Benefits Rate is paid, or no less than \$17.95 per hour if the Health Benefits Rate is not paid.

Beginning \$15.00, the hourly wage rates and Health Benefits Rate shall be upwardly adjusted each July 1 to reflect the change in the Consumer Price Index for All Urban Consumers for the Washington, DC Metropolitan Statistical Area for the twelve-month period preceding December 31.

6.4Access to Employment Opportunities The Developer shall be obligated to meet all applicable laws, regulations and policies related to the employment of local, low income persons and providing opportunities to businesses owned by local, low income persons or that employ local, low income persons pursuant to the Section 3 Program. The Developer and ACCORD shall take steps to promote employment of Targeted Applicants by employers within the Project. Targeted Applicants are Low-Income Local Residents, including Low-Income Local Residents who are participants in a Rehabilitated Ex-Offender Job Training Program. Developer shall exercise diligent, best efforts to cause Employers to comply with the First Source Hiring Program.

1.5.Employment Retrieval System The Developer shall provide an easily accessible First Source Job Referral System. With the input of ACCORD, The Developer will design and implement the system.

1.6.Responsible Contracting Service Contractors shall be compliant with all applicable labor laws. An entity will not be selected as a Service Contractor and an existing Service Contractor's rights to operate shall be terminated if the Service Contractor has committed intentional violations of any labor law, as determined in a final order or decision of an agency.

or court of competent jurisdiction, and an entity will not be selected or its rights to operate may be terminated prior to such final order or decision if the Developer is presented with reasonable evidence that demonstrates, in the sole discretion of the Developer, that the Service Contractor has committed violations of labor law that are both intentional and serious

1.7. Construction Jobs. Developer shall endeavor to have forty percent (40%) Wards 7 and 8 participation in construction jobs on the Project, subject to the terms and conditions of any applicable project labor agreement and Federal regulations

6.8 Employment Goals: Construction The positions expected to be available during the course of construction will be incorporated in Action Plans submitted by the general contractors prior to their selection by the Developer for each phase of development. The Implementation Committee, prior to the final selection of the general contractor by the Developer for each phase, shall review action Plans. In accordance with current DOES policies, it is anticipated that the Action Plans will commit to at least 51 % of new hires to District residents

1.9. Internships The Developer will employ at least two interns in paid positions throughout the course of the redevelopment program. Current and former Development residents will have first preference in the granting of these Internships. Residents of the Neighboring Community will have second preference.

6.10 Job Training Programs The Developer will offer employment directly or through its contractors or subcontractors to successful Ward 7 and 8 graduates of occupational skills training programs. Graduates of **Opportunities Industrialization Center (OIC)** occupational skills training programs will have first preference. Successful graduates will be given first preference as positions that match their skills become available. Prior to construction, and during the operation of each phase of development, the goals for the hiring of graduates of occupational skills training programs are as follows

Pre-Construction	6 position per phase
Management	6 positions per phase

6.11 Funding of Job Training. During the course of development, Developer will provide \$50,000 towards programs that provide training to participants in occupational skills training programs

1.12. Additional Training Programs The Developer works with many professionals with specialized areas of expertise. For example, the Developer works with firms that specialize in environmental planning, analysis and remediation, soils testing and analysis, affordable housing management and tax credit compliance, etc. The Developer will work with the Implementation Committee to identify professional services such as environmental and geotechnical services for which training for Neighboring Community residents is not currently provided. With its professional partners, the Developer will develop at least two

training programs The programs will feature classroom instruction and on-the-job training The Developer's goal will be to be to offer employment to, at least, 2 graduates of these training programs, with first preference to Development residents, and second preference for residents of the Neighboring Community The Developer estimates the value of these programs at, at least, \$50,000

ARTICLE VII.

Contracting Opportunities

7.1 Developer shall require General Contractor to have Forty Percent (40%) spend with CBE of which Fifty Percent (50%) of that CBE spend requirement shall be to businesses located within Ward 8

1 2 Developer shall fund **Congress Heights Community Training and Development**

Corporation to be used solely to pay for the costs of (a) conducting training for targeted businesses in Ward 8, to develop management and business capability to perform contracts for Developer or Subcontractors under the Developer, identified by ACCORD as reasonably likely to be able to perform in the Project

1 3 **Revolving Working Capital Fund** Developer shall establish a Revolving Working Capital Fund, in the amount of at least \$500,000 so that small subcontractors, including those located in the Neighboring Community, retained during the construction phases of the development can cover payroll and other fixed costs on a weekly basis

1 4 Notwithstanding the foregoing or anything to the contrary in this Agreement, the programs administered under this Article shall be subject to and governed by the terms and conditions of any applicable project labor agreement.

ARTICLE VIII

Community Amenities

8.1 **Meeting Space:** Developer shall provide convenient, handicap accessible space for meetings of the Implementation Committee

1.2. **William Lockridge Foundation (WLF):** Developer shall provide a lease for office space for a term of ten years, with three (3) 10-year extensions to WLF at the cost of one (1) dollar per month with no utility expenses attached to the lease

8.3 Developer shall fund **Lead the Way Foundation (LTWF)** \$228,030 dollars annually for 5 years, with the first payment at the execution of this document To facilitate a comprehensive social reconstruction program for the residents of the community These programs will include resident and youth case management, engagement and outreach services featuring an adolescent clubhouse and including, but not limited to the, arts and cultural services, health fitness and nutrition, financial management, workforce development in the surrounding communities; and will provide the study of economic impacts of development on the surrounding communities LTWF will also support and host monthly community events with other Ward 8 community based organizations, schools, MPD, and faith based organization LTWF will also support

Douglass Community Center's endeavor to provide access to residents of neighboring community and residents of the site to supportive services, recreational, organic gardening activities

8.4 Support: Developer shall work with Members of ACCORD II to identify supportive service and other needs in the Neighboring Community, identify potential funding sources, and assist in the preparation of applications for funding

ARTICLE IX

Implementation Committee

9.1 To assist with implementation of this Agreement, Developer shall meet with ACCORD II in a good faith, reasonable effort to develop strategies for implementation of the policies and programs set forth in this Agreement.

1 2 The Developer and ACCORD II shall establish a working group of representatives for this purpose, to be known as the Implementation Committee. The Implementation Committee shall meet at least quarterly. At such meetings, any Member Organization or the Developer may raise issues related to implementation of this Agreement, in an effort to facilitate open dialogue, resolve implementation challenges, and advance the goals of both ACCORD II and the Developer regarding this Development. All parties shall ensure that representatives attending Implementation Committee meetings are appropriate individuals for issues to be discussed, possessing relevant technical and policy expertise. Prior to requesting governmental approvals of design of buildings or components of the Development, Developer will provide such designs to ACCORD II at an Implementation Committee meeting, to facilitate the ACCORD II's ability to make suggestions to Developer and/or at public hearings regarding such designs. Responsibility to participate in implementation committee meetings shall run only against entities that have current responsibilities under this Agreement or contracts referencing it.

ARTICLE X

Accord II Support Obligations

1 1 In light of Developer's commitments set forth in this Agreement, ACCORD II strongly supports the Development. Therefore, ACCORD II will make the support efforts set forth in this Article 8.

1 2 **Letters of Support** Each Member Organization shall send a letter in unqualified support of the Developer to the appropriate Agency prior to the consideration of selection of a developer for the Development. Thereafter, if requested by Developer during the term of this Agreement, each Member Organization shall send a letter in support of other Project Approvals to the City Council and any other governmental entity specified by Developer.

10.3 Media Availability. ACCORD II shall work with the Developer to prepare a collaborative media strategy regarding shared support for the Development.

10.4 Covenant Not To Sue or Testify

10.5 Covenant Each Member Organization and ACCORD II covenant not to sue, challenge, or contest, administratively, judicially or publicly, any of the Project Approvals Furthermore, each Member Organization and ACCORD II agrees not to pursue judicial challenges to, or testify in opposition at any public hearings (or any continuations of hearings) concerning any of the Project Approvals

10.6 Permissible Public Comments. Notwithstanding above, ACCORD II and each Member Organization retain the right to make public comments regarding Project Approvals suggesting changes in aspects of the documents and approval terms being considered, so long as such comments are consistent with the letter and spirit of the provisions of this Agreement ACCORD II and each Member Organization agree that before making such public comments, they shall use its best efforts to address the issues in question with Developer at Implementation Committee meetings

ARTICLE XI **Miscellaneous**

1.1 Compliance With Law This Agreement shall be enforced only to the extent that it is consistent with the laws of the state of District of Columbia and the United States If any provision of this Agreement is held by a court of law to be in conflict with law, the applicable law shall prevail over the terms of this Agreement, and the conflicting provisions of this Agreement shall not be enforceable

1.2 Severability If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall continue in full force and effect

1.3. Remedies

Default. Failure by any party to perform or comply with any term or provision of this Agreement, if not cured, shall constitute a default under this Agreement

Sixty-Day Right to Cure If either party believes that the other party is in default of this Agreement, it shall provide written notice to the allegedly defaulting party of the alleged default, offer to meet and confer in a good-faith effort to resolve the issue, and, except where a delay may cause irreparable injury, provide sixty (60) days to cure the alleged default, commencing at the time of the notice Any notice given pursuant to this provision shall specify the nature of the alleged default, and, where appropriate, the manner in which the alleged default may be cured

1.4. Implementation Meetings and Mediation. Before or during the sixty-day right-to-cure period described above, the parties may attempt to resolve any alleged default at the regularly scheduled implementation meetings, or in mediation requested by either party

Remedies In the event that another party is allegedly in default under this Agreement, then a party alleging default may elect, in its sole and absolute discretion, to waive the default or to pursue remedies as described in this section Such remedies may be pursued only after

exhaustion of the sixty-day right to cure period described above, except where an alleged default may result in irreparable injury, in which case the non-defaulting party may immediately pursue the remedies described in this section

1 5 Binding on Successors This Agreement shall be binding upon and inure to the benefit of ACCORD II, Member Organizations, ACCORD II's Successors, and Successors to any Successors of ACCORD II This Agreement shall be binding upon and inure to the benefit of Developer, Developer's Successors, and Successors to any Successors of Developer Developer's Successors include, but are not limited to, any party who obtains an Interest, vertical developers, retail developers, contractors, management companies, and owners' or retail merchants, and associations participating in the Project Upon conveyance of an Interest to an entity in compliance with Section, ACCORD II may enforce the obligations under this Agreement with respect to that Interest only against such entity, and neither Developer nor any owner of a different Interest shall be liable for any breach of such obligations by such entity or its Successors Except as otherwise indicated in this Section, references in this Agreement to a party shall be deemed to apply to any successor in interest, transferee, assign, agent, representative, of that party

1 6 Purchase and Assumption Agreements Developer shall not execute any deed conveying an Interest in the entirety or any portion of the Site, unless (1) Developer and the entity receiving such Interest have executed a purchase agreement governing conveyance of that Interest, (2) that purchase agreement requires, through a recorded agreement, the transferee to assume the obligations that flow to it under this Agreement as a Successor of Developer, and (3) such recorded agreement includes this Agreement as a material term, binding on the entity receiving the Interest and enforceable by ACCORD II and Member Organizations as intended third party beneficiaries Prior to the execution by any party of any purchase agreement or agreement to be recorded regarding the assumption of Developer's obligations, Developer shall deliver to ACCORD II a copy of each such agreement Developer and ACCORD II shall meet and confer regarding such agreements through the Implementation Committee to confirm how Developer shall cause such assumption of Developer's obligations by the transferee to ensure that this Agreement is implemented as intended Upon execution of any such agreements, Developer shall deliver an executed copy thereof to ACCORD II.

11.7 Binding Arbitration. A party may pursue binding arbitration to enforce any term of this Agreement that has allegedly been breached A party may seek arbitration relief ordering, and the arbitrator shall have the power to order, affirmative equitable and/or affirmative injunctive relief, temporary or permanent, requiring a defaulting party to comply with this Agreement The parties hereto agree that monetary damages would be an inadequate remedy for any breach of this Agreement With the exception of an order by the arbitrator to a party to pay sums it has agreed to pay under this Agreement, monetary damages shall in no circumstances be available as a remedy for default of this Agreement Arbitration shall be conducted in Washington, D C under the rules of the American Arbitration Association (the "Rules") Each party shall bear its own fees and other costs, except where a party is found by final judgment of the arbitrator to have been in default of this Agreement, in which case the prevailing party shall be entitled to attorneys' fees and arbitration costs from the defaulting party

11.8 Equitable Relief in Case of Irreparable Injury. In addition to any right under the Rules to petition a court for provisional relief, if a party believes that another party is or will be in default of this Agreement in such a manner that may cause irreparable injury, that party shall be entitled to file binding arbitration proceedings to enforce the specific performance of this Agreement by that other party and to enjoin that other party from violation of this Agreement, and to exercise such remedies cumulatively or in conjunction with all other rights and remedies provided by law or by this Agreement.

11.9 Term This Agreement shall become effective on the date of mutual execution of this Agreement and shall terminate twenty years from such date or such date that the OPA is terminated, whichever occurs earlier. All commitments of the parties described herein are effective upon the effective date of this Agreement, unless otherwise specified. Notwithstanding the foregoing or anything to the contrary in this Agreement, if, the Agencies (1) do not enter into an OPA with the Developer or (2) materially increase Developer's obligations or materially decreases Developer's rights as set forth in the OPA, this Agreement shall terminate, at Developer's election given by written notice to ACCORD II, on the date that is five (5) days after the date of Developer's notice. If during such consideration, the Agency attempts or proposes any action that would materially increase Developer's obligations or materially decrease Developer's rights as set forth in the OPA, the Master Plan, or any documents contemplated thereby, Members of ACCORD, at the request of the Developer, shall object to such attempt or proposal and inform the Agency that this Agreement shall terminate if any such action is taken.

11.10 Implementation Through Relevant Contracts. Where this Agreement requires the Developer to impose responsibilities on entities that are not parties to this Agreement, the Developer shall ensure that relevant contracts (1) impose such responsibilities on such parties, (2) require such parties to impose such responsibilities on subcontractors or other parties involved in the Development through the contract in question, (3) require all parties with such responsibilities to provide to ACCORD II upon request any information reasonably necessary to determine compliance with such responsibilities, provided that ACCORD II shall not request the same or similar records or information more often than once per quarter, (4) state with regard to such responsibilities imposed on any party that ACCORD II is an intended third party beneficiary with enforcement rights, and (5) include any other provisions necessary to ensure application and enforceability by ACCORD II. Any party that imposes an obligation required by this Agreement on another party should, in event of failure by that other party to comply with such obligation, enforce that obligation against that other party or terminate the contract in question.

11.11 Assurance Regarding Preexisting Contracts Developer warrants and represents that as of the effective date of this Agreement, it has executed no contract that would have violated any section of this agreement and no contracts have been executed before the effective date of this Agreement.

11.12 Compliance Information Upon request from a party, another party hereto shall provide any records or information reasonably necessary to monitor compliance with the terms of this Agreement. No party shall request the same or similar records or information more often than once per quarter, except to the extent that the nature of the obligation is monitored requires more frequent reporting, as reasonably agreed upon by the parties.

11.13 Rights and Responsibilities of ACCORD Member Organizations Notwithstanding anything to the contrary in this Agreement sets out a responsibility of a "Member Organization" then each Member Organization must satisfy that responsibility, and that responsibility may be enforced by Developer against each Member Organization individually, and when this Agreement sets out a responsibility solely of "ACCORD II," then that responsibility is satisfied for all Member Organizations when any Member Organization satisfies that responsibility. Notwithstanding the foregoing, if any individual Member Organization directly receives funds from Developer under this Agreement, Developer may enforce the obligations within this Agreement related to such funding directly against such Member Organization. Any Member Organization may enforce the responsibilities of Developer under this Agreement, and each Member Organization possesses the rights of ACCORD II under this Agreement.

11.14 Waiver. The waiver by any party of any provision or term of this Agreement shall not be deemed a waiver of any other provision or term of this Agreement. The mere passage of time, or failure to act upon a breach, shall not be deemed a waiver of any provision or term of this Agreement.

ARTICLE XII

Intentionally Omitted

12.1 Construction Each of the parties has had the opportunity to be advised by counsel with regard to this Agreement. Accordingly, this Agreement shall not be strictly construed against any party, and any rule of construction that any ambiguities be resolved against the drafting party shall not apply to this Agreement.

12.2 Entire Agreement The Agreement contains the entire agreement between the parties and supersedes any prior agreements, whether written or oral, except those executed concurrently with this Agreement. Concurrent execution is defined as execution within five business days. This Agreement may not be altered, amended or modified except by an instrument in writing signed by the parties hereto.

12.3 ACCORD hereby appoints Anthony Muhammad as its Agent to speak and correspond with Developer on ACCORD II's behalf. Developer may rely on statements made and approvals or comments given by Anthony Muhammad pursuant to this Agreement as constituting the agreement of ACCORD II regarding such issue. ACCORD II may appoint another representative by written notice to Developer.