STATEMENT FOR THE RECORD

MID-CITY FINANCIAL PLANNED UNIT DEVELOPMENT AT BROOKLAND MANOR

Zoning Commission Hearing
DC Office of Zoning
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Introduction

Law for Black Lives – DC is a collective of volunteer attorneys working in Washington, DC. Law for Black Lives – DC seeks to eradicate white supremacy and anti-Blackness by leveraging our collective skills and experiences as lawyers, legal professionals, and Black people to support Black-led community efforts in the struggle for liberation and justice in metropolitan Washington, DC. We are part of the national network dedicated to supporting the Movement for Black Lives and in recognition of our obligation as attorneys to defend the constitutional rights of all. Affordable housing and forced racial displacement under "gentrification" continues to be pushed at the expense of Black communities that have resided in Washington, D.C. for generations and built this city.

Statement

The Zoning Commission must deny Mid-City Financial's development plan because the planned unit development violates the Fair Housing Act and discriminates against low and moderate-income Black families

The Fair Housing Act prohibits housing policies and decisions that make housing unavailable to people because of their race or the size of their family. [1] In *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.,* the U.S. Supreme Court reaffirmed this Fair Housing Act protection as applicable to private landlords and government bodies, including zoning commissions.[2] Mid-City Financial's application to demolish Brookland Manor will evict low and moderate income Black families in favor of exclusionary, high-income housing tailored to young, single, and affluent D.C. transplants.[3]

Brookland Manor residents have been informed by the developers that large families will not be allowed to continue to reside at Brookland Manor after redevelopment. The residents are primarily long-term Black residents with low income. Over 150 residents will be displaced, and one of the few remaining affordable apartment complexes will be removed from Washington D.C. An endorsement of such a move is racially-discriminatory and in violation of federal law.

Mid-City Financial's redevelopment will eliminate significant affordable family sized housing in the Brentwood neighborhood of Washington DC Currently, 373 of the 535 apartments in Brookland are governed by U.S. Department of Housing and Urban Development – Housing Assistance Payment (HUD HAP) contracts. 117 of these apartments are also available to residents at market rate, which are maintained at affordable rents, and for which the majority of

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[1] 42 USC 3604(a); 3602(k); *see Brookland Manor Litigation Fact Sheet*, WASH. LAWYERS COM. (Aug. 29, 2016), *available at* http://www.washlaw.org/news-a-media/506-brookland-manor-litigation-fact-sheet#_ftn10.
[2] *See e.g.* Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc., 135 Supreme Court 2507, 2521-22 (2015) ("These unlawful practices include zoning laws").
[3] Paul Duggan, *In gentrifying DC, apartments for large families are quickly disappearing*, WASH. POST, Aug. 29, 2016, https://www.washingtonpost.com/local/trafficandcommuting/in-gentrifying-dc-apartments-for-large-families-are-quickly-disappearing/2016/08/29/b93276d6-6aec-11e6-ba32 5a4bf5aad4fa_story.html?utm_term =.5d546 de6 d 212.

tenants qualify for vouchers. Mid-City Financial intends to demolish all 535 units of affordable housing and replace those units with over 1,700 luxury apartments. 373 units will be federally-subsidized, but a majority will be two-bedrooms or less. Currently, there are 209 apartment units with three-bedrooms or more. Alarmingly, Mid-City Financial plans to eliminate all four- and five-bedroom apartment units. There will only be 64 units with three-bedrooms.[4] The current market rate – units that charge substantially less rent than city averages – will be eliminated.

The Fair Housing Act was enacted to protect the vibrant, mixed-income, and diverse communities, like at Brookland Manor today.[5] Yet, Washington, D.C. is being homogenized and segregated by developers like Mid-City Financial.[6] The current patter of displacement is profoundly destabilizing for communities and cities, and destroys the social fabric that makes cities vibrant, safe, and thriving.[7] Currently, there is a legal case pending in the U.S. District Court for the District of Columbia against Mid-City Financial in *Borum, et al. v. Brentwood Village LLC, et al.*, based on violation of the Fair Housing Act and discrimination against familial status. The complaint in *Borum, et al. v. Brentwood Village LLC, et al.*, states that Mid-City Financial's plan to demolish and replace Brookland Manor housing units discriminates against families.[8] It is clear that such discrimination has a disparate impact on low and moderate-income Black families specifically.[9] By approving Mid-City Financial's application, the Zoning Commission would be approving discrimination against families and people of color, ratifying the destabilization of a community, and supporting the racial segregation and homogenization of Washington, D.C.

Washington, D.C. deserves better. Our city is the nation's capital; the closest one can get to the American flag. From the time of Reconstruction in the 1870s, this city has been the dividing line between the free North and the segregated South.[10] Southern Blacks sought the safety of this city as they migrated north for refuge. It is unacceptable that, three generations later, this place of sanctuary should displace those who have invested in this city, raised their families here, and have laid their mark in building this city's rich tapestry. Such a policy is discriminatory and in violation of federal law, and profoundly un-American.

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[4] *See Borum v. Brentwood Village, LLC,* Civil Action No. 1:16-cv-01723, Complaint (D.D.C. 2016).
[5] Affirmatively Furthering Fair Housing, 80 C.F.R. 42271 (Jun. 16, 2015).
[6] Terrence McCoy, *As the nation's capital booms, poor tenants face eviction over as little as $25*, WASH. POST, (Aug. 8, 2016), http://www.washingtonpost.com/sf/local/2016/08/08/as-the-nations-capital-booms-poor-tenants-face-eviction-over-as-little-as-25/?utm_term=.2e8844f44b5c.
[7] *See* Heather Sandstrom & Sandra Huerta, *The Negative Effects of Instability on Child Development: A Research Synthesis*, Urban Inst. (Sept 18, 2013), http://www.urban.org/research/publication/negative-effects-instability-child-development-research-synthesis; Dominic T. Mouldon, *ONE DC Statement on Family Size Discrimination at Brookland Manor*, http://www.onedconline.org/dtm_brooklandmanor; Alexa Imani Spencer, *Brookland Manor v. Gentrification*, The Hilltop (Sept. 23, 2016), http://thehilltoponline.com/2016/09/23/brookland-manor-v-gentrification/.
[8] *Borum v. Brentwood Village, LLC,* Civil Action No. 1:16-cv-01723, Complaint (D. D.C. 2016); *see, supra* WASH. LAWYERS COM. FACT SHEET.
[9] *See*, supra Duggan.
[10] Isabel Wilkerson, The Warm of Other Suns: The Epic Story of America's Great Migration, 390 (2010).

The Zoning Commission must deny Mid-City Financial's development plan because the planned unit development would condone Mid-City Financial's disparate treatment and constructive eviction of residents.

Mid-City Financial hired a security service, Code 3 Security and Protection Services, Inc. ("Code 3"), under the auspices of providing safety for Brookland Manor. However, the security company serves a completely different purpose. Code 3 employs "special police officers" (SPOs), who are anything but common security guards. Code 3's SPOs are authorized by DC law[11] to carry loaded firearms and to make arrests for offenses committed within Brookland Manor without a court warrant. Rather than protecting residents, news reports and Brookland Manor resident accounts have repeatedly described how these "special police officers" are being used by Mid-City Financial primarily to issue non-criminal notices and infractions against residents. These notices and infractions are issued so that Mid-City Financial can then evict residents for being in "bad standing."[12] Brookland Manor Tenant Association President, Minnie Elliott, and others have described how Code 3 has "cracked down on tenants, barring relatives from the property and writing infractions for such things as sitting outside or leaning on a fence."[13]

Code 3 has also used excessive force when arresting residents for doing such things as smoking a cigarette outside, and has repeatedly issued "barring notices" to prevent friends and family from visiting Brookland Manor residents.[14] For example, one female resident reported that a Code 3 officer had been sending her lude pictures of his genitalia, for example, that SPO issued a barring notice against the resident's husband and then placed an eviction notice on her door.[15]

The evidence is clear: Mid-City Financial is using "special police officers" to force Black low-income residents out of their units so that Mid-City Financial can transform them into smaller, luxury apartments for higher-income "professionals."[16] Brookland Manor now has 535 units, many of them large enough for families. Yet Mid-City Financial's redevelopment plan will replace those 535 family units with 1,760 units, most of which will be studios, and one and two-bedroom apartments plush with amenities.[17]

Mid-City Financial told the DC Zoning Commission that family units "are not consistent with

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[11] *See* DC Reg. 6-A1101; DC Reg. 6-A1102; DC Reg. 6-A1103; DC Reg. 6-A1104; DC Reg. 6-A1105; DC Reg. 6-A1106; DC Reg. 6-A1108; DC Reg. 6-A1109; DC Reg. 6-A1110.

[12] Terrence McCoy, *As the Nation's Capital Booms, Poor Tenants Face Eviction Over as Little as $25*, WASH. POST (Aug. 8, 2016), http://www.washingtonpost.com/sf/local/2016/08/08/as-the-nations-capital-booms-poor-tenants-face-eviction-over-as-little-as-25/?utm_term=.40f7fb3146fb.

[13] McCoy, *supra* note 10.

[14] McCoy, *supra* note 10.

[15] McCoy, *supra* note 10.

[16] Paul Duggan, *In Gentrifying DC, Apartments for Large Families Are Quickly Disappearing*, WASH. POST (Aug. 29, 2016), https://www.washingtonpost.com/local/trafficandcommuting/in-gentrifying-dc-apartments-for-large-families-are-quickly-disappearing/2016/08/29/b93276d6-6aec-11e6-ba32-5a4bf5aad4fa_story.html?utm_term=.ff204b386bf4.

[17] Duggan, *supra* note 14.

the creation of a vibrant new community" at Brookland Manor.[18] But what Mid-City Financial really meant is that affordable family units are anathema to their goal of building small luxury units that only the wealthy can afford. It is clear that Mid-City Financial's plan is to kick out low-income people of color and attract wealthy people to take their place, therefore directly contributing to and planning the gentrification of yet another DC neighborhood.[19]

By issuing citations, infractions, barring notices, and by harassing and using excessive force against Brookland Manor residents, Mid-City Financial is using "special police officers" to create a hostile environment for Brookland Manor residents so that they can be replaced by wealthier tenants without families. If the planned unit development is approved, Mid-City will continue to engage in actions of harassment, actual and constructive eviction against residents – largely low income Black family households.

The Zoning Commission must deny Mid-City Financial's development plan because the planned unit development violates public policy.

The District of Columbia Zoning Commission must evaluate all rezoning applications and/or proposals for full compliance with the D.C. Municipal Regulations.[20] Mid-City Financial's proposal violates public policy to end the concentration of low income housing and poverty, in contravention of the regulation's guidance regarding "compatibility of the proposed development with city-wide, ward, and area plans of the District of Columbia, and other goals of the [Planned Unit Development] process."

As highlighted in the Washington, D.C. government's New Communities Initiative,[21] Mid-City Financial violates public policy to end the concentration of low-income housing and poverty through a development plan that: 1) discriminates based on familial status; 2) forces mass displacement of Black residents; and 3) increases the poor, homeless, and shelter population.

The proffered rationale by Mid-City Financial that "housing very large families in apartment complexes is significantly impactful upon the quality of life of households as well as their surrounding neighbors" is absurd. The reality is that for the poorest and most vulnerable – largely Black – residents, quality of life is impacted by their forced displacement. Housing costs impact their ability to provide basic necessities, including healthcare and food, and affects school outcomes for their children.[22]

If the Brookland Manor residents are forced to relocate, their incomes and family sizes will subject them to overcrowded and inadequate units under the DC Housing Authority occupancy

[18] Duggan, *supra* note 14.
[19] Duggan, *supra* note 14.
[20] DC Mun. Regs. tit. 11, § 2402.2.
[21] New Communities Initiative, http://dcnewcommunities.org/about-nci/.
[22] *See* Wes Rivers, DC Fiscal Policy Institute, Going, Going, Gone: DC's Vanishing Affordable Housing, Why Affordable Housing Matters, at 5, Mar. 12, 2015, http://www.dcfpi.org/wp-content/uploads/2015/03/Going-Going-Gone-Rent-Burden-Final-3-6-15format-v2-3-10-15.pdf.

standards; families would suffer uninhabitable and unsafe living conditions to stay in Washington DC These residents would likely be displaced to poorer neighborhoods that have not been revitalized, and that have not received the same type of investment nor have the same access to services, schools, facilities as would be afforded to Brookland Manor residents by Mid-City Financial's planned redevelopment. Neighborhoods – largely made up of communities of color that were previously displaced – are again displaced to poor neighborhoods that are plagued by persistent poverty and concentrated disadvantage.

Furthermore, many of the Brookland Manor families require four to five bedrooms to comply with the DC Housing Authority occupancy standards mandate that large families cannot reside in smaller apartment units.[23] Thus, the reality is that many of these families will be forced out of their homes and communities, and displaced to surrounding jurisdictions. This is arguably the intent of Mid-City Financial, indicated through its thinly-veiled justification for removal of family sized-units by deeming low and moderate-income families "not consistent with the creation of a vibrant new community."[24]

According to a report by The Atlantic, for every 1 gentrified neighborhood across 51 U.S. metro areas, 10 others remained poor and 12 formerly stable neighborhoods fell into concentrated disadvantage.[25] A 2014 study conducted by a Portland State University professor found that:

> More than 1,200 urban census tracts in the 51 largest metropolitan areas saw their poverty rates go from less than 15 percent in 1970 to greater than 30 percent in 2010. Far from being unusual, these fallen stars had an aggregate population of more than 4.5 million, accounting for most of the increase in population living in high poverty neighborhoods between 1970 and 2010.[26]

Moreover, in the last 30 years, Washington DC has suffered mass forced displacement of Black families, neighborhoods, and communities to outer suburbs of Maryland, beyond the surrounding inner suburb jurisdictions like Prince George's County. Between 2009 and 2014, the population of Black residents decreased by 26 percent in Riverdale Maryland.[27] Race and class in forced displacement are indivisible.

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[23] *See* DC Mun. Regs. tit. 14, § 5205.3 (2012).

[24] WASH. LAWYERS COM., *Low-Income Families File Lawsuit to Halt Discriminatory Redevelopment of DC-Based Brookland Manor Property, Aug. 25, 2016*, http://www.washlaw.org/news-a-media/504-low-income-families-file-lawsuit-to-halt-discriminatory-redevelopment-brookland-manor-property.

[25] Richard Florida, *The Complicated Link Between Gentrification and Displacement,* THE ATLANTIC, https://www.theatlantic.com/politics/archive/2015/09/this-is-what-happens-after-a-neighborhood-gets-gentrified/432813/.

[26] Cortright & Mahmoudi, *Neighborhood Change*, May 2014, 11–12, http://dillonm.io/articles/Cortright_Mahmoudi_2014_Neighborhood-Change.pdf. The number of high poverty neighborhoods within 10 miles of the central metro areas increased from about 1,100 in 1970, to more than 3,100 in 2010. The poverty population also doubled, from about 2 million to slightly more than 4 million. *Id.*

[27] Camille Chrysostom, *Gentrification spreading from Washington, DC to Prince George's County*, CAPITAL NEWS SERVICE, Dec. 9, 2016, http://cnsmaryland.org/2016/12/09/gentrification-spreading-from-washington-d-c-to-prince-georges-

Renter households in Ward 5, where the Mid-City Financial redevelopment is proposed, are some of the most severely burdened by housing costs in the Washington D.C. The Urban Institute calculated that 54 percent of Ward renter households are cost-burdened, using a majority of their income on housing costs.[28] Between 2002 and 2013, the affordable housing stock in DC decreased from 40 percent DC to 20 percent of the housing stock.[29] Meanwhile, the housing stock for high priced units over $1,600 increased from 15 percent of DC housing to nearly 35 percent.[30]

If the Mid-City Financial planned unit development is approved, yet another of the virtually disappearing low-cost private rental options will be gone.[31] This not only increases the growing burden on government to provide subsidies that cannot meet the population's needs, but also leaves thousands homeless, seeking emergency shelter or in limbo because they are not eligible for subsidies.

The DC affordable housing, poverty, and homelessness crisis will continue to balloon in the future, unless there are actions taken to preserve the low-cost housing that now exists.[32] According to the most recent Census-American Community Survey, over 110,000 people in Washington DC – nearly 20 percent of the population – live in poverty.[33] The Hunger and Homelessness survey from the U.S. Conference of Mayors found that "DC has 124.2 homeless people for every 10,000 residents in the general population. The city also had one of the fastest increases in homelessness between 2009 and 2016, with a 34.1 percent gain."[34] According to the Community Partnership for the Prevention of Homelessness, there are over 8,000 people

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county/. Between 2009 and 2016 the average home price in Hyattsville increased by about 22 percent as compared to an increase of only about 7 percent in Prince George's County overall. *Id.*

[28] Peter Tatian et al., Affordable Housing Needs Assessment for the District, Urban Inst., May 2015, at 33, http://www.urban.org/sites/default/files/publication/50151/2000214-affordable-housing-needs-assessment-for-the-district-of-columbia.pdf. For renters, cost burden is calculated as the ratio of monthly gross rent, including utilities paid for by the renter, to monthly household income. This is the cost of housing relative to what households can afford. *Id.*

[29] Claire Zippel, DC's housing affordability crisis, in 7 charts, GREATER GREATER WASHINGTON, Apr. 30, 2015, https://ggwash.org/view/37967/dcs-housing-affordability-crisis-in-7-charts. https://ggwash.org/view/37967/dcs-housing-affordability-crisis-in-7-charts.

[30] *See id.*

[31] The number of apartments with rent and utilities below $800 a month has been close to 30,000 since 2010, according to Census data. This is roughly the number of homes in DC receiving substantial housing subsidies – such as public housing, federal housing choice vouchers, and local rent subsidies– according to government records, there are roughly 36,000 homes that get these kinds of subsidies. This implies that nearly all of the low-cost housing in DC results from government subsidies and that low-cost private rental housing has virtually disappeared. *See* Wes Rivers, DC Fiscal Policy Institute, Going, Going, Gone: DC's Vanishing Affordable Housing, Mar. 12, 2015, at 4–6, http://www.dcfpi.org/wp-content/uploads/2015/03/Going-Going-Gone-Rent-Burden-Final-3-6-15format-v2-3-10-15.pdf.

[32] *See id.* at 1, 7–9.

[33] *See* Poverty in the District of Columbia 2014, State Data Center Monthly Brief, January 2016, https://planning.dc.gov/sites/default/files/dc/sites/op/page_content/attachments/Poverty%20in%20DC%202014_1.pdf.

[34] Justin Moyer, DC has the highest homeless rate of 32 U.S. cities, a new survey finds, Washington Post, Dec. 14, 2016, https://www.washingtonpost.com/local/dc-has-the-highest-homeless-rate-of-38-us-cities-a-new-survey-finds/2016/12/14/95487b3c-c18e-11e6-9a51-cd56ea1c2bb7_story.html?utm_term=.b3962676eb64

experiencing homelessness in Washington, DC, and the numbers for family homelessness are climbing.[35] Between 2015 and 2016, the number of families increased by 31.8 percent, and 1,136 families are in emergency shelters. [36] A Washington Post report also found that the lack of affordable housing has caused 1,500 families to become homeless.[37]

Conclusion

Law for Black Lives – DC strongly opposes the Brookland Manor redevelopment proposal by Mid-City Financial. The Mid-City Financial proposal is a community detriment, as families and residents will be displaced, at the risk of increased rates of poverty, enclaves of poverty and concentrated disadvantage, and homelessness in our city.

Moreover, the proposal is discriminatory against families and people of color, and in violation of federal law. An endorsement of Mid-City Financial's proposal would serve to rubber-stamp to developers' documented illegal u8se of private security firms to harass residents at the hopes of displacing them.

In sum, the planned unit development violates public policy by: 1) discriminating based on familial status; 2) displacing Black residents; and 3) failing to end or seek to end the concentration of low-income housing and poverty.

Such a proposal is profoundly un-American and un-Washingtonian. This city has a rich history as serving as a refuge for Black Southerners escaping Jim Crow subjugation to arrive and invest in this city, and raise generations of their families here. It is the rich fabric of this city that makes it strong, and an endorsement of the Mid-City proposal is an endorsement for the anti-patriotic xenophobic undercurrent threatening the nation today.

We strongly urge the DC Zoning Commission to deny Mid-City Financial's planned unit development and to stay issuing a decision until resolution of the outstanding litigation.

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[35] *See* The Community Partnership for the Prevention of Homelessness, http://www.community-partnership.org/facts-and-figures. In the winter of 2015, reports indicate that there were 1,623 persons in Washington DC without permanent shelter this winter in the Washington region.

[36] *See* The Community Partnership for the Prevention of Homelessness, D.C. Point in Time 2016, http://www.community-partnership.org/facts-and-figures.

[37] Jennifer Jenkins & Darla Cameron, *As the Nation's Capital Booms, Poor Tenants Face Eviction Over as Little as $25,* Washington Post, Aug. 8, 2016, http://www.washingtonpost.com/sf/local/2016/08/08/as-the-nations-capital-booms-poor-tenants-face-eviction-over-as-little-as-25/?utm_term=.857d83dd2ed6.