



2016117885-41

PLANNED UNIT DEVELOPMENT COVENANT

Z.C. CASE NO. 14-19

(M Street Development Group, LLC and Square 772 Development Group, LLC – Consolidated PUD and Related Map Amendment @ Square 772, Lots 1, 2, 6, 7, 19, 801 and 802)¹

THIS PLANNED UNIT DEVELOPMENT COVENANT (this “Covenant”), is made as of this 28th day of September, 2016, by and between **M STREET DEVELOPMENT GROUP, LLC**, a District of Columbia limited liability company (collectively, the “Owner”), and the **DISTRICT OF COLUMBIA**, a municipal corporation (the “District”).

W I T N E S S E T H:

WHEREAS, Owner owns in fee simple the property currently known as Lot 24 in Square 772 (the “PUD Site”). The PUD Site is known as premises address 300-320 M Street, N.E., Washington, D.C., as is more particularly described in Zoning Commission Case No. 14-19 and in Exhibit A attached hereto and incorporated herein;

WHEREAS, pursuant to Chapter 24 of the version of Zoning Regulations of the District of Columbia in effect at the time (the “1958 Zoning Regulations”), the Zoning Commission for the District of Columbia (the “Zoning Commission”) approved an application for a planned unit development (the “PUD”) and related Zoning Map amendment for the PUD Site by Zoning Commission Order No. 14-19, dated September 21, 2015, which became final and effective on November 20, 2015 (the “Order”);

WHEREAS, Chapter 24 of the 1958 Zoning Regulations requires that Owner enter into this Covenant with the District of Columbia assuring Owner’s (and its successors in title)

¹ Following publication of the PUD Order, the ownership entities were consolidated into a single entity known as M Street Development Group, LLC. In addition, Lots 1, 2, 6, 7, 19, 801 and 802 in Square 772 were subdivided into Record Lot 24 by subdivision plat dated October 20, 2015, and recorded at the Office of the Surveyor of the District of Columbia on October 26, 2015.

development and use of the PUD Site as approved by the Zoning Commission in the Order and all modifications, alterations or amendments thereto;

WHEREAS, on September 6, 2016, the 1958 Regulations were repealed and replaced by a new set of regulations (the “2016 Zoning Regulations”); and

WHEREAS, Subtitle X § 311.3 of the 2016 Zoning Regulations continues to require this Covenant (all subsequent citations to zoning regulations made herein are to the 2016 Zoning Regulations.)

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

1. Approved Plans, Terms and Conditions. The terms and conditions of the Zoning Commission’s approval of the PUD and related Zoning Map amendment for the PUD Site in the Order (as the same may be amended and/or modified from time to time), are incorporated herein by reference and made a part hereof as Exhibit B and shall be considered a part of this Covenant. The PUD Site shall be developed and used in accordance with the plans approved by the Order and in accordance with the conditions and restrictions contained in the Order, subject to such changes thereto as the Zoning Administrator of the District of Columbia may authorize pursuant to Subtitle A § 304.5 or Subtitle X § 311.6, or changes made by the Zoning Commission pursuant to Subtitle Z §§ 703 or 704. Owner covenants that it shall use the PUD Site only in accordance with the terms of the Order, as the same may be further amended and/or modified from time to time, subject to the terms and conditions contained herein and the provisions of Chapter 24 of the Zoning Regulations.

2. Additional Time to Construct PUD. If Owner should fail to file for a building permit for and/or to commence construction of the approved PUD within the time specified in

Subtitle Z §§ 702.2 or 702.3 and the Order, the Zoning Commission may duly consider an application for an extension of time for good cause in accordance with and subject to the limitations of Subtitle Z § 705.

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

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

5. Covenants to Run with the Land. The covenants and restrictions contained herein shall be deemed real covenants running with the land and shall bind the parties hereto, their successors and assigns, and shall inure to the benefit of the parties hereto, their successors and assigns. Such covenants are not binding upon any party who no longer has a property interest in the PUD Site. The District shall have the right to enforce all covenants, conditions, and restrictions contained herein.

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

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

8. Rescission/Alteration of Chapter 24 Covenant. If the Order is modified or amended by the Zoning Commission, no formal amendment of this Covenant shall be required, provided that Owner, or its successors or assigns, records a notice of modification in the Land Records together with a copy of the written order authorizing the modification or amendment. No other amendment of the obligations created by this Covenant is permitted without the written consent of the District and, if determined by the Office of the Attorney General to be necessary, without the prior approval of the Zoning Commission.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, M Street Development Group, LLC, has caused this Covenant to be executed and delivered under seal as of the date first written above by _____, its duly authorized _____.

OWNER:

M STREET DEVELOPMENT GROUP, LLC
a District of Columbia limited liability company

By: [Signature]
Name: Berkley M. Sheavin
Title: Managing Member

STATE OF MARYLAND
COUNTY OF MONTGOMERY
~~DISTRICT OF COLUMBIA~~, to wit:

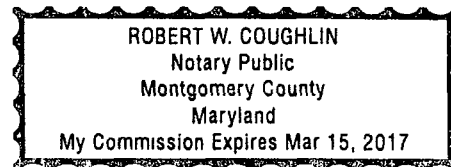
This Covenant was acknowledged before me on the 28th day of SEPTEMBER, 2016, by Berkley M. Sheavin, the duly appointed MANAGING MEMBER of M Street Development Group, LLC.

WITNESS my hand and official seal this 28th day of SEPTEMBER, 2016.

[Signature]
Notary Public

[Notarial Seal]

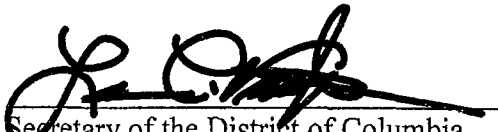
My Commission Expires: 03/15/17



IN WITNESS WHEREOF, the Mayor of the DISTRICT OF COLUMBIA, having first considered and approved the foregoing Covenant, has directed the execution thereof in the name of said DISTRICT OF COLUMBIA, by the Secretary, D.C., who has hereunto set her hand and affixed the seal of the District of Columbia hereto under authority of the Act of Congress entitled "An Act to Relieve the Commissioners of the District of Columbia of Certain Ministerial Duties," approved February 11, 1932.

DISTRICT:

DISTRICT OF COLUMBIA,
a municipal corporation

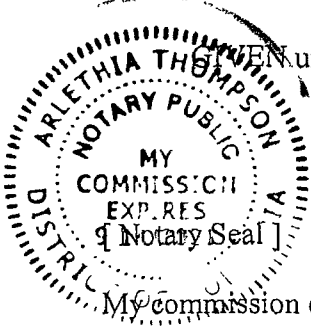
By: 
Secretary of the District of Columbia

[CORPORATE SEAL]

DISTRICT OF COLUMBIA, ss:

I, Arlethia Thompson, a Notary Public in and for the District of Columbia, do hereby certify that Lauren Valko, who is personally well known to me as the person named as Secretary of the DISTRICT OF COLUMBIA in the foregoing Covenant, and hereunto annexed, personally appeared before me in said District and, as Secretary of the DISTRICT OF COLUMBIA aforesaid, and by virtue of the authority in her vested, acknowledged the same to be the act and deed of the Mayor of the DISTRICT OF COLUMBIA.

WITNESSED under my hand and seal this 7 day of November, 2016.



Arlethia Thompson
Notary Public, D.C.

My commission expires: 09/14/2017.

APPROVED:

Matthew Le Get 10-20-16

Zoning Division, Department of
Consumer and Regulatory Affairs

APPROVED AS TO LEGAL SUFFICIENCY:

Alan Beystein 11-28-16

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

EXHIBIT A

LEGAL DESCRIPTION OF THE PUD SITE

All that certain lot or parcel of land situated, lying and being in the District of Columbia, and being more particularly described as follows:

Lot numbered twenty-four (24) in Square numbered seven-hundred and seventy-two (772) in the subdivision made per plat recorded in the Office of the Surveyor of the District of Columbia in Book 201 at page 105. ✓

EXHIBIT B

ZONING COMMISSION ORDER NO. 14-19

[appended]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 14-19

Z.C. Case No. 14-19

M Street Development Group, LLC and Square 772 Development Group, LLC
(Consolidated PUD and Related Map Amendment @ Square 772,
Lots 1, 2, 6, 7, 19, 801, and 802)
September 21, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on July 9, 2015, to consider applications for a consolidated planned unit development ("PUD") and related zoning map amendment filed by M Street Development Group, LLC and Square 772 Development Group, LLC (together the "Applicant"). The Commission considered the applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the applications.

FINDINGS OF FACT

The Applications, Parties, Hearings, and Post-Hearing Filings

1. On October 14, 2014, the Applicant filed applications with the Commission for consolidated review of a PUD and related map amendment from the C-M-1 Zone District to the C-3-C Zone District for property located at 300 M Street, N.E. (Lots 1, 2, 6, 7, 19, 801, and 802 in Square 772) (the "PUD Site").
2. The PUD Site is currently improved with a warehouse building and associated surface parking, and is surrounded by a variety of uses, including warehouses and charter school facilities to the north, residential uses to the east and south, and industrial and residential uses to the west. The Applicant proposes to raze the non-historic warehouse building and develop a new mixed-use building composed of retail and residential uses. The building will have a density of 6.21 floor area ratio ("FAR") and will include a total of approximately 418,798 square feet of gross floor area. Approximately 408,496 square feet of gross floor area will be devoted to residential use and approximately 10,302 square feet of gross floor area will be devoted to retail use. The building will include 416 residential units (plus or minus 10%) and a total of approximately 187 off street parking spaces located in a below-grade parking garage. The building will be constructed to a maximum height of 110 feet at its highest point, and will step down to approximately 80 feet and 50 feet from west to east.

3. By report dated January 30, 2015, the District of Columbia Office of Planning ("OP") recommended that the applications be set down. (Exhibit ["Ex."] 13.) At its public meeting held on February 9, 2015, the Commission voted to schedule a public hearing on the applications.
4. The Applicant submitted a prehearing statement on April 21, 2015 (Ex. 16-16I), and a hearing was timely scheduled for the matter. On May 5, 2015, the notice of public hearing was mailed to all owners of property located within 200 feet of the PUD Site, to Advisory Neighborhood Commission ("ANC") 6C, the ANC in which the PUD Site is located, and to ANC 5D, the ANC located directly across the street from the PUD Site. A description of the proposed development and the notice of the public hearing in this matter were published in the *D.C. Register* on May 15, 2015.
5. At its regularly scheduled public meeting on June 10, 2015, for which notice was properly given and a quorum was present, ANC 6C voted 6-0-0 to support the applications. (Ex. 27.)
6. On June 19, 2015, the Applicant submitted a supplemental prehearing statement in response to comments raised by the Commission at the set down meeting. (Ex. 23-23C.) The supplemental prehearing submission included the following materials: (i) revised architectural plans and elevations with additional information regarding the roof plan and green roof area calculations; (ii) a traffic impact study prepared by Gorove/Slade Associates, Inc., the Applicant's traffic and transportation consultant; and (iii) a list of the proposed public benefits and project amenities for the PUD.
7. On June 29, 2015, OP, the District Department of Transportation ("DDOT"), and the District Department of Energy and Environment ("DOEE") each submitted reports on the application. The OP report recommended approval of the applications and the requested areas of zoning flexibility, and provided a list of additional information to be submitted by the public hearing. (Ex. 25.) The DDOT report indicated no objection to the applications with the following conditions: (i) the Applicant provide annual bikeshare memberships to all residential tenants and retail employees for the first three years of the project; and (ii) the Applicant provide two additional long-term bicycle parking spaces for retail employees. (Ex. 26.) The DOEE report recommended approval of the applications with the following conditions: (i) meet or exceed the performance requirements of the DC Green Construction Code, and demonstrate a minimum 26% increase over ASHRAE 90.1-2007; (ii) incorporate renewable energy for a minimum of one percent of the building's energy use; (iii) exceed on-site stormwater management requirements or invest in the Stormwater Retention Credit Trading Program; and (iv) reduce the number of parking spaces.
8. The parties to the case were the Applicant and ANC 6C.

9. The Commission convened a public hearing on July 9, 2015, which was concluded that same evening. At the hearing, the Applicant presented four witnesses in support of the applications: Berkeley Shervin on behalf of the Applicant, Sophia Lau of Hickok Cole Architects, Erwin Andres of Gorove/Slade Associates, Inc., and Jeff Lee of Lee and Associates Landscape Architecture. Based upon their professional experience and qualifications, the Commission qualified Erwin Andres as an expert in transportation planning and engineering, and Jeff Lee as an expert in landscape architecture.
10. At the public hearing, the Applicant submitted to the record its responses to each of the comments raised by OP, DDOT, and DOEE, and a draft list of proposed proffers and conditions for the PUD. (Ex. 32A, 32B.)
11. Stephen Cochran, Development Review Specialist with OP, testified in support of the applications at the public hearing. Evelyn Israel, Transportation Planner with DDOT, also testified in support of the applications. Jay Wilson, program analyst with DOEE, testified in support of the applications and recommended that the Applicant study whether it could incorporate more renewable energy and energy efficient systems into the building, and whether the building could achieve LEED-Gold certification.
12. Commissioner Tony Goodman of ANC 6C06 testified in support of the applications. Commissioner Goodman noted that the Applicant had met with the ANC on numerous occasions, and that the ANC appreciates the design of the building with individual units, private areas, opportunities for urban agriculture, and height step-downs that relate to the context of the neighborhood. Commissioner Goodman also requested that the Applicant provide more affordable housing and reduce the number of proposed off-street parking spaces.
13. The record was closed at the conclusion of the hearing except to receive additional submissions from the Applicant, as requested by the Commission, and to receive the Applicant's proposed Findings of Fact and Conclusions of Law.
14. On July 16, 2015, the Applicant submitted the following additional information, as requested by the Commission at the public hearing: (i) a revised roof plan showing a 1:1 setback of the raised pool deck on the 12th level of the building and a 1:1 setback of the northern-most roof structure on the 9th level of the building; (ii) an explanation of the Applicant's further conversations with DOEE and its increased sustainability commitment; (iii) an explanation of the mix and location of Inclusionary Zoning ("IZ") units in the building, and a revised subsidy for some of the IZ units; (iv) confirmation of the increase in the amount of financial contribution to Two Rivers Public Charter School and Planned Parenthood, and an additional contribution to Playable Art DC; (v) an elevation of the north end penthouse wall facing 4th Street; and (vi) a revised statement regarding the flexibility requested for the exterior building materials. (Ex. 35-35C.)

15. On July 30, 2015, the Commission held a special meeting to review the additional materials submitted by the Applicant. At the close of the meeting, the Commission took proposed action to approve the applications. The proposed action was referred to the National Capital Planning Commission ("NCPC") on July 30, 2015, pursuant to § 492 of the Home Rule Act.
16. On August 6, 2015, the Applicant submitted its list of final proffers and draft conditions. (Ex. 38.)
17. The Executive Director of NCPC, by delegated action dated August 28, 2015, found that the proposed PUD and related map amendment would be inconsistent with the Comprehensive Plan for the National Capital and other identified federal interests, "due to a minimal violation of the penthouse setback requirements of the Act to Regulate the Height of Buildings in the District of Columbia." (Ex. 41.)
18. On September 8, 2015, the Applicant submitted a response to NCPC's delegated action. The response included a revised plan sheet showing revisions to the building's northernmost penthouse design to address NCPC's comments regarding the setback of the penthouse, and its compliance with the Height Act. The Applicant's September 8th submission also provided additional information (and a revised drawing sheet) regarding the proposed mural on the north elevation of the building in response to the Commission's comments when it took proposed action. (Ex. 40-40B.) The Commission finds that the revised penthouse design complies with the Height Act, and addresses the concern raised by NCPC in the delegated action. The Commission believes that the Applicant adequately addressed its concerns about the mural.
19. The Commission took final action to approve the PUD on September 21, 2015.

The PUD Site and Surrounding Area

20. The PUD Site is located at 300 M Street, N.E., more specifically described as Lots 1, 2, 6, 7, 19, 801, and 802 in Square 772. Square 772 is located in the northeast quadrant of the District and is bounded by N Street to the north, 4th Street to the east, M Street to the south, and 3rd Street to the west. The PUD Site has a combined land area of approximately 67,446 square feet, with approximately 329 linear feet of frontage on M Street, N.E., approximately 270 linear feet of frontage on 3rd Street, N.E., and approximately 150 linear feet of frontage on 4th Street, N.E.
21. The PUD Site is currently improved with a warehouse building and associated surface parking. The PUD Site is surrounded by a variety of uses, including warehouses and charter school facilities to the north, residential uses to the east and south, and industrial and residential uses to the west. The PUD Site is in close proximity to multiple public

transportation options, including the NoMa-Gallaudet Metrorail Station, which is located one block away from the PUD Site, as well as numerous Metrobus routes.

22. The PUD Site is presently zoned C-M-1. The Applicant is seeking to rezone the PUD Site to the C-3-C Zone District in connection with this application. The requested map amendment is consistent with the Comprehensive Plan's Future Land Use Map designation of the PUD Site as mixed-use: Medium-Density Commercial, Medium-Density Residential, and Production, Distribution, and Repair. The requested map amendment is also consistent with the Comprehensive Plan's Generalized Policy Map designation of the PUD Site as a Land Use Change Area, and is also consistent with the NoMa Small Area Plan's recommendations for the PUD Site.

Existing and Proposed Zoning

23. The PUD Site is currently zoned C-M-1. The C-M Zone Districts are "intended to provide sites for heavy commercial and light manufacturing activities employing large numbers of people and requiring some heavy machinery under controls that minimize any adverse effect on other nearby, more restrictive districts." (11 DCMR § 800.1.) The Zoning Regulations note that "[h]eavy truck traffic and loading and unloading operations are expected to be characteristic of C-M Districts." (11 DCMR § 800.2.) The C-M-1 Zone District prohibits residential development except as otherwise specifically provided. (11 DCMR § 800.4.) As a matter of right, property in the C-M-1 Zone District can be developed with a maximum FAR of 3.0. (11 DCMR § 841.1.) The maximum permitted building height in the C-M-1 Zone District is 40 feet and three stories. (11 DCMR § 840.1.)
24. The Applicant proposes to rezone the PUD Site to C-3-C in connection with this application. The C-3-C Zone District permits medium-high density development, including office, retail, housing, and mixed-use development. (11 DCMR § 740.8.) The C-3-C Zone District permits a maximum building height of 90 feet with no limit on the number of stories. (11 DCMR § 770.1.) In the C-3-C Zone District, the maximum permitted density of all buildings and structures on a lot cannot exceed 6.5 FAR for any permitted use, but density of 8.0 FAR is permitted for projects subject to the Inclusionary Zoning regulations. (11 DCMR § 771.2 and § 2604.1.) The maximum percentage of lot occupancy in the C-3-C Zone District for all uses is 100%. (11 DCMR § 772.1.) Rear yards in the C-3-C Zone District must have a minimum depth of two and one-half inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 12 feet. (11 DCMR § 774.1.) Pursuant to § 774.11 of the Zoning Regulations, in the case of a through lot or a corner lot abutting three or more streets, the depth of rear yard may be measured from the center line of the street abutting the lot at the rear of the building or other structure. A side yard is generally not required in the C-3-C Zone District; however,

when a side yard is provided, it must have a minimum width of two inches per foot of height of building, but not less than six feet. (11 DCMR § 775.5.)

25. The parking and loading requirements for buildings are based upon the proposed use of the property. For example, an apartment house or multiple dwelling in the C-3-C Zone District requires one parking space for each four dwelling units. (11 DCMR § 2101.1.) Retail or service establishments in excess of 3,000 square feet are required to provide one parking space for each additional 750 square feet of gross floor area. (*Id.*) An apartment house or multiple dwelling with 50 or more units in all zone districts is required to provide one loading berth at 55 feet in depth, one loading platform at 200 square feet, and one service/delivery space at 20 feet in depth. (11 DCMR § 2201.1.) A retail or service establishment with 8,000 to 20,000 square feet of gross floor area must provide one loading berth at 30 feet in depth, one loading platform at 100 square feet, and one service/delivery loading space at 20 feet in depth. (*Id.*)
26. Consistent with the C-3-C development parameters, the Applicant will develop the PUD Site with a mix of residential and retail uses. A tabulation of the PUD's development data is included on Sheet A-02 of the Architectural Plans and Elevations ("Plans"). (Ex. 23A1.)

Description of the PUD Project

27. As shown on the Plans, the Applicant is seeking consolidated PUD approval and a zoning map amendment to develop a mixed-use residential and retail development in the NoMa District. The building will have an overall density of 6.21 FAR and will include a total of approximately 418,798 square feet of gross floor area. Approximately 408,496 square feet of gross floor area will be devoted to residential use and approximately 10,302 square feet of gross floor area will be devoted to retail use. The building will include 416 residential units (plus or minus 10%) and a total of approximately 187 off street parking spaces located in a below-grade parking garage. The building will be constructed to a maximum height of 110 feet at its highest point, and will step down to approximately 80 feet and 50 feet from west to east.
28. The project is located in a context that varies in use and scale, including Uline Arena to the southwest, recent large-scale NoMa developments to the west, the Union Market and Gallaudet University to the north, and residential uses to the southwest. The project is sensitive to its varied context and responds in size, form, and in its use of materials. The building steps down significantly in height towards the east where the context is more residential. The program consists of market-rate and affordable dwelling units, a ground level that is programmed with retail and residential uses that activate the street, and two levels of parking below grade. The project is located one block away from the NoMa-Gallaudet Metro Station and provides residents with ample, secure bicycle parking.

Parking and loading access is located along the rear alleys to the north of the PUD Site, which will divert vehicular traffic away from the residential uses at M and 4th Streets.

29. The building responds to the PUD Site in its elegant expression and rich palette of materials. The base of the building brings the overall scale down at the street level. The building will be brick and glass to maintain a sense of openness and connectivity to the streetscape. The artisanal brick will pay homage to the light-industrial history of the neighborhood but simultaneously be detailed and designed to feel residential and contemporary. Along 3rd Street, N.E., the brick frames and glass retail storefronts are broken down into small retail bays. Along the western portion of M Street, the building takes on the form of a low-rise multifamily building, and to the east of M Street and 4th Street, the building's modules are even smaller to express a townhouse form as walk-up units. The walk-up units are punctuated by projecting glass bays that will enliven and activate the streetscape with their residential presence. Directly above the building's middle volume on M Street, the building further scales the façade height down and the light metal panels allow it to have a softer presence. The building announces itself with its corner entry at 3rd and M Streets diagonally across from the Uline Arena, and steps back from the property line along portions of M Street. Along the length of this volume are inset balconies carved from the mass that stagger between the uppermost two floors. The volume on 3rd Street, across from Central Armature Works, has 10 floors of residential units above the retail base. This portion of the building faces the urban side of the PUD Site, where it relates to the large-scale development to the west. The façade is a high quality precast concrete panel system that looks like stone and is punctuated by inset balconies and windows.
30. The Applicant will pursue LEED-Gold certification for the building and will integrate a host of sustainable features, including green roofs, street-level stormwater collection, bioretention planting areas, sustainable materials, street and interior bike parking, electric car-charging stations in the parking levels, and energy-efficient building design and systems, including photovoltaic ("PV") panels to achieve one percent renewable energy for the building. If the Applicant is unable to achieve one percent renewable energy, it will instead demonstrate a minimum 26% savings relative to the appropriate baseline for the project as defined by ASHRAE 90.1-2007 Appendix G - Performance Rating Method and following the LEED v2009 EAp2: Minimum Energy Performance calculation methodology.
31. The organization of the ground-floor program will provide a sense of neighborhood activity and security at the street level. The residential entrance is located at the corner of 3rd and M Streets. There will be a concierge at the reception desk immediately inside with visual access to the sidewalk leading to the NoMa Metrorail station. This will provide a street presence with eyes on M Street 24 hours a day. The street-level program varies in accordance with the context. Neighborhood retail storefronts are concentrated on 3rd

Street, which are intended to be activated by local retail and restaurants that will have outdoor seating. A neighborhood linear park located at M Street between 3rd Street and Abbey Place will have plantings, special paving, grouped seating for socializing, and appropriate lighting. Along M Street and to the east of Abbey Place, the project transitions to a much more residential, townhouse vernacular. These walk-up units will have individual ground-floor entries that relate to the immediate surrounding residential neighborhood. The overall streetscape will be a lush, accessible amenity shared and enjoyed by the entire neighborhood.

32. The project will at a minimum comply with the Inclusionary Zoning Regulations set forth in Chapter 26 of the Zoning Regulations, which require that eight percent of the residential gross floor area of the project be set-aside for households earning up to 80% of the area median income ("AMI"). As indicated in the IZ Calculation Chart shown below, the Applicant will set aside no less than eight percent of the residential gross floor area, as computed by DCRA's Certificate of Inclusionary Zoning Compliance ("CIZC") Form, to IZ units (approximately 32,680 square feet of gross floor area and 35 units). Within that eight percent, approximately 26,993 square feet of gross floor area (28 units) will be devoted to households earning up to 80% of the AMI, and approximately 5,687 square feet of gross floor area (seven units) will be devoted to households earning up to 50% of the AMI.

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	408,496 sf GFA (100%)	416 units (plus or minus 10%)	Market, IZ	N/A	N/A
Market Rate	375,816 sf GFA (92%)	381	Market Rate	N/A	N/A
IZ	5,687 sf GFA (1.4%)	7	50% AMI	For the life of the project	rental
IZ	26,993 sf GFA (6.6%)	28	80% AMI	For the life of the project	rental

Zoning Flexibility

33. The Applicant requested the following areas of flexibility from the Zoning Regulations as discussed below.
34. ***Flexibility from the Loading Requirements.*** Pursuant to § 2201.1 of the Zoning Regulations, the Applicant is required to provide the following loading facilities: one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep. Due to the proposed uses for the building and the anticipated needs of the building residents, the Applicant is seeking flexibility to provide two loading berths at 30 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep.
35. The Commission finds that the Applicant's requested flexibility to provide two 30-foot deep loading berths rather than a 55-foot-deep loading berth is appropriate and reasonable for the project. The Applicant cannot fit a 55-foot berth on the PUD Site, accessed from the public alley, because doing so would interfere with the location of the ramp to the parking garage, service corridors, and egress pathways. Moreover, given the nature and size of the residential units, it is unlikely that the building will be served by 55-foot trucks. The loading areas will be used by the residents when they move in or out of the building, and any other use by residents will be infrequent and can be restricted to times which pose the least potential conflict with retail users. Therefore, the Commission finds that the proposed loading facilities will accommodate the uses in the building, and thus approves the requested loading flexibility.
36. ***Flexibility from the Side Yard Requirements.*** A side yard is generally not required in the C-3-C Zone District; however, when a side yard is provided, it must have a minimum width of two inches per foot of building height, but not less than six feet. (11 DCMR § 775.5.) Given that the PUD Site has frontage on three streets, for zoning purposes, the front of the building is on 4th Street, N.E., the rear of the building is on 3rd Street, N.E., and the side lot lines are along the existing public alley to the north of the site and along M Street, N.E. As shown on the Plans, the building is set back 11'6" from the northern side lot line to increase the width of the public alley to provide sufficient space for vehicular and truck access to the PUD Site, and to locate the proposed utility vaults in private space consistent with DDOT's policy. This setback results in the creation of a side yard which measures 11'6" in width, instead of the required width of 18'4".
37. The Commission finds that setting the building back an additional 6'10" for the full height of the building would adversely impact the design and layout of the building. For example, a setback of 18'4" would create an exorbitantly wide alley entrance, allowing an unfettered view of the rear of the buildings beyond. Additionally, the larger setback

would require the repositioning of the building's square footage to the portion of the building along M Street, which would increase building height closest to the existing townhouses. Moreover, the Commission finds that the requested side yard flexibility will not have any adverse impacts on any adjacent uses since the portion of the proposed building adjacent to the side yard is more than 24 feet away from the PUD Site's northern property line.

38. *Flexibility from the Roof Structure Requirements.* The Applicant requests flexibility from the roof structure requirements of the Zoning Regulations because: (i) there will be multiple roof structures; (ii) the roof structures in certain locations cannot reasonably be set back from all walls a distance equal to their height above the roof; and (iii) two roof structures will have walls of unequal height. The building includes one roof structure on the roof of the 9th level of the building, and two roof structures on the 12th level of the building. The roof structure on the 9th level is 16 feet in height and is set back at least 1:1 from all edges of the roof. The northern roof structure on the 12th level of the building has multiple heights to achieve the 1:1 setback along the northern edge of the building (11'3" and 18'6"), and setback relief is necessary since this structure does not meet the 1:1 setback along the building's eastern and court-side walls. The southern roof structure on the 12th level of the building has a height that steps from 16' to 18'6", and meets the setback requirement from all street frontages. However, relief is required since this roof structure is adjacent to an interior courtyard and has multiple heights. In addition, flexibility is required for the pool handrail and adjacent shading structures on the 12th level of the building, which are not set back 1:1 from the interior courtyard walls. The handrail is 42" above the pool deck and the shading structure has a height of 9'6" above the pool deck.
39. The Commission finds that each roof structure is a necessary feature of the building and has been designed to minimize and adverse impacts. The structures are separated due to the Building Code requirement for separation of egress, as well as the desire to break up massing on the roof. The structures require setback relief only along the internal courts and along the alley to the east, and otherwise meet the setback requirements from all street frontages. The Commission finds that the location and number of roof structures is driven by the layout and design of the residential units, and that the Applicant is providing the greatest possible setbacks, given the size of the roofs and the internal configuration of the building. The Commission also finds that each element of the roof has been located and designed to minimize its visibility. The location and number of structures are driven by the layout and design of the residential units. Therefore, the Commission concludes that the intent and purposes of the Zoning Regulations will not be materially impaired by the proposed roof structures, and that the light and air of adjacent buildings will not be adversely affected by granting this flexibility.

Development Flexibility

41. The Applicant also requests flexibility in the following additional areas:
- a. To be able to provide a range in the number of residential units of plus or minus 10%;
 - b. 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 structure;
 - c. To vary the number, location, and arrangement of parking spaces, and the number of parking garage levels, provided that the total number of parking spaces is not reduced below the minimum number required by the Zoning Regulations;
 - d. 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 without reducing the quality of the materials; and to make minor refinements to exterior details, including window frames, doorways, railings, and trim; and other changes to comply with applicable District of Columbia laws and regulations that are necessary to obtain a final building permit;
 - e. To vary the sustainable design features of the building, provided the total number of LEED points achievable for the building does not decrease below the LEED-Gold designation;
 - f. To vary the location and number of PV panels so long as the panels achieve a 1:1 setback from all exterior walls and one percent renewable energy for the building. In the alternative, if the Applicant is unable to achieve one percent renewable energy for the building, flexibility to instead demonstrate a minimum 26% savings relative to the appropriate baseline for the project as defined by ASHRAE 90.1-2007 Appendix G - Performance Rating Method and following the LEED v2009 EAp2: Minimum Energy Performance calculation methodology;
 - g. To vary the location and design of the ground-floor components of the building in order to comply with any applicable District of Columbia laws and regulations, including those of the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail or service use; and
 - h. To vary the final selection of exterior signage on the building consistent with the Building Code.

Project Benefits and Amenities

42. Urban Design, Architecture, and Open Space (11 DCMR § 2403.9(a)). The building will have a positive impact on the visual and aesthetic character of the immediate neighborhood and will further the goals of urban design while enhancing the streetscape. The project is sensitive to its varied context and responds in size, form, and in its use of materials. The organization of the ground floor provides a sense of neighborhood activity and security at the street level, and the overall project involves a significant amount of landscape, garden, and open space features.
43. Housing and Affordable Housing (11 DCMR § 2403.9(f)). The Applicant will develop a total of approximately 408,496 square feet of gross floor area for new housing. Of the housing, a minimum of eight (approximately 32,680 square feet of gross floor area and 35 units) will be devoted to IZ units. Within that eight percent, approximately 26,993 square feet of gross floor area (28 units) will be devoted to households earning up to 80% of the AMI, and approximately 5,687 square feet of gross floor area (seven units) will be devoted to households earning up to 50% of the AMI. Given that the PUD Site's existing zoning does not permit any residential use as a matter of right, all of the housing and affordable housing proposed for the PUD Site is treated as a project amenity pursuant to 11 DCMR § 2403.9(f).
44. Environmental Benefits (11 DCMR § 2403.9(h)). The Applicant will ensure environmental sustainability through the implementation of sustainable design features and strategies to enhance the sustainable nature of the PUD Site's mixed-use, transit-rich location and to promote a healthy lifestyle for the project's residents. The project provides a host of environmental benefits consistent with the recommendations of 11 DCMR § 2403.9(h), and the building will achieve LEED-Gold certification under the United States Green Building Council ("USGBC") LEED for New Construction v2009. The project will integrate many sustainable features, including green roofs, street-level stormwater collection/bioretenion planting areas, sustainable building materials, street and interior bike parking, provisions for electric car-charging stations in the parking garage, and an energy efficient building design and systems. The project will dedicate rooftop space to accommodate an apiary/bee hive, and will also incorporate PV panels to achieve one percent renewable energy for the building. If the Applicant is unable to achieve one percent renewable energy, it will instead demonstrate a minimum 26% savings relative to the appropriate baseline for the project as defined by ASHRAE 90.1-2007 Appendix G - Performance Rating Method and following the LEED v2009 EAp2: Minimum Energy Performance calculation methodology.
45. Transportation Benefits (11 DCMR §2403.9(c)). The Applicant incorporated a number of elements designed to promote effective and safe vehicular and pedestrian access to the

PUD Site, convenient connections to public transit services, and onsite amenities such as bicycle parking and sufficient vehicular parking. The Applicant will undertake the following improvements:

- a. Widen by permanent easement the east-west alley located along the northern property line from 14.75' x 149.8' to 24' x 149.8', as shown on Sheets C01 and C07 of the Plans, which constitutes a significant improvement and will facilitate safe vehicular movement; (Ex. 23A6.)
 - b. Eliminate a total of eight existing curb cuts along the north side of M Street, the east side of 3rd Street, and the west side of 4th Street, which will restore approximately 265 linear feet of curb face for public parking;
 - c. Request that DDOT remove the existing "Police Parking Only" spaces located on the east side of 3rd Street, adjacent to the PUD Site, which will result in the return of curb-side space to public on-street parking; and
 - d. Furnish and install approximately 16 bicycle racks at the street level for public use. A minimum of two of the 16 bike racks will be installed along M Street.
46. The Applicant will implement the following transportation demand management ("TDM") strategies:
- a. Designate a TDM Coordinator to be responsible for organizing and marketing the TDM plan and serving as a point of contact with DDOT;
 - b. Price all on-site parking at market rates at minimum, defined as the average cost for parking in a quarter-mile radius from the PUD Site. All residential parking will be unbundled from the cost of leasing apartments or purchasing condos;
 - c. Provide bicycle parking that meets the existing regulatory minimums. Include a bicycle maintenance area in the bicycle room with a bike pump and toolset;
 - d. Display an electronic message board in the residential lobby of the building that provides information on public transportation and other alternative transportation modes;
 - e. Include in its residential leases a provision that prohibits tenants from obtaining a Residential Parking Permit ("RPP") from the D.C. Department of Motor Vehicles ("DMV"), under penalty of lease termination;

- f. Distribute move-in transportation welcome packets to each resident upon move-in. The packets will include information such as:
 - i. Promotion for DDOT's goDCgo website;
 - ii. Brochures on carsharing, ridesharing, and bikesharing programs;
 - iii. Tips on smartphone applications and websites to use to navigate public transportation options;
 - iv. Maps for nearby bicycle routes and lanes;
 - v. Maps for Metrorail, Metrobus and DC Streetcar routes; and
 - vi. Information on how to efficiently maintain cars to maximize fuel efficiency; and
 - g. Offer an annual Capital Bikeshare membership to all initial renters of each residential unit and to the first 20 retail employees of the retailers in the building for the first three years that the project is open.
47. Employment Benefits (11 DCMR § 2403.9(j)). The Applicant will submit to the Department of Consumer and Regulatory Affairs ("DCRA") a First Source Employment Agreement executed by the Applicant, consistent with the First Source Employment Agreement Act of 1984 and the Apprenticeship Requirements Amendment Act of 2004, and in substantially the same form as the First Source Employment Agreement included in the record at Exhibit 16I.
48. Uses of Special Value to the Neighborhood and the District of Columbia as a Whole (11 DCMR § 2403.9(I)). The Applicant will make the following contributions:
- a. Spend up to \$50,000 for the installation of public art on M Street at the terminus of Abbey Place;
 - b. Contribute \$20,000 to Two Rivers Public Charter School for the relocation of concrete benches and sidewalk repair;
 - c. Contribute \$10,000 to Planned Parenthood of Metropolitan Washington for the purpose of purchasing furniture and equipment for the organization's community room;

- d. Contribute \$25,000 to Playable Art DC, a play and place-making initiative in partnership with OP and the District Department of Parks and Recreation (“DPR”), which brings innovative art-based play spaces to neighborhoods with underserved park space in the District through a design competition. The \$25,000 contribution will be made to a new Playable Arts DC site at one of the following locations: 1200 block of 4th Street, N.E.; the corner of N Street and Florida Avenue, N.E.; or along the Metropolitan Branch Trail between M Street and L Street;
- e. Contribute \$50,000 to WMATA for the installation of two additional fare gates/turnstiles at the M Street exit of the NoMa Metrorail station to increase capacity during rush hour;
- f. Install the following improvements adjacent to the PUD Site’s property line on the north side of M Street, the east side of 3rd Street, and the west side of 4th Street:
 - i. Replace the sidewalk with a new granite curb and gutter. Paving will include upgraded accent bands and granite cobble pavers, subject to DDOT approval;
 - ii. Plant approximately 20 new canopy trees and 20 new ornamental trees;
 - iii. Install planters and trash receptacles for public use;
 - iv. Install Washington Globe street lights and other street level lighting; and
 - v. Install bioretention planters along the north side of M Street; and
- g. Expend up to \$140,000 to make the following off-site improvements:
 - i. Demolish the existing sidewalk at the south side of the 300 block of M Street and replace it with a new sidewalk, curb, and gutter, in compliance with DDOT standards and specifications. The new sidewalk will be brick to match the existing condition;
 - ii. Replace existing street lights with NoMa’s standard Washington Globe fixtures at the following locations: (a) on the south side of the 300 block of M Street; (b) Abbey Place; (c) 1100 block of 3rd Street – East Side Only; (d) 1100 block of 4th Street; (e) 400 block of M Street. Replacement of fixtures is subject to availability and adequate capacity of existing street light electrical infrastructure; and

- iii. The \$140,000 will be allocated first to the work identified in paragraph (i), and any remaining proceeds will then be allocated to the work in paragraph (ii).

Comprehensive Plan

49. The Commission finds that the PUD advances the purposes of the Comprehensive Plan, is consistent with the Future Land Use Map and Generalized Policy Map, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan. The PUD significantly advances these purposes by promoting the social, physical, and economic development of the District through the provision of a high-quality residential development with ground-floor retail on the PUD Site, without generating any adverse impacts. The project will create new neighborhood-serving retail opportunities to meet the demand for basic goods and services, and will promote the vitality, diversity, and economic development of the surrounding area.
50. The District of Columbia Comprehensive Plan Future Land Use Map designates the PUD as mixed-use: Medium-Density Commercial, Medium-Density Residential, and Production, Distribution, and Repair land use category.
51. The Medium-Density Commercial category is used to define areas where buildings are generally larger and/or taller than those in moderate density commercial areas but generally do not exceed eight stories in height. The C-2-B, C-2-C, C-3-A, and C-3-B Zone Districts are generally consistent with this land use category, although other zones may apply in some locations.
52. The Medium-Density Residential designation is used to define neighborhoods or areas where mid-rise (four-to-seven stories) apartment buildings are the predominant use. Pockets of low- and moderate-density housing may exist within these areas. The Medium-Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. The R-5-B and R-5-C Zone Districts are generally consistent with the medium-density designation, although other zones may apply in some locations.
53. The PDR category is used to define areas characterized by manufacturing, warehousing, wholesale and distribution centers, transportation services, food services, printers and publishers, tourism support services, and commercial, municipal, and utility activities which may require substantial buffering from noise, air pollution, and light-sensitive uses such as housing. The PDR designation is not associated with any industrial zone and therefore permits a building height of up to 90 feet with 6.0 FAR.

54. The Commission finds that although the C-3-C Zone District is not specifically listed among the corresponding land use categories for the PUD Site's applicable designations, the C-3-C Zone District designation is not inconsistent with the Future Land Use Map. The Framework Element of the Comprehensive Plan provides that the Land Use Map is not a zoning map. (10A DCMR § 226.1(a); Z.C. Order No. 11-13; Z.C. Order No. 10-28; Z.C. Order No. 14-08.) Whereas zoning maps are parcel-specific and establish detailed requirements for setback, height, use, parking, and other attributes, the Future Land Use Map does not follow parcel boundaries and its categories do not specify allowable uses or dimensional standards. (*Id.*) By definition, the Map is to be interpreted broadly. (*Id.*) Furthermore, the land use category definitions describe the general character of development in each area, citing typical building heights (in stories) as appropriate. The granting of density bonuses (for example, through planned unit developments) may result in heights that exceed the typical ranges cited here. (*Id.* at § 226.1(c).) The zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements, as well as approved Small Area Plans. (*Id.* at § 266.1(d).) Therefore, the Commission finds that the proposed map amendment is not inconsistent with the Future Land Use Map.
55. The Commission further finds that in evaluating the map amendment, the PUD Site should be viewed as a whole, not as a specific parcel. The Commission notes that when taken in context with the surrounding neighborhood, the PUD Site is in the center of a highly dynamic area that is quickly expanding and growing taller. The proposed C-3-C zoning classification will enable the PUD Site to be developed as a mixed-use development built to a maximum density of approximately 6.21 FAR, which is consistent with the amount of density permitted in medium density commercial zones. For example, the C-2-C Zone District permits 6.0 FAR as a base and up to 7.2 FAR utilizing the IZ bonus. The proposed building will be constructed to a maximum height of 110 feet at its highest point, and will step down to approximately 80 feet and then to 50 feet from west to east, along M Street. This range of heights is consistent with the medium-density classification and the PDR designation and is appropriate given the location of the PUD Site.
56. The District of Columbia Comprehensive Plan Generalized Policy Map designates the PUD Site in a Land Use Change Area category. The guiding philosophy in the Land Use Change Areas is to encourage and facilitate new development and to promote the adaptive reuse of existing structures. Many of the Land Use Change Areas have the capacity to become mixed-use communities containing housing, retail shops, services, workplaces, parks, and civic facilities. As Land Use Change Areas are redeveloped, the District aspires to create high quality environments that include exemplary site and architectural design and that are compatible with and do not negatively impact nearby neighborhoods.

57. The Commission finds that the proposed rezoning and PUD redevelopment of the PUD Site is consistent with the policies indicated in the Land Use Change Area. The existing C-M-1 Zone District is inconsistent with the Policy Map's designation of the PUD Site since C-M Zone Districts are "intended to provide sites for heavy commercial and light manufacturing activities employing large numbers of people and requiring some heavy machinery under controls that minimize any adverse effect on other nearby, more restrictive districts." (11 DCMR § 800.1.) In contrast, the proposed mix of new residential and retail uses in the project will help to improve the overall neighborhood fabric and bring new residents and retail uses to the area.
58. The Commission finds that the PUD is also consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, and building green and healthy communities, as discussed in the paragraphs below.
59. ***Managing Growth and Change.*** In order to manage growth and change in the District, the Comprehensive Plan encourages, among other factors, the growth of both residential and non-residential uses. The Comprehensive Plan also states that redevelopment and infill opportunities along corridors are an important part of reinvigorating and enhancing neighborhoods. The Commission finds that the PUD is fully consistent with each of these goals. Redeveloping the PUD Site as a vibrant mixed-use development with residential and retail uses will further the revitalization of the NoMa East neighborhood. The proposed retail spaces will create new jobs for District residents, further increase the city's tax base, and will help to reinvigorate the existing neighborhood fabric.
60. ***Creating Successful Neighborhoods.*** One of the guiding principles for creating successful neighborhoods is getting public input in decisions about land use and development; from development of the Comprehensive Plan to implementation of the plan's elements. The proposed PUD furthers this goal since, as part of the PUD process, the Applicant has worked closely with ANC 6C to ensure that the development provides a positive impact on the immediate neighborhood.
61. ***Building Green and Healthy Communities.*** One of the guiding principles for building green and healthy communities is that building construction and renovation should minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. (10A DCMR § 221.3.) The building on the PUD Site will include a significant number of sustainable design features and is located in a transit-rich environment, reducing the need to use private vehicles to access the site.

62. The Commission also finds that the PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as set forth in the Applicant's Statement in Support and in the OP reports. (Ex. 4, 13, 25.)

Office of Planning Report

63. On January 30, 2015, OP submitted a report recommending setdown of the applications. (Ex. 13.) The OP report stated that OP supports the applications, and that they are not inconsistent with the Comprehensive Plan's objectives for the area or with the Generalized Land Use and Policy Maps. The OP report noted that the proposed density, of which 98% would be devoted to residential use, would be at the upper end of what is typically considered appropriate for medium-density land uses, and that the maximum proposed height of 110 feet is 20 feet taller than is usual for a medium-density residential or commercial structure. However, the OP report concluded that the concentration of this height on the western end of the building, closer to the rail tracks and the 130-foot-high buildings in NoMa, better enables lowering the building's height to 80 feet and 50 feet where the building would be adjacent to blocks of two- and three-story rowhouses to its south and east. The OP report also noted that the PUD is not inconsistent with the written elements of the Comprehensive Plan, including the Land Use, Transportation, Housing, Environmental Protection, Urban Design, and Central Washington Area Elements.
64. On June 29, 2015, OP submitted a second report recommending approval of the applications. (Ex. 25.) This OP report restated that the PUD is not inconsistent with the Comprehensive Plan's objectives for the area or with the Generalized Land Use and Policy Maps. The OP report also noted that the level of benefits and amenities is commensurate with the requested zoning change, density increase, and zoning relief. The OP report provided a chart that indicated (i) the Applicant's response to requests for information at setdown, and (ii) additional information needed from the Applicant by the public hearing.

DDOT Report

65. On June 29, 2015, DDOT submitted a report indicating that it has no objection to the applications with the following conditions: (i) the Applicant provide annual bikeshare membership to all residential tenants and retail employees for the first three years of the project; and (ii) the Applicant provide two additional long-term bicycle parking spaces for retail employees. (Ex. 26.) At the public hearing, the Applicant agreed to both of DDOT's conditions as further described in Finding of Fact No. 46.

DOEE Reports

66. On June 29, 2015, DOEE submitted a report recommending approval of the applications with the following conditions: (i) meet or exceed the performance requirements of the DC Green Construction Code, and demonstrate a minimum 26% increase over ASHRAE 90.1-2007; (ii) incorporate renewable energy for a minimum of one percent of the building's energy use; (iii) exceed on-site stormwater management requirements or invest in the Stormwater Retention Credit Trading Program; and (iv) reduce the number of parking spaces. Subsequent to the public hearing, the Applicant met with DDOE representatives and revised its environmental proffers such that the building will achieve LEED-Gold and will incorporate PV panels to achieve one percent renewable energy for the building. If the Applicant is unable to achieve one percent renewable energy, it will instead demonstrate a minimum 26% savings relative to the appropriate baseline for the project as defined by ASHRAE 90.1-2007 Appendix G - Performance Rating Method and following the LEED v2009 EAp2: Minimum Energy Performance calculation methodology.
67. On July 24, 2015, DOEE submitted a report stating that the Applicant's changes to its sustainability proffers adequately addressed all of the DOEE's concerns and that DOEE therefore supported the project. (Ex. 37).

ANC 6C Reports

68. At its regularly scheduled public meeting on June 10, 2015, for which notice was properly given and a quorum was present, ANC 6C voted 6-0-0 to support the applications. (Ex. 27.) The report stated a number of concerns about the adequacy of the proffered public benefits of the project. Commissioner Tony Goodman of ANC 6C06, who was authorized by the ANC to represent it as a party, testified in support of the applications at the public hearing.
69. On July 24, 2015, Commissioner Goodman submitted a letter on behalf of ANC 6C, that responded to the Applicant's July 16, 2015 submission. The letter did not state whether the letter was approved by the ANC at a properly noticed meeting with a quorum present. The letter stated that Mr. Goodman believed the revisions to the building's north elevation were improvements, and requested that the Commission prohibit the Applicant from adding leasing advertisements on the North elevation of the building. The letter further stated that the Mr. Goodman supported the Applicant's enhancements to its public benefits package, and asked the Commission to require the Applicant to complete the improvements to the sidewalk on the south side of the 300 block of M Street, S.E. prior to closing the sidewalk on the north side of the street, and to require the Applicant to allocate any remaining funds after the sidewalk and light fixture improvements for additional pedestrian sidewalk and public space beautification in ANC 6C in NoMa. The

letter expressed support for the Applicant's requested flexibility of exterior building materials. (Ex. 36.)

Post-Hearing Submission

70. On July 16, 2015, the Applicant submitted a post-hearing submission, which included the following information requested by the Commission at the public hearing: (i) a revised roof plan showing a 1:1 set back of the raised pool deck on the 12th level of the building and a 1:1 setback of the northern-most roof structure on the 9th level of the building; (ii) an explanation of the Applicant's further conversations with DOEE and its increased sustainability commitment; (iii) an explanation of the mix and location of IZ units in the building, and a revised subsidy for some of the units to be set aside to households earning up to 50% of the AMI; (iv) confirmation on the increase in amount of financial contribution to Two Rivers Public Charter School and Planned Parenthood, and an additional contribution to Playable Arts DC; (v) an elevation of the north end penthouse wall facing 4th Street; and (vi) a revised statement regarding the flexibility requested for the exterior building materials. (Ex. 35-35C.)
71. Based on the documents and information submitted in the Applicant's Post-hearing Submission, the Commission makes the following findings:
 - a. The redesign of the roof plan results in appropriate roof structure setbacks;
 - b. The revised environmental benefits are appropriate for the PUD Site and consistent with DOEE's expectation and requests;
 - c. The mix, location, and increased subsidy provided for the IZ units is improved and appropriate, given the project's proposed height and density;
 - d. The revised public benefits are commensurate with the degree of development incentives requested and any potential effects of the PUD;
 - e. The Applicant provided the requested north end penthouse wall elevation; and
 - f. The Applicant's revised statement regarding the flexibility requested for the exterior building materials is appropriate.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high quality development that provides 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.)

2. Under the PUD process of the Zoning Regulations, the 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 identified for height, density, lot occupancy, parking and loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of 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.
4. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The mixed uses for this project are appropriate for the PUD Site. The impact of the project on the surrounding area is not unacceptable. Accordingly, the project should be approved.
6. The applications can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
7. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project's benefits and amenities are reasonable tradeoffs for the requested development flexibility.
8. Approval of the PUD is appropriate because the proposed development is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the PUD Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
9. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP report and, as explained in this decision, finds its recommendation to grant the applications persuasive.

10. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC. The Commission carefully considered the ANC 6C's recommendation for approval and concurs in its recommendation. The Commission notes the ANC expressed a number of issues and concerns in the report that all related to the adequacy of the public benefits proffered by the Applicant. The Applicant enhanced its public benefits proffers, and for the reasons discussed above, the Commission believes the proffered public benefits are adequate to justify approving the application.
11. The Commission also considered the letter written by Commissioner Goodman. The letter was written by Commissioner Goodman in his capacity as representative of the ANC as a party to this case. However, the letter cannot serve as a written report of an ANC to which great weight must be given because the letter does not state that it was approved by the entire ANC at a properly noticed meeting with a quorum present. Nevertheless, because the correspondence came from a party representative, the Commission carefully considered Mr. Goodman's requests, but declined to grant them. Specifically, the Commission will not prohibit the Applicant from placing leasing advertisements on the north elevation of the building because there is no justification for such a prohibition in the record. The Commission also decided not to require the Applicant to perform all sidewalk improvements on the south side of the street before closing the north side of the street to begin work on that side of the street. Any construction in public space must be approved by DDOT, and the Commission will defer to DDOT's assessment of how the performance of that work should be sequenced. Finally, the Commission determined not to require that the Applicant allocate any additional leftover funds from the public space improvements required by this Order for additional public improvements. The value of a public benefit is not determined by the money that is spent to provide it, but the intrinsic value of the benefit to the public. Thus the public space improvements proposed are valuable regardless of how much the Applicant expends to accomplish them. Once constructed to the satisfaction of DDOT nothing more is required of this Applicant as to that proffer.
12. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401 et seq. (2007 Repl.)).

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 applications for consolidated review and approval of a planned unit development and related map amendment

from the C-M-1 Zone District to the C-3-C Zone District for property located at 300 M Street, N.E. (Lots 1, 2, 6, 7, 19, 801, and 802 in Square 772). The approval of this PUD is subject to the guidelines, conditions, and standards set forth below.

A. Project Development

1. The PUD shall be developed in accordance with the Architectural Plans and Elevations dated June 19, 2015 (Ex. 23A1-23A7) as modified by the revised architectural plans submitted on July 9 and 16, 2015 and September 8, 2015 (Ex. 29, 35A, and 40A) (the “Plans”), and as modified by the guidelines, conditions, and standards of this Order.
2. In accordance with the Plans, the PUD shall be a mixed-used project consisting of approximately 418,798 square feet of gross floor area (6.21 FAR), with approximately 408,496 square feet of gross floor area devoted to residential use and approximately 10,302 square feet of gross floor area devoted to retail use. The project shall have 416 residential units, plus or minus 10%, and shall have a maximum height of 110 feet.
3. The Applicant is granted flexibility from the loading requirements (§ 2201.1); the side yard requirements (§ 775.5); and the roof structure requirements (§§ 411 and 770.6), consistent with the approved Plans and as discussed in the Development Incentives and Flexibility section of this Order.
4. The Applicant shall also have flexibility with the design of the PUD in the following areas:
 - a. To be able to provide a range in the number of residential units of plus or minus 10%;
 - b. 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 structure;
 - c. To vary the number, location, and arrangement of parking spaces, and the number of parking garage levels, provided that the total number of parking spaces is not reduced below the minimum number required by the Zoning Regulations;
 - d. 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 without reducing the quality of the materials; and to make minor refinements to exterior details, including window frames, doorways, railings, and trim; and other changes to comply with applicable District of Columbia laws and regulations that are necessary to obtain a final building permit;

- e. To vary the sustainable design features of the building, provided the total number of LEED points achievable for the building not decrease below the LEED-Gold designation;
- f. To vary the location and number of PV panels so long as the panels achieve a 1:1 setback from all exterior walls and one percent renewable energy for the building. In the alternative, if the Applicant is unable to achieve one percent renewable energy for the building, flexibility to instead demonstrate a minimum 26% savings relative to the appropriate baseline for the project as defined by ASHRAE 90.1-2007 Appendix G - Performance Rating Method and following the LEED v2009 EAp2: Minimum Energy Performance calculation methodology;
- g. To vary the location and design of the ground-floor components of the building in order to comply with any applicable District of Columbia laws and regulations, including those of the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail or service use; and
- h. To vary the final selection of exterior signage on the building consistent with the Building Code.

B. Public Benefits

1. **Prior to the issuance of a Certificate of Occupancy for the building and for the life of the project**, the Applicant shall dedicate a minimum of eight percent of the residential gross floor area of the building, as computed by the CIZC Form (approximately 32,680 square feet of gross floor area and 35 units) to IZ units. Within that eight percent approximately 26,993 square feet of gross floor area (28 units) will be devoted to households earning up to 80% of the AMI, and approximately 5,687 square feet of gross floor area (seven units) will be devoted to households earning up to 50% of the AMI. The IZ units shall maintain affordability in accordance with all applicable requirements of Chapter 26 of the Zoning Regulations.

2. **Prior to the issuance of a building permit**, the Applicant shall register the project with the USGBC to commence the LEED certification process under the USGBC's LEED for New Construction v2009 standards. **Prior to the issuance of a Certificate of Occupancy for the building**, the Applicant shall furnish a copy of its LEED certification application submitted to the USGBC. The application shall indicate that the building has been designed to include at least the minimum number of points to achieve LEED-Gold certification under the USGBC's LEED for New Construction v2009 standards.
3. **For the life of the project**, the Applicant shall integrate the following sustainable design features into the building: green roofs (Ex. 35A, Sheets 30-31 and 50-51), street-level stormwater collection/bioretenction planting areas (Ex. 23A6, Sheets L01-L10, and Ex. 35A, Sheet A53); sustainable building materials (Ex. 35A, Sheet A53); street and interior bike parking (Ex. 23A4, Sheet 26); provisions for electric car-charging stations in the parking garage (Ex. 23A5, Sheets 32-33); and an energy efficient building design and systems (Ex. 35A, Sheet A53).
4. **For the life of the project**, the Applicant shall dedicate rooftop space to accommodate and allow for an apiary/bee hive to be installed and maintained by residential or retail tenant(s).
5. **Prior to the issuance of a Certificate of Occupancy for the building and for the life of the project**, the Applicant shall install rooftop PV panels to achieve one percent renewable energy for the building. In the alternative, if the Applicant is unable to achieve one percent renewable energy, the Applicant shall instead demonstrate a minimum 26% savings relative to the appropriate baseline for the project as defined by ASHRAE 90.1-2007 Appendix G - Performance Rating Method and following the LEED v2009 EAp2: Minimum Energy Performance calculation methodology.
6. **Prior to issuance of a Certificate of Occupancy for the building and for the life of the project**, the Applicant shall undertake the following activities to promote effective and safe vehicular and pedestrian access to the Site:
 - a. Widen by permanent easement the east-west alley located along the northern property line from 14.75' x 149.8' to 24' x 149.8', as shown on Sheets C01 and C07 of the Plans;
 - b. Eliminate a total of eight existing curb cuts along the north side of M Street, the east side of 3rd Street, and the west side of 4th Street;
 - c. Request that DDOT remove the existing "Police Parking Only" spaces located on the east side of 3rd Street, adjacent to the Property; and

- d. Furnish and install approximately 16 bicycle racks at the street level for public use, with a minimum of two of the 16 bike racks installed along M Street.
7. **Prior to the issuance of a Certificate of Occupancy for the building**, the Applicant shall submit to DCRA evidence that the Applicant executed and submitted a First Source Employment Agreement to DOES, consistent with the First Source Employment Agreement Act of 1984 and the Apprenticeship Requirements Amendment Act of 2004, and in substantially the same form as the First Source Employment Agreement. (Ex. 16I.)
8. **Prior to the issuance of a Certificate of Occupancy for the building**, the Applicant shall submit to DCRA evidence that the Applicant has made the following contributions or expenditures. The Applicant shall provide proof to the Zoning Administrator that the items or services funded have been or are being provided in order to obtain a Certificate of Occupancy. The Applicant shall:
- a. Commission an artist for the installation of public art (in an amount up to \$50,000) on M Street at the terminus of Abbey Place;
 - b. Contribute \$20,000 to Two Rivers Public Charter School for the relocation of concrete benches and sidewalk repair;
 - c. Contribute \$10,000 to Planned Parenthood of Metropolitan Washington for the purpose of purchasing furniture and equipment for the organization's community room;
 - d. Contribute \$25,000 to Playable Art DC for a play and place-making initiative in partnership with OP and DPR to bring an innovative art-based play space to a neighborhood with underserved park space in the District through a design competition. The space will be located at one of the following locations: 1200 block of 4th Street, N.E.; the corner of N Street and Florida Avenue, N.E.; or along the Metropolitan Branch Trail between M Street and L Street;
 - e. Contribute \$50,000 to WMATA for the installation of two additional fare gates/turnstiles at the M Street exit of the NoMA Metrorail station to increase capacity during rush hour;
 - f. Install the following improvements adjacent to the PUD Site's property line on the north side of M Street, the east side of 3rd Street, and the west side of 4th Street:

- i. Replace the sidewalk with a new granite curb and gutter. Paving shall include upgraded accent bands and granite cobble pavers, subject to DDOT approval;
 - ii. Plant approximately 20 new canopy trees and 20 new ornamental trees;
 - iii. Install planters and trash receptacles for public use;
 - iv. Install Washington Globe street lights and other street-level lighting; and
 - v. Install bioretention planters along the north side of M Street; and
 - g. Request that DDOT remove the existing “Police Parking Only” spaces located on the east side of 3rd Street, adjacent to the PUD Site.
9. **Prior to the issuance of a Certificate of Occupancy for the building**, the Applicant shall expend up to \$140,000 to make the following off-site improvements, or shall post a deposit with DDOT of up to \$140,000 to make the following off-site improvements:
- a. Demolish the existing sidewalk at the south side of the 300 block of M Street and replace it with a new sidewalk, curb, and gutter, in compliance with DDOT standards and specifications. The new sidewalk shall be brick to match the existing condition;
 - b. Replace existing street lights with NoMa’s standard Washington Globe fixtures at the following locations: (1) on the south side of the 300 block of M Street; (2) Abbey Place; (3) 1100 block of 3rd Street – East Side Only; (4) 1100 block of 4th Street; and (5) 400 block of M Street. Replacement of fixtures is subject to availability and adequate capacity of existing street light electrical infrastructure; and
 - c. The \$140,000 shall be allocated first to the work identified in section (a), and any remaining proceeds shall then be allocated to the work in section (b).

C. Transportation Incentives

1. Prior to issuance of a Certificate of Occupancy for the building and for the life of the project, the Applicant shall provide the following TDM strategies:
 - a. Designate a TDM Coordinator to be responsible for organizing and marketing the TDM plan and serving as a point of contact with DDOT;
 - b. Price all on-site parking at market rates at minimum, defined as the average cost for parking in a quarter-mile radius from the PUD Site, and unbundle all residential parking from the cost of leasing apartments or purchasing condos;
 - c. Provide bicycle parking that meets the existing regulatory minimums and include a bicycle maintenance area in the bicycle room with a bike pump and toolset;
 - d. Display an electronic message board in the residential lobby of the building that provides information on public transportation and other alternative transportation modes; and
 - e. Include in its residential leases a provision that prohibits tenants from obtaining an RPP from the DMV under penalty of lease termination.
2. Upon initial residential move-in and for the life of the project, the Applicant shall distribute move-in transportation welcome packets to each resident. The packets shall include information such as:
 - a. Promotion for DDOT's goDCgo website;
 - b. Brochures on carsharing, ridesharing, and bikesharing programs;
 - c. Tips on smartphone applications and websites to use to navigate public transportation options;
 - d. Maps for nearby bicycle routes and lanes;
 - e. Maps for Metrorail, Metrobus and DC Streetcar routes; and
 - f. Information on how to efficiently maintain cars to maximize fuel efficiency.

3. **Upon initial residential and retail move-in and for the first three years after the issuance of a Certificate of Occupancy for the building,** the Applicant shall offer an annual Capital Bikeshare membership to all renters of each residential unit and to the first 20 retail employees of the retailers in the building.

D. Miscellaneous

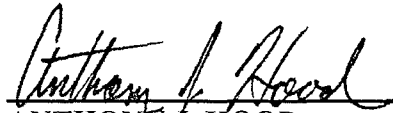
1. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the PUD Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 14-19. Within such time, an application must be filed for a building permit, with construction to commence within three years of the effective date of this Order.
3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.
4. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

On July 30, 2015, upon the motion of Chairman Hood, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the applications at the close of its public

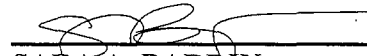
hearing by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Marcie I. Cohen not present, not voting).

On September 21, 2015, upon the motion of Vice Chairperson Cohen, as seconded by Commissioner Miller, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on November 20, 2015.



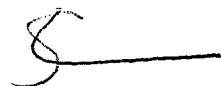
ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

RECORDING FEES \$25.00
SURCHARGE \$6.50

Doc #: 2016117885 Fees: \$31.50
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