

ESCROW AGREEMENT FOR ART FUND

This Escrow Agreement (this “Agreement”) is entered into as of June 20, 2022 (the “Effective Date”), by and between **ARMATURE WORKS (RESIDENTIAL) OWNER, LLC**, a Delaware limited liability company having an address of 888 16th Street NW, Suite 555, Washington DC 20006 (the “Property Owner”) and **FIDELITY NATIONAL TITLE INSURANCE COMPANY**, a Delaware corporation, having an address of 1620 L Street, N.W., 4th Floor, Washington, DC 20036 (the “Escrow Agent”).

1. Background. In connection with the District of Columbia’s Zoning Commission’s approval of a PUD and Rezoning for real property owned by Property Owner and its affiliates located at 1200 3rd Street NE and known as Lot 8 in Square 747 (Zoning Commission Orders No. 16-09 and 16-09A the “Zoning Commission Orders”), the Property Owner agreed to establish an account for the purchase and display of art in the Metro Plaza of the PUD project (the “Project”) and to fund that account with a deposit of \$100,000 (such funds together with any interest accrued thereon being collectively referred to as the “Escrow Funds.”) Pursuant to the Zoning Commission Orders, decisions regarding the distribution of the Escrow Funds will be made by the Art Committee (as defined below). The Escrow Funds are to be held in an interest-bearing account and used over the 15 year period from the issuance of a certificate of occupancy for the Project (the “Term”) for the purchase and display of artwork, including murals and sculptures, to be displayed in the plaza area at the Project which will rotate every two to three years for the Term (the “Intended Use”). If any Escrow Funds remain in the account at the end of the Term they shall be donated by the Property Owner (and released by the Escrow Agent) to the NOMA BID to support arts-related initiatives and must be expended by one year from the expiration of the Term. Capitalized terms contained in this Agreement that are not defined in this Agreement shall have the meanings ascribed to them in the Zoning Commission Orders.

2. Delivery of Escrow Funds: Authorization of the Escrow Agent. Prior to the issuance of the first Certificate of Occupancy for the Project approved in the Zoning Commission Orders, the Property Owner shall deliver this executed Agreement and \$100,000 as the Escrow Funds to the Escrow Agent. The Escrow Funds may be delivered by check, wire or other electronic transfer of immediately available funds. The Escrow Agent shall have no liability for any loss sustained as a result of any investment made in accordance with the terms of this Agreement, except for losses resulting from the Escrow Agent’s gross negligence or willful misconduct. No provision of this Agreement shall require the Escrow Agent to seek the highest available interest available or any interest at all or incur any financial liability or potential financial liability in the performance of its duties under this Agreement. The Escrow Agent shall not be liable for the insolvency of any bank in which the Escrow Funds are deposited.

3. Art Committee. Once the Escrow Funds are deposited, the Property Owner will establish a five member committee that will be responsible for making decisions about the purchase, sale and display of art in the Project (the “Art Committee”). The Property Owner will appoint the members of the Art Committee, which will include three owners of properties within the Project, one representative of the NOMA BID, and one representative of ANC 6C. The Property Owner shall have the right to remove members of the Art Committee and to appoint replacements so long as the composition of the Art Committee is as set forth above. Any decisions of the Art Committee will be made by a majority vote of the Art Committee members. Each Art Committee member shall

have one vote. The Art Committee shall meet in person or virtually on an annual or more frequent basis as determined by the Property Owner. Upon request by the Property Owner, the Art Committee shall certify any decisions made with respect to art to be paid for with the Escrow Funds and displayed at the Project.

4. Escrow Account. The Escrow Funds shall be deposited by the Escrow Agent into a separate non-interest-bearing escrow account (the “Escrow Account”) at a federally-insured financial institution with offices in the District of Columbia (the “Depository”). If the financial condition of the Depository changes in any adverse way which may prohibit the ability of the Escrow Agent to withdraw such Escrow Funds in accordance with the terms of this Escrow Agreement, then the Escrow Agent may move the Escrow Account to another financial institution that satisfies the requirements of this paragraph. Purchaser and Seller consent to the selection of [Bank of America, N.A.] as the Depository. The Escrow Agent shall have no liability in the event of failure, insolvency or inability of the Depository to pay such funds, or accrued interest upon demand or withdrawal. In no event shall the Escrow Agent incur any liability for levies by taxing authorities based upon the taxpayer identification number provided to the Escrow Agent and used to establish the Escrow Account. To the extent that the Escrow Agent incurs out-of-pocket costs and expenses in performing its obligations hereunder, including but not limited to any bank service fees or similar items, the Escrow Agent may pay such costs and expenses out of the Escrow Account.

5. Release of Escrow Funds. The Escrow Agent shall disburse the Escrow Funds in accordance with the following. Upon receipt of written instructions (which may be sent via email) from the Property Owner certifying that the Art Committee has approved by majority vote an expenditure of art for the Intended Use for the Project from the Escrow Funds, the Escrow Agent shall disburse the Escrow Funds in accordance with such instructions. Any such disbursement instructions shall contain the name of the payee(s) and the amount to be paid to such payee(s) and the purpose of such payment. All disbursements of the Escrow Funds shall be made via check or wired funds.

5. Scope of Responsibility. The Escrow Agent is obligated only to perform the duties specifically set forth in this Agreement, which shall be deemed purely ministerial in nature. Under no circumstances will the Escrow Agent be deemed to be a fiduciary to any party or any other person under this Agreement. This Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred or implied from the terms of this Agreement or any other agreement.

6. Reliance. The Escrow Agent shall not be liable for any action taken or not taken by it in accordance with the direction or consent of the parties or their respective attorneys (including office staff). The Escrow Agent shall not be liable for acting or refraining from acting upon any notice, request, consent, direction, requisition, certificate, order, affidavit, letter, or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, without further inquiry into the person or persons’ authority.

7. Limitation of Liability. The Escrow Agent shall not be liable, directly or indirectly, for, and the Property Owner hereby releases the Escrow Agent from, any (i) damages, losses or expenses arising out of the services provided hereunder, other than damages, losses or expenses which have been finally adjudicated to have directly resulted from the Escrow Agent’s gross negligence or willful

misconduct, or (ii) special, indirect or consequential damages or losses of any kind whatsoever (including without limitation lost profits), even if the Escrow Agent has been advised of the possibility of such losses or damages and regardless of the form of action.

8. Resignation or Removal. The Escrow Agent may resign by furnishing written notice of its resignation to the Property Owner, and the Property Owner may remove the Escrow Agent by furnishing to the Escrow Agent a written notice of the Escrow Agent's removal. Such resignation or removal, as the case may be, shall be effective thirty (30) days after the delivery of such notice or upon the earlier appointment of a successor, and the Escrow Agent's sole responsibility thereafter shall be to safely keep the Escrow Funds and to deliver the same to a successor escrow agent as shall be appointed by the Property Owner, as evidenced by a written notice filed with the Escrow Agent or in accordance with a court order. If the Property Owner has failed to appoint a successor escrow agent prior to the expiration of thirty (30) days following the delivery of such notice of resignation or removal, the Escrow Agent shall have the right, but not the obligation to (a) petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the Property Owner; (b) deposit the Escrow Funds with the Clerk of the Court in which any litigation relating to the Contract is pending and/or (c) take such reasonable affirmative steps as it may, at its option, elect in order to terminate its duties as the Escrow Agent, including, without limitation, the depositing of the Escrow Funds with a court of competent jurisdiction and the commencement of an action for interpleader.

9. Notices. All notices, requests, demands, and other communications required under this Agreement shall be in writing, in English, and shall be deemed to have been duly given if delivered (i) personally, e.g., via courier messenger, (ii) by overnight delivery with a reputable national overnight delivery service, or (iii) via email, at the addresses set forth below. It shall be the responsibility of each of the Property Owner to notify the Escrow Agent and the other parties in writing of any name or address changes. Communications shall be deemed to have been given on the date received.

If to Property Owner:

c/o Trammell Crow Company
888 16th Street NW
Suite 555
Washington DC 20006
Attn: Campbell Smith, Managing Director

With a copy to:

Goulston & Storrs, P.C.
1999 K Street, NW, Suite 500
Washington, DC 20006
Attn: Allison Prince, Esq.
Email: aprince@goulstonstorrs.com

With a copy to:

c/o Trammell Crow Company
300 Conshohocken State Road
Suite 250
West Conshohocken, Pennsylvania 19428
Attn: General Counsel

With a copy to:

Metropolitan Life Insurance Company
425 Market Street, Suite 1050
San Francisco, CA 94105
Attention: Asset Manager – Armature Works

With a copy to:

Tenenbaum & Saas PC
4504 Walsh Street, Ste 200
Chevy Chase, MD 20815
Attn: Rick Saas, Esq.

If to the Escrow Agent:

Fidelity National Title Insurance Company
1620 L Street, N.W., 4th Floor
Washington, DC 20036
Attn: Mark Badanowski

10. Assignment. The Property Owner shall have the right to assign all of its rights and obligations hereunder to any successor owner of the Project or any portion thereof.

11. Amendments. This Agreement may not be changed, modified or terminated, nor may any provision hereunder be waived, except by an instrument executed by the parties hereto.

12. Counterparts. This Agreement may be executed in several counterparts, and all counterparts so executed shall constitute one agreement, binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterpart. The exchange of copies of this agreement, any amendments hereto, any signature pages required hereunder or any other documents required or contemplated hereunder by facsimile or via email transmission in Portable Document Format (.pdf) shall constitute effective execution and delivery of same as to the parties thereto and may be used in lieu of the original documents for all purposes.

13. Controlling Law. This Agreement shall be construed and enforced in accordance with the laws of the District of Columbia.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Escrow Agreement as of the day and year first written above.


PROPERTY OWNER:

**ARMATURE WORKS (RESIDENTIAL)
OWNER, LLC**, a Delaware limited liability
company

By: 
Name: B. Campbell Smith
Title: Authorized Signatory

ESCROW AGENT:

**FIDELITY NATIONAL TITLE INSURANCE
COMPANY**

By: 
Name: Mark Badanowski
Title: Vice President

PROPERTY DESCRIPTION

Lot 8 in Square 747 as recorded in the records of the Office of the Surveyor for the District of Columbia in Book 180 at Page 161, and now known for Assessment and Taxation purposes as Lots 800-808 and 7000-7009.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

January 11, 2017

Campbell Smith
Vice President
1200 3rd St LLC
1055 Thomas Jefferson Street, NW
Washington, DC 20007

Dear Mr. Smith:

Enclosed is your copy of the signed First Source Employment Agreement between the D.C. Department of Employment Services (DOES) and 1200 3rd Street LLC. General Contractor or Subcontractor . Under the terms of the Agreement, you are required to use DOES as the first source to fill all new jobs created as a result of Project: **Central Armature Works (Z.C. Case No. 16-09)**. In addition, at least 51% of the newly created jobs must be filled by D.C. residents. Further, District residents registered in programs approved by the District of Columbia Apprenticeship Council shall work 35% of all apprenticeship hours worked in connection with the Project.

You must post your job vacancies to the Department of Employment Services' Virtual One-Stop (VOS) at www.dcnetworks.org.

First Source reports are due by the 10th of each the month. Company representatives responsible for completing the First Source Contract Compliance reports must register in the First Source Online Registration and Reporting System (FORRS), <http://firstsource.dc.gov>.

Reminder: All General Contractors **must** invite their subcontractors that are subject to the First Source Employment Agreement requirements, to join the project using the First Source Online Registration & Reporting System (FORRS).

If you have any questions or need additional information please contact Alex Underwood, (202) 698-3529, alex.underwood@dc.gov.

Sincerely,

Michael I Watts
Associate Director
Office of Labor Law Enforcement

Enclosure



**Government of the District of Columbia
FIRST SOURCE EMPLOYMENT AGREEMENT**



Contract Number: N/A

Employer Name: 1200 3rd St LLC

Project Contract Amount: \$170,000,000

Employer Contract Award: N/A

Project Name: Central Armature Works (Z.C. Case No. 16-09)

Project Address: Square 747, Lot 8 Ward: 6

Nonprofit Organization with 50 Employees or Less: Yes No

This First Source Employment Agreement, in accordance with The First Source Employment Agreement Act of 1984 (codified in D.C. Official Code §§ 2-219.01 – 2.219.05), The Apprenticeship Requirements Amendment Act of 2004 (Codified in D.C. Official Code §§ 2-219.03 and 32-1431) for recruitment, referral, and placement of District of Columbia residents, is between the District of Columbia Department of Employment Services, hereinafter referred to as "DOES", and 1200 3rd St LLC, hereinafter, referred to as EMPLOYER. Under this Employment Agreement, the EMPLOYER will use DOES as its first source for recruitment, referral, and placement of new hires or employees for all new jobs created by the Project. The Employer will hire 51% District of Columbia residents for all new jobs created by the Project, and 35 % of all apprenticeship hours be worked by DC residents employed by EMPLOYER in connection with the Project shall be District residents registered in programs approved by the District of Columbia Apprenticeship Council.

I. GENERAL TERMS

- A. Subject to the terms and conditions set forth herein, the EMPLOYER will use DOES as its first source for the recruitment, referral and placement for jobs created by the Project. The Project being defined as and limited to the construction of the development approved by the Zoning Commission in Case No. 16-09.
- B. The EMPLOYER will require all Project contractors with contracts totaling \$100,000 or more, and Project subcontractors with subcontracts totaling \$100,000 or more, to enter into a First Source Employment Agreement with DOES.
- C. DOES will provide recruitment, referral and placement services to the EMPLOYER, which are subject to the limitations set out in this Agreement.
- D. The participation of DOES in this Agreement will be carried out by the Office of Employer Services, which is responsible for referral and placement of employees, or such other offices or divisions designated by the Office of the Director, of DOES.
- E. This Agreement will take effect when signed by the parties below and will be fully effective for the duration of the Project contract and any extensions or modification to the Project contract.

- F. This Agreement will not be construed as an approval of the EMPLOYER'S bid package, bond application, lease agreement, zoning application, loan, or contract/subcontract for the Project.
- G. DOES and the EMPLOYER agree that, for purposes of this Agreement, new hires and jobs created for the Project (both union and nonunion) include all EMPLOYER'S job openings and vacancies in the Washington Standard Metropolitan Statistical Area created for the Project as a result of internal promotions, terminations, and expansions of the EMPLOYER'S workforce, as a result of this project, including loans, lease agreements, zoning applications, bonds, bids, and contracts.
- H. This Agreement includes apprentices as defined and as amended, in D.C. Law 2-156. D.C. Official Code §§ 32-1401- 1431.
- I. The EMPLOYER, prime subcontractors and subcontractors who contract with the District of Columbia government to perform construction, renovation work, or information technology work with a single contract, or cumulative contracts, of at least \$500,000, let within a 12-month period will be required to register an apprenticeship program with the District of Columbia Apprenticeship Council; and this includes but is not limited to, any construction or renovation contract or subcontract signed as the result of, a loan, bond, grant, Exclusive Right Agreement, street or alley closing, or a leasing agreement of real property for one (1) year or more. In furtherance of the foregoing, the EMPLOYER shall enter into an agreement with its contractors, including the general contractor, that requires that such contractors and subcontractors for the Project participate, in apprenticeship programs for the Project that: (i) meet the standards set forth in Chapter 11 of Title 7 of the District of Columbia Municipal Regulations, and (ii) have an apprenticeship program registered with the District of Columbia's Apprenticeship Council.

II. RECRUITMENT

- A. The EMPLOYER will complete the attached Employment Plan, which will indicate the number of new jobs projected to be created on the Project, salary range, hiring dates, residency status, ward information, new hire justification and union requirements.
- B. The Employer will post all job vacancies in the DOES' Virtual One-Stop (VOS) at www.jobs.dc.gov within five (5) days of executing the Agreement. Should you need assistance posting job vacancies, please contact Job Bank at (202) 698-6001.
- C. The EMPLOYER will notify DOES, by way of the First Source Office of its Specific Need for new employees for the Project, within at least five (5) business days (Monday - Friday) upon Employers identification of the Specific Need. This must be done before using any other referral source. Specific Needs shall include, at a minimum, the number of employees needed by job title, qualifications, hiring date, rate of pay, hours of work, duration of employment, and work to be performed.
- D. Job openings to be filled by internal promotion from the EMPLOYER'S current workforce do not need to be referred to DOES for placement and referral. However, EMPLOYER shall notify DOES of such promotions.

- E. The EMPLOYER will submit to DOES, prior to commencing work on the Project, the names, residency status and ward information of all current employees, including apprentices, trainees, and laid-off workers who will be employed on the Project.

III. REFERRAL

- A. DOES will screen applicants and provide the EMPLOYER with a list of applicants according to the Notification of Specific Needs supplied by the EMPLOYER as set forth in Section II (B).
- B. DOES will notify the EMPLOYER, prior to the anticipated hiring dates, of the number of applicants DOES will refer.

IV. PLACEMENT

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

V. TRAINING

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

VI. CONTROLLING REGULATIONS AND LAWS

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

with this Project a copy of this Agreement and has requested comments or objections. If the representative has any comments or objections, the EMPLOYER will promptly provide them to DOES.

VII. EXEMPTIONS

- A. All contracts, subcontracts or other forms of government-assistance less than \$100,000.
- B. Employment openings the contractor will fill with individuals already employed by the company.
- C. Job openings to be filled by laid-off workers according to formally established recall procedures and rosters.
- D. Construction or renovation contracts or subcontracts in the District of Columbia totaling less than \$500,000 are exempt from the requirements of Section I(H) and I(I) of the General Terms hereof.
- E. Non-profit organization with 50 or less employees are exempt from the requirements.

VIII. AGREEMENT MODIFICATIONS, RENEWAL, MONITORING, AND PENALTIES

- A. If, during the term of this Agreement, the EMPLOYER should transfer possession of all or a portion of its business concerns affected by this Agreement to any other party by lease, sale, assignment, merger, or otherwise this First Source Agreement shall remain in full force and effect and transferee shall remain subject to all provisions herein. In addition, the EMPLOYER as a condition of transfer shall:
 - 1. Notify the party taking possession of the existence of this EMPLOYER'S First Source Employment Agreement.
 - 2. Notify DOES within seven (7) business days of the transfer. This advice will include the name of the party taking possession and the name and telephone of that party's representative.
- B. DOES will monitor EMPLOYER'S performance under this Agreement. The EMPLOYER will cooperate with the DOES monitoring and will submit a Contract Compliance Form to DOES monthly.
- C. To assist DOES in the conduct of the monitoring review, the EMPLOYER will make available to DOES, upon request, payroll and employment records for the review period indicated for the Project.
- D. The Employer will provide DOES additional information upon request.
- E. With the submission of the final request for payment from the District, the EMPLOYER shall:

1. Document in a report to DOES its compliance with the requirement that 51% of the new employees hired by the EMPLOYER for the Project be District residents; or
 2. Submit to DOES a request for a waiver of compliance of the requirement that 51% of the new employees hired by the EMPLOYER the Project be District residents which will include the following documentation:
 - a. Documentation supporting EMPLOYERS good faith effort to comply;
 - b. Referrals provided by DOES and other referral sources; and
 - c. Advertisement of job openings listed with DOES and other referral sources.
- F. The DOES may waive the requirement that 51% of the new employees hired by the EMPLOYER for the Project be District residents, if DOES finds that:
1. A good faith effort to comply is demonstrated by the EMPLOYER; or
 2. The EMPLOYER is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Statistical Area:

The Washington Standard Metropolitan Statistical Area includes the District of Columbia, the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg; the Virginia Counties of Fairfax, Arlington, Prince William, Loudon, Stafford, Clarke, Warren, Fauquier, Culpeper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson.
 3. The EMPLOYER enters into a special workforce development training or placement arrangement with DOES; or
 4. DOES certifies that there are insufficient numbers of District residents in the labor market possessing the skills required by the EMPLOYER for the positions created as a result of the Project. No failure by Employer to request a waiver under any other provision hereunder shall be considered relevant to a requested waiver under this Subsection.
- G. Willful breach of the First Source Employment Agreement by the EMPLOYER, failure to submit the Contract Compliance Report, or deliberate submission of falsified data, may be enforced by the DOES through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract for the positions created by EMPLOYER.
- H. The parties acknowledge that the provisions of E and F of Article VIII apply only to First Source hiring.
- I. Nonprofit organizations with 50 or less employees are exempt from the requirement that 51% of the new employees hired by the EMPLOYER on the Project be District residents.

J. The EMPLOYER and DOES, or such other agent as DOES may designate, may mutually agree to modify this Agreement.

K. The EMPLOYER's noncompliance with the provisions of this Agreement may result in termination.

IX. LOCAL, SMALL, DISADVANTAGES BUSINESS ENTERPRISE

A. Is your firm a certified Local, Small, Disadvantaged Business Enterprise (LSDBE)?
 YES NO

If yes, certification number: _____

X. APPRENTICESHIP PROGRAM

A. Do you have a registered Apprenticeship program with the D.C. Apprenticeship Council? YES NO

If yes, D.C. Apprenticeship Council Registration Number: _____

XI. SUBCONTRACTOR

A. Is your firm a subcontractor on this project? YES NO

If yes, name of prime contractor: _____

Dated this 12th day of December 20 16

J.L.D. WJ 1-11-17
Signature Dept. of Employment Services

[Signature]
Signature of Employer
1200 3rd St LLC
Name of Company
1055 Thomas Jefferson Street, NW
Address
202.295.3367
Telephone
CSmith6@trammellcrow.com
E-mail

EMPLOYMENT PLAN

NAME OF EMPLOYER: 1200 3rd St LLC
 ADDRESS OF EMPLOYER: 1055 Thomas Jefferson Street, NW
 TELEPHONE NUMBER: 202.295.3383 FEDERAL IDENTIFICATION NO.: _____
 CONTACT PERSON: Campbell Smith TITLE: Vice President
 E-MAIL: csmith6@trammellcrow.com TYPE OF BUSINESS: Real Estate Development

DISTRICT CONTRACTING AGENCY: Zoning Commission
 CONTRACTING OFFICER: n/a TELEPHONE NUMBER: 202.727.6311
 TYPE OF PROJECT: Planned Unit Development CONTRACT AMOUNT: 170,000,000
 EMPLOYER CONTRACT AMOUNT: n/a
 PROJECT START DATE: 1Q 2018 PROJECT END DATE: 3Q 2020
 EMPLOYER START DATE: n/a EMPLOYER END DATE: n/a

NEW JOB CREATION PROJECTIONS: Please indicate ALL new position(s) your firm will create as a result of the Project. If the firm WILL NOT be creating any new employment opportunities, please complete the attached justification sheet with an explanation. Attach additional sheets as needed.

JOB TITLE		# OF JOBS F/T P/T	SALARY RANGE	UNION MEMBERSHIP REQUIRED NAME LOCAL#	PROJECTED HIRE DATE
A	n/a	n/a	n/a	n/a	n/a
B					
C					
D					
E					
F					
G					
H					
I					
J					
K					

CURRENT EMPLOYEES: Please list the names, residency status and ward information of all current employees, including apprentices, trainees, and transfers from other projects, who will be employed on the Project. Attach additional sheets as needed.

NAME OF EMPLOYEE	CURRENT DISTRICT RESIDENT ✓Please Check	WARD
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	
	<input type="checkbox"/>	

JUSTIFICATION SHEET: Please provide a detailed explanation of why the Employer will not have any new hires on the Project.

The Applicant is not producing new jobs on its own in relation to this project. Further, the Applicant has no full time or part time employees. The Applicant will be contracting with a general contractor and the general contractor will further contract with sub contractors to perform the construction related work to implement the project. Such general contractors and sub contractors will enter into separate First Source Agreements based on this form.

PLANNED UNIT DEVELOPMENT COVENANT**Z.C. CASE NO. 16-09****(1200 3rd Street, LLC– Consolidated PUD and PUD-Related Map Amendment @ Square 747,
Lot 8)**

THIS PLANNED UNIT DEVELOPMENT COVENANT (this “Covenant”), is made as of this 15th day of February, 2019, by and between **1200 3RD STREET, LLC**, a District of Columbia limited liability company (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 8 in Square 747 (the “PUD Site”), and is more particularly described in Zoning Commission Case No. 16-09 and in Exhibit A attached hereto and incorporated herein;

WHEREAS, Owner filed an application for a Consolidated planned unit development for the PUD Site (the “Application”) pursuant to Chapter 24 of the version of Zoning Regulations of the District of Columbia in effect at the time (the “1958 Zoning Regulations”).

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

WHEREAS, because the Application was set down for a hearing prior to the repeal of the 1958 Zoning Regulations, the Zoning Commission for the District of Columbia (the “Zoning Commission”) approved the Application pursuant to the Chapter 24 standards, and did so by Zoning Commission Order No. 16-09, dated December 12, 2016, which became final and effective on August 11, 2017 (the “Order”); and

WHEREAS, Subtitle X § 311.3 of the 2016 Zoning Regulations requires that Owner enter into this Covenant with the District of Columbia assuring Owner’s (and its successors in title)

development and use of the PUD Site as approved by the Zoning Commission in the Order and all modifications, alterations or amendments thereto (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 Order, as it may be amended and/or modified from time to time, are incorporated herein by reference and made a part hereof as Exhibit B and shall be considered a part of this Covenant. The PUD Site shall be developed and used in accordance with the plans approved by the Order and in accordance with the conditions and restrictions contained in the Order, subject to such changes thereto as the Zoning Administrator of the District of Columbia may authorize pursuant to Subtitle A § 304.5 or changes made by the Zoning Commission pursuant to Subtitle Z §§ 703 or 704. Owner covenants that it shall use the PUD Site only in accordance with the terms of the Order, as the same may be further amended and/or modified from time to time, subject to the terms and conditions contained herein and the provisions of Subtitle X Chapter 3 of 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, 702.3, and 705.8 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,

702.3, 705.8 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 Orders are 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.

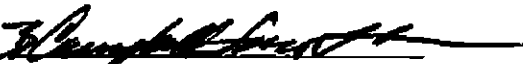
[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, 1200 3rd Street, LLC, has caused this Covenant to be executed and delivered under seal as of the date first written above by Campbell Smith, its duly authorized Vice President.

1200 3rd STREET, LLC, a Delaware limited liability company, as Trustee of the CENTRAL ARMATURE REVOCABLE TRUST

By: TC MidAtlantic Development V, Inc., a Delaware corporation, its Sole Member


Name: _____

By: 
 Name: Campbell Smith
 Title: Vice President

STATE OF District of)
 COUNTY OF Columbia) ss:

Before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared this date, Campbell Smith, personally well known (or satisfactorily proven) to me to be the Vice President of TC MidAtlantic Development V, Inc., the Sole Member of 1200 3rd Street, LLC, the Trustee of Central Armature Revocable Trust, who, being by me first duly sworn, did acknowledge that he, as a duly authorized Vice President of said corporation, executed the foregoing and annexed instrument, in the name and on behalf of said corporation, as sole member of 1200 3rd Street, LLC, as Trustee of Central Armature Revocable Trust, as its free act and deed and for the uses and purposes therein contained.

WITNESS my hand and official seal this 15th day of February, 2019.


 Name: Yana Kobzeva
 Notary Public in and for District of Columbia

NOTARY SEAL

My commission expires: June 14, 2020
 Notary Registration Number: _____

YANA V. KOBZEVA
 Notary Public, District of Columbia
 My Commission Expires JUNE 14, 2020



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: Kimberly A. Bassett
Secretary of the District of Columbia

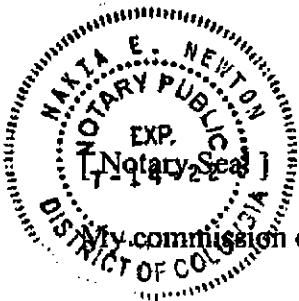
[CORPORATE SEAL]

DISTRICT OF COLUMBIA, ss:

I, NAKIA E. NEWTON a Notary Public in and for the District of Columbia, do hereby certify that Kimberly A. Bassett 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.

GIVEN under my hand and seal this 29 day of July, 2019.

Nakia E. Newton
Notary Public, D.C.

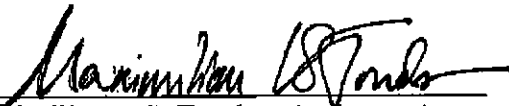


My commission expires: NAKIA E. NEWTON
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires July 14, 2022

APPROVED:

Matthew J. Lee 2-15-19
Zoning Division, Department of
Consumer and Regulatory Affairs

APPROVED AS TO LEGAL SUFFICIENCY:



Maximilian L.S. Tondro, Assistant Attorney General
Office of the Attorney General for the District of Columbia
(PUD Covenant for Z.C. Order No. 16-09)

6/20/19
Date

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 8 IN SQUARE 747 AS RECORDED IN THE RECORDS OF THE OFFICE OF THE SURVEYOR FOR THE DISTRICT OF COLUMBIA IN BOOK 180 AT PAGE 161.

EXHIBIT B

ZONING COMMISSION ORDER NO. 16-09
[appended]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-09
Z.C. Case No. 16-09
1200 3rd Street, LLC
(Consolidated PUD and PUD-Related Map Amendment @ Square 747)
December 12, 2016

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on November 3, 2016, to consider an application from 1200 3rd Street, LLC ("Applicant") for review and approval of a consolidated planned unit development ("PUD") and PUD-related map amendment for Lot 8 in Square 747 ("Property"). The application proposes a mixed-use development consisting of retail, residential, and lodging uses ("Project"). The Commission considered the application pursuant to Chapters 24 and 30 and § 102 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR").¹ The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application with conditions.

FINDINGS OF FACT

Application, Parties, and Hearing

1. The Project site consists of Lot 8 in Square 747 and contains approximately 106,139 square feet of land area. (Exhibit ["Ex."] 2.)
2. The Property immediately abuts the railroad tracks to its west and is currently improved with a large warehouse and surface parking lot. The Property is located within the boundaries of Advisory Neighborhood Commission ("ANC") 6C and is zoned C-M-3. (Ex. 2.)
3. On April 19, 2016, the Applicant submitted an application to the Commission for the review and approval of a PUD and PUD-related map amendment to rezone property located in the C-M-3 Zone District to the C-3-C Zone District. (Ex. 2.)
4. On June 2, 2016, the Office of Planning ("OP") submitted a setback report recommending that a public hearing be held on the application. It requested the Applicant to submit additional information as follows prior to the public hearing: (Ex. 12.)

¹ Chapter 24 and all other provisions of Title 11 DCMR were repealed on September 6, 2016. Chapter 24 was replaced by Chapter 3 of Subtitle 11-X. However, because this application was set down for hearing prior to that date, the Commission's approval was based upon the standards set forth in Chapter 24.

A handwritten signature or set of initials, possibly 'JD', is written in the bottom right corner of the page.

- Demonstrate, through a commitment to PDR or related uses on the ground floor, that the proposed development would further the PDR related objectives and land use direction of the Comprehensive Plan and the NoMA Vision Plan;
 - Refine the proposal for inclusionary zoning to warrant the request for a concentration of IZ units; and
 - The design should achieve a greater LEED equivalent rating.
5. On June 13, 2016, the Commission set the application down for a public hearing, supporting OP's request for additional information prior to the public hearing.
 6. The Applicant filed its pre-hearing statement on July 27, 2016, including responses to OP's and the Commission's comments above. (Ex. 14, 15-15A9.)
 7. Notice of the public hearing was published in the *D.C. Register* on September 2, 2016 and was mailed to ANCs 6C and 5D and to owners within 200 feet of the Property on August 25, 2016. (Ex. 17, 18, 19.)
 8. OP referred the application to the Department of Energy and the Environment ("DOEE"), District Department of Transportation ("DDOT"), Department of Housing and Community Development ("DHCD"), Department of Employment Services ("DOES"), Department of Parks and Recreation ("DPR"), Department of Public Works ("DPW"), DC Public Schools, Fire and Emergency Medical Services Department ("FEMS"), Metropolitan Police Department ("MPD"), and DC Water. (Ex. 12.)
 9. OP hosted an interagency meeting for the aforementioned agencies on August 4, 2016, to provide each agency an opportunity to discuss the Project with the Applicant.
 10. A public hearing was held on November 3, 2016, during which the Applicant gave its presentation and responded to questions. The Applicant proffered, and the Commission accepted, Shalom Baranes, as an expert in architecture, Daniel Van Pelt as an expert in transportation engineering, and Trini Rodriguez as an expert in landscape architecture. (November 3, 2016 Transcript ["Tr."], p. 8.)
 11. Union Market Neighbors ("UMN") filed a request for party status citing concerns over the impact of the Project on quality of life. Union Market Neighbors' request was deficient: it did not authorize anyone to speak on its behalf, did not provide information on the structure of the organization, did not specify the property affected, and it did not distinguish how its members would be more uniquely affected by the development than the general public. (*Id.*, at 6-7; Ex. 25.)
 12. The Commission took up UMN's request for party status as a preliminary issue. UMN did not attend the hearing and was not available to clarify its submission. The Commission denied UMN's request for party status on the grounds that it chose not to participate in the hearing and on the basis that the request was deficient. (November 3, 2016 Tr., p. 7.)

55

13. UMN rescinded its request for party status while the public hearing was underway. (Ex. 43.)
14. Tony Goodman, the Single Member District representative with ANC 6C, testified in support of the application on behalf of the ANC. (November 3, 2016 Tr., pp. 106-110.)
15. No parties, other than the ANC, spoke in support or opposition to the application.
16. Cheryl Cort of the Coalition for Smarter Growth, testified in support of the application. (*Id.*, at 111-113.)
17. ANC 6C voted in support of the application and testified in support of the application at the public hearing. (Ex. 23.)
18. Over 100 letters in support of the application were submitted into the record. (Ex. 30-32.)
19. At the conclusion of the public hearing, the Commission closed the record except for the Applicant's post-hearing submission and proposed order, as well as responses to the Applicant's post-hearing submission from OP, DDOT, and both ANCs. The Commission took proposed action to approve the application and requested additional information prior to taking final action on the application. The Commission requested additional information regarding:
 - a. Additional penthouse details;
 - b. Signage plan;
 - c. Additional information on the affordable housing proffer;
 - d. Additional information on the proposed phasing plan;
 - e. Additional information on the proposed materials; and
 - f. First Source agreement.
20. At the close of the public hearing on November 3, 2016, the Commission took proposed action to approve the application. (November 3, 2016 Tr., pp. 116-117.)
21. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") as required by the District of Columbia Home Rule Act on November 7, 2016. (Ex. 44.) NCPC, by delegated action dated November 23, 2016, found that the proposed PUD would not adversely affect the federal establishment or other identified federal interests in the National Capital and would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital. (Ex. 49.)
22. On November 23, the Applicant submitted its list of final proffered public benefits of the PUD and draft conditions, pursuant to 11 DCMR § 2403.16 through 2403.18.

52

THE MERITS OF THE APPLICATION

Description of Property and Surrounding Areas

23. The PUD Site is located in the northeast quadrant of the District of Columbia. It is bounded by M Street, N.E. to the south, Florida Avenue, N.E. to the north, 3rd Street, N.E. to the east, and railroad tracks to the west. The Property is triangular in shape, with its narrowest frontage along Florida Avenue. (Ex. 2.)
24. It is in Single Member District 6C06 of ANC 6C in Ward 6. It is considered a part of the NoMA neighborhood and is located just south of the Union Market neighborhood, which is north of Florida Avenue. The NoMA-Gallaudet U Metro station is directly to the west, across the railroad tracks. (Ex. 2.)
25. The Property is located directly to the north of the redevelopment of the Uline Arena, a mixed-use retail and office development; to the west of mixed-use development projects approved as PUDs in Z.C. Case Nos. 14-19, 15-22, and 15-28, with maximum heights of 110 feet, 101 feet, and 120 feet, respectively; to the south of high-density redevelopment of the Union Market, and to the east of the Amtrak railroad tracks. The Property is largely surrounded by properties that have been rezoned to the C-3-C Zone District through the PUD-related map amendment process. (Ex. 2, 22.)
26. The Property is currently improved with an approximately 40-foot-tall warehouse and a surface parking lot used by the Central Armature Works. The warehouse does not have windows for the first 20 feet of building height and incorporates windows only at the roofline. For pedestrians walking along 3rd Street, there is no view into the building, only a view of sheet metal and a cinder block façade; the pedestrian experience is further degraded by a barbed wire fence lining a portion of 3rd Street. The sidewalk does not extend for the length of 3rd Street between M Street and Florida Avenue; it is cut off by a dirt road used by Amtrak to access their railroad tracks. The west side of the Property is dedicated to surface parking and truck storage. In sum, the Property does not currently engage pedestrian traffic or encourage interaction with the community. (Ex. 2.)
27. The Property is located in the C-M-3 Zone District. The C-M-3 Zone District allows medium-high-density development, allowing a maximum density of 6.0 floor area ratio ("FAR") and a maximum height of 90 feet.
28. The C-M-3 Zone District does not allow residential uses; no residential uses are currently located on the Property. As such, no residents will be displaced by the Project.
29. Other challenging features of the Property include the easements that encumber it. Amtrak and D.C. Water both have easements across the Property, which must be accommodated in any future development. Amtrak maintains a number of high voltage electrical cables along its tracks that necessitate a 15-foot setback for the entire length of

55

the western façade.² Amtrak also has a permanent easement across the site (east-west) to access the rail bed, which must be accommodated in the Project. D.C. Water has a below grade easement in the former N Street right-of-way that requires a clearance of at least 25 feet and must be at least 25 feet wide. These are significant features and greatly complicate the building design. (Ex. 2.)

30. The surrounding area is mostly a mix of industrial, commercial, and institutional uses. To the north of Florida Avenue is the Union Market neighborhood, which is historically industrial but is currently in different stages of redevelopment. To the south of the Project is the former Uline Arena, which has been converted to a REI retailer and office space. Directly east of the Project, between N Street and Florida Avenue, a mixed-use residential building is planned.³ Across 3rd Street to the east and just south of N Street is another planned mixed-use development with hotel, office, retail, and residential uses.⁴ Finally, another mixed-use residential development was approved for the parcel of land to the east of 3rd Street and just north of M Street.⁵ (*Id.*)
31. The immediately surrounding blocks contain primarily a mix of industrial and commercial uses, but new developments are planned throughout, particularly in the Union Market neighborhood, where several new projects are pending. To the west, across the railroad tracks, is the heart of NoMA, which includes high-rise office buildings, apartment buildings, hotels, and the NoMA-Gallaudet U. Metrorail station. Further to the east, the neighborhood is primarily residential with two- and three-story townhouses and flats. Gallaudet University, a large institutional anchor in the community, is located to the northeast of the Property. Further to the south and southeast of the Property, the neighborhood is primarily residential with two- and three-story townhouses and flats. (*Id.*)
32. The immediate neighborhood includes a mixture of zones. The properties immediately surrounding the Property are located in the C-M-1 or C-M-3 Zone Districts. The Properties to the east and north, which are going through an entitlement process, have either been rezoned or the property owners are seeking to rezone their properties to the C-3-C Zone District. The Uline Arena redevelopment was pursued as a matter of right, retaining the existing C-M-3 and C-M-1 zoning. The NoMA neighborhood west of the railroad tracks is located in the C-3-C Zone District. Residential properties further from the Property are zoned primarily R-4. (*Id.*)

The Project

33. The Project is comprised of five primary parts: the podium, the northern residential building, the southern residential building, the hotel, and open spaces, each of which is described in more detail below. (Ex. 2.)

² A 10-foot setback is required from the power lines, per OSHA and an additional five feet is required for new construction.

³ ZC Case No. 15-22

⁴ ZC Case No. 15-28

⁵ ZC Case No. 14-19

55

34. **Podium:** Given the physical challenges of the site, including its proximity to the railroad tracks, its triangular shape and its grade changes, the podium affords design opportunities that would not otherwise exist at the ground floor. The podium, including covered but pedestrian accessible space, covers approximately 96% of the lot and is 14-22 feet in height, which provides the base of the building the height needed to elevate bedroom and hotel windows above the retaining wall required alongside the railroad tracks. (*Id.*)
35. The podium includes over approximately 700 linear feet of retail frontage along both M and 3rd Streets. The retail frontage is broken intermittently by residential or hotel entrances, service exitways and the Metro plaza, described in more detail below. The retail façades are broken down into “frames” that vary in material, fenestration and articulation. Multiple retailers may be located within each frame or a single retailer may occupy more than one frame. The frames exhibit a unique design based on the retailer, which will customize it for its own purposes. (*Id.*)
36. The Project includes a Metro plaza above the former N Street right-of-way. The plaza is 30 feet tall and 70 feet wide and consists of 6,000 square feet of gross floor area. The plaza cuts through the entire width of the site before terminating at the train tracks’ retaining wall, allowing access between 3rd Street and the future Metro tunnel, which will stretch below the railroad tracks to the NoMA-Gallaudet U Station to the west. The plaza affords direct access for the neighboring community to the Metro tunnel, via the Applicant’s private property. Not only is the plaza a convenience for the community but it is also a visual point of interest for passersby. The Project incorporates artwork throughout the plaza to create a visually exciting and comfortable space. An acrylic sound guard at the western edge of the plaza will buffer the space from noise and to allow views of train activity. The sound guard runs for the length of the building; however, only the portion at the face of the plaza is clear. (*Id.*)
37. A portion of the Metro plaza is used periodically for Amtrak vehicles to access the tracks. Amtrak will cross the plaza to access a ramp located on the western edge of the podium, adjacent to the planned Metro tunnel for access. It is expected that Amtrak will utilize this ramp approximately four times per day. Visual cues (either bollards, a change in material or pattern, or the use of a curb) are incorporated into the design to alert pedestrians that it is a shared space. In addition, no backing-up vehicular maneuvers take place in the Metro plaza, which further minimizes the potential for vehicular/pedestrian conflicts. (*Id.*)
38. Access to loading and parking for the Project is made via the podium. The Project utilizes a single curbcut for its parking and loading that is located in the southwestern corner of the Property at a signalized intersection. All passenger vehicles enter the garage and proceed to the two lower levels of the garage, where approximately 300 spaces are reserved. (*Id.*)
39. Loading for the entire Project occurs from the single curbcut on M Street. Loading is on the first level of the garage, where three berths at 30 feet deep are provided. Service corridors serving each of the three buildings are easily accessible from the loading area,

making it an ideal location for loading. Finally, all truck maneuvers are accommodated within the garage space and do not require any back-in maneuvers from M Street. As a part of this Project, the Applicant will reconfigure the traffic signal at the curb cut, as well as install a separate bike signal for the cycle track that will be located on the south side of M Street. The Applicant will continue to coordinate with DDOT regarding the final design of the curbcut and the driveway to the Project. (Ex. 2, 22, 34, 37.)

40. **Northern Residential Building:** The northern residential building is the largest of the three buildings. In addition to the retail uses in the podium, the northern residential building consists of approximately 450 residential units. The building is 120 feet tall and includes approximately 410,000 square feet of residential use. The mass of the building occupies the entirety of the northern portion of the Property, from 3rd Street to the railroad tracks. The break at the southern end of the building coincides with the view corridor of Patterson Street to the west, which creates a visual connection with the NoMA neighborhood west of the railroad tracks, while also visually establishing open space consistent with the street grid through the site. (Ex. 2.)
41. The residential building is bifurcated on the first three levels by the Metro plaza. The parcel to the north of the Metro plaza has its own separate entrance that can be used to access the lower floors of the building. There are two levels of retail uses, one potentially below grade and one at grade, which give the building a strong presence on Florida Avenue. The building is set back 15 feet from Florida Avenue for a height of approximately 33 feet in order to improve the retail experience. This expands the sidewalk space, making for more comfortable pedestrian maneuvers along Florida Avenue, which would otherwise be limited to the existing width of the sidewalk at six feet. The two parts of the floor plate will unite at the fourth level. (*Id.*)
42. The building's exterior is approximately 50% glass and 50% solid wall surface. The majority of the solid wall surfaces are brick – light gray blended brick at levels four and up and dark gray blended brick below level four. The N Street right-of-way, which previously bisected the northern end of the site, is formally expressed by the Metro plaza's open space at the lower three levels. Above that space, a change of color and pattern in the building's exterior marks the width of the former N Street right-of-way. On 3rd Street, a light gray metal and glazed armature flanks the right-of-way. The inset zone between the darker and lighter metal and glass armatures is clad in an orange brick and modulated with overscaled openings and stacked/paired balconies. (*Id.*)
43. **Southern Residential Building:** The southern residential building is located in the southeast corner of the Project and abuts 3rd Street to the east, the hotel to the west, the northern residential building to the north and M Street to the south. The building is 120 feet tall and includes approximately 175,000 square feet of residential use. The building's exterior is approximately 60% glass and 40% solid wall surface. The primary solid wall surfaces are made up of vertically corrugated metal panels in varying shades of dark gray. Smooth, lighter gray panels are employed in the recesses. The building's aesthetic plays with the proportions of the traditional industrial window, which features a grid-like array of horizontal and vertical mullions and small glass panes. By scaling up



this traditional window to contemporary residential dimensions, the southern residential building recalls industrial style but exemplifies modern architecture. (*Id.*)

44. **Hotel:** The hotel is located to the west of the southern residential building, north of M Street, east of the railroad tracks and south of the northern residential building. It includes approximately 200 rooms and 130,000 square feet of space. Similar to the other two buildings, the hotel is 120 feet tall. The building's exterior is approximately 50% glass and 50% solid wall surface. The solid wall surfaces on the west (track) façade are marked by composite concrete panels in varying shades of brown and gray. From a distance, these subtle color variations produce an abstract patchwork of vertically stacked panels. The solid wall surfaces of the east (courtyard) façade are constituted by a precast concrete framework infilled with composite wood panels tiered in three level assemblies. Again, these subtle color and texture variations produce an abstract patchwork enhancing this building's interior facade. (*Id.*)
45. **Open Spaces:** The industrial history of the site is reflected in the landscape through repetition, pattern, conveyance, graphics, style, and a muted industrial color palette. The Project provides a significant amount of attention to its open spaces. Open spaces of varying sizes, shapes and purposes are incorporated throughout the site. The most significant open space is the Metro plaza, included in the design of the northern residential building (also discussed above in relation to the podium). The Metro plaza will provide access for residents east of the railroad tracks to the NoMA-Gallaudet U Metrorail station via a planned tunnel connection to be constructed by WMATA. This will facilitate use of the Metrorail station for residents in the community, as well as those wishing to visit the community. The plaza space will not be "dead" space; but rather, at 30 feet tall, it will be open, dramatic, and vibrant. The space will include works of art to provide visual interest and will even incorporate the railroad tracks themselves as a point of interest through the use of an acrylic sound screen. The space is meant to be a passive gathering space that can be enjoyed by more than just those utilizing Metro. (*Id.*)
46. The Metro plaza is a mostly covered hardscape plaza that is flanked on the north and south sides by retail and on the west by the elevated railway system. The plaza is designed to accommodate extended outdoor retail opportunities such as outdoor dining adjacent to the retail spaces. An access drive for Amtrak maintenance vehicles is embedded into the plaza design through a change in paving materials in the covered plaza and through the use of a mountable curb on 3rd Street with a creative installation of linear pavers and planting bands within the tree amenity zone and the tenant zone to discourage other vehicular traffic from entering the plaza. Accommodations for the potential future Metro pedestrian tunnel connection under the train tracks to the New York Avenue Metro Station are being provided. The path to the tunnel is defined by special paving and paving patterns and includes an accessible path. (*Id.*)
47. The interim condition plan for the period before the Metro tunnel is constructed includes pop-up retail spaces and movable furniture located at the western end of the plaza that will activate and draw people into the space. (*Id.*)



48. The open space plans incorporate DeafSpace principles to pair deaf experiences with the built environment through the thoughtful analysis of space and proximity, sensory reach, mobility and proximity, light and color, and acoustics. (*Id.*)
49. The Project creates open spaces through building setbacks. On the southern edge of the Property, the podium is set back to create a triangle plaza, or M Street Plaza, that corresponds with the open space provided in connection with the REI project to the south of M Street. The M Street Plaza is a unique urban pocket park where people meet, mingle and connect with each other. This plaza blurs the lines between what is public and what is private. Terraced levels defined by monumental stairs allow for free flowing circulation through the space while points for access are provided to each level for individuals with disabilities. The prominent staircases allow for seating and gathering opportunities in the plaza. A focal feature in the form of a water scrim will begin in a linear water trough cantilevered from the second level terrace ending in a pool, or scrim, of water in the plaza. The scrim, water trough, and a gantry crane element on the second level visually connect the plaza and the second level open spaces. The plaza is animated by the retail on the northern edge, the entrance to the hotel and restaurant, and all of the outdoor dining associated with those establishments. The edges of the plaza are lined with large timber benches. (*Id.*)
50. The M Street Plaza wraps around the building to the corner of 3rd Street via open space provided by pulling back the corner of the southern residential building from the property line. Widening the sidewalk space at this location creates a more pedestrian friendly experience and encourages walking along the retail uses on 3rd Street. The Project widens the sidewalk in the middle of its 3rd Street frontage between M Street and the proposed Metro plaza to create visual interest in the street level façade by introducing movement to it, as well as to create more opportunities for retail uses to engage with pedestrians and the public realm to make the entire Project more open and inviting to the public. (*Id.*)
51. In coordination with properties currently being developed on the east side of 3rd Street, the west side of the street has a distribution that will include a two-foot transition zone including curb, a six-foot tree amenity zone, a 10-foot sidewalk zone, and a 10-foot tenant zone. Trees, low impact development basins, permeable pavers, and city standard streetlights, trash receptacles, and bike racks are integrated along the length of the street. The tenant zone is activated by plantings and opportunities for interactive sculpture. (*Id.*)
52. Finally, the Project sets back from the lot line a distance of 15 feet along Florida Avenue for a height of approximately 33 feet. Again, this was done to improve the safety and experience of the pedestrian. The existing sidewalk on Florida Avenue is narrow (six feet wide), creating discomfort with pedestrians as they are pushed close to a busy roadway. Widening the sidewalk provides a more comfortable space for pedestrians, which eases the current path between the Property and the NoMA-Gallaudet U. Metrorail Station. (*Id.*)

55

53. The Project incorporates a significant amount of open private space, including its second story terrace and its rooftop amenity space. The second level terrace delicately balances the needs, functions, and levels of access for the three different uses adjacent to the courtyard, which are the hotel, the southern residential building, and the northern residential building. A restaurant dining area or outdoor function area on the southwest corner of the terrace provides activity and vibrancy to both the second level and the plaza below. Located at the eastern edge of the dining area or function area is the main focal feature of the design, a gantry crane that ties the second level terrace to the M Street Plaza at street level below. A gantry crane that currently operates inside the Central Armature Works was the inspiration for this feature. (*Id.*)
54. The southern residential building features a great lawn and grilling stations. The great lawn is separated from the restaurant dining area or outdoor function space by the gantry crane water feature. The northern residential building has outdoor amenity spaces on this level. They include a multi-purpose lawn, seating areas, grilling stations, and a video screen. The lush landscape lush features groves of trees providing buffers and visual separation between the buildings and the amenity spaces. (*Id.*)
55. Each building offers rooftop amenities as well. It is anticipated that the hotel will have a small pool for guests, various seating areas and a restaurant/bar with views of the city. The southern residential building has lounge seating, a grilling bar, and an outdoor fireplace all in an intimate setting. The northern residential building takes advantage of the views to the south to showcase a generous pool and outdoor amenity terrace with strong connections to the indoor amenity space. Features that may be included in this amenity terrace are grilling stations, pergolas, televisions, and fire elements. (*Id.*)
56. A composite of extensive and intensive green roof systems will be created for the roof and penthouse levels of each building. These green roof systems reduce storm water runoff; conserve water; mitigate the urban heat island effect; reduce noise; create habitat for birds, insects, and butterflies; provide great aesthetic value, and even aid in fire protection. The planting design will utilize native and adaptive plants throughout the Project. In storm water filtration and bio-retention planters, plants will be specifically selected to thrive in those locations and to perform the filtration function. (*Id.*)

PUD Flexibility Requested

57. Section 411.4(c): The Applicant seeks special exception relief to allow a restaurant in the hotel penthouse. (Ex. 22.)
58. Section 411.9: The Applicant seeks relief to allow varying heights for the habitable penthouse space. (*Id.*)
59. Section 775.5: Though no side yard is required, the Applicant is providing a 15-foot side yard along the railroad tracks. If a side yard is provided, it must be a minimum of 20 feet wide; accordingly, the Applicant seeks relief from this requirement. (*Id.*)

55

60. Section 2115.9: The Applicant is providing 60 valet parking spaces for the hotel use; however, the Project as a whole is not considered a “commercial” project and is not permitted to include valet parking spaces in its parking supply. The Applicant seeks relief from this section so that the hotel valet parking spaces are included in the proposed parking supply. (*Id.*)
61. Section 2201.1: The Applicant seeks variance relief from the requirement to provide a 55-foot loading berth for the residential uses. (*Id.*)
62. Section 2605: The Applicant is exploring the potential for establishing the southern residential building as a condominium building. In the event it does so, it seeks flexibility to locate all of the affordable units available to households with an annual income no greater than 50% AMI in the northern (rental) residential building. (*Id.*)
63. In addition to the relief required from the Zoning Regulations, the Applicant seeks flexibility in the implementation of the Project, including: (*Id.*)
 - a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, signage, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure (22C.);
 - b. To vary final selection of the exterior materials within the color ranges and general material types approved, based on availability at the time of construction (22C.);
 - c. To vary the location of the affordable units so long as their location is generally consistent with the locations noted in Exhibit 46, in that they must remain consistent with the requirements of § 2605.6. The proffered levels of affordable housing shall not be modified (22C.);
 - d. To make minor refinements to exterior details, dimensions, and locations, including belt courses, sills, bases, cornices, railings, balconies, trim, frames, mullions, spandrels, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or are needed to address the structural, mechanical, or operational needs of the building uses or systems (22C.);
 - e. To vary the exterior design of the retail space per the specifications of the retailer;
 - f. To vary the proposed residential unit range and hotel room range by 10%;
 - g. To vary the number of proposed parking spaces by 10% and to refine the parking layout in an effort to create a more efficient plan;

- h. To extend the footprint of the garage toward the southern lot line so long as it remains within the lot lines and below grade along both M and 3rd Streets. The extension of the garage will not increase the proposed parking beyond the flexibility noted above;
- i. To provide approximately 10,000 square feet of additional retail space below grade in the northern residential building along Florida Avenue and approximately 7,000 square feet on the second floor of the northern residential building along Florida Avenue. It also seeks flexibility to provide potential mezzanine space within retail spaces, per tenant specifications;
- j. To adjust details of the 3rd Street streetscape after coordination with other stakeholders and relevant District agencies;
- k. To modify the penthouse design for the hotel per specifications of the final operator. The parameters of the massing (height, density and set back) will not change and no additional relief is permitted as a part of this flexibility;
- l. To reduce or eliminate the Florida Avenue projection in the event the sidewalk is not widened, per current DDOT plans (Ex. 22C.);
- m. To modify the location of the structural wall supporting the Amtrak track bed and the design of the area immediately adjacent, based on the final engineering of the foundation system developed in coordination with Amtrak (Ex. 22C.);
- n. To provide interim, "pop-up" retailers and movable fixtures in the Metro plaza; and
- o. Phasing: The Applicant anticipates constructing the Project in one phase; however, it would like the flexibility to construct it in two phases should market conditions change. The proposed phasing would allow the Applicant to apply for a building permit for the northern residential building, and corresponding portion of the podium, within two years of approval of this PUD and to apply for a building permit for the southern residential building, hotel, and corresponding podium within four years of the approval of this PUD.

Project Amenities and Public Benefits

64. As detailed in the Applicant's testimony and written submissions, the proposed PUD will provide the following project amenities and public benefits: (Ex. 2, 22, 37A1-37A3, 46-46B.)

a. **Exemplary Urban Design, Architecture, and Open Spaces.**

- (i) The Project effectively incorporates public spaces into the site plan: whether it is through building setbacks, a Metro plaza or an enhanced streetscape, the site plan has been thoughtfully crafted. The Applicant will



coordinate with other stakeholders to establish a uniform and pedestrian-friendly streetscape along 3rd Street. In addition to these improvements, the retail spaces that are proposed establish a rhythmic pattern along 3rd Street that varies with each façade. The streetwall is not monotonous and uniform; rather it incorporates varying materials and unique articulations to create an active pedestrian experience. It also opens view corridors along both N and Patterson Streets that do not currently exist and emphasizes the openness of the site. In addition to the public spaces, the Project includes generous courtyards on the second level to be enjoyed by residents, guests and patrons of the hotel;

- (ii) The overall massing of the Project was designed with specific thought to its context. It utilizes a podium to address the challenges posed by the neighboring railroad tracks. It also utilizes a soundwall along the western façade and double-glazed windows to minimize the impacts of sound from the railroad. The height of the building helps to establish the uses adjacent to the railroad tracks, which might otherwise compete with the site. Each building was designed as an independent building and incorporates its own unique design and materials, all of which are of high quality; and
- (iii) Finally, the Project incorporates several pieces of art, including a mural wall in the Metro plaza and a water feature in the southern plaza. The art engages visitors and creates an inviting and attractive environment;

b. Site Planning and Efficient Land Utilization. The Project transforms an underutilized warehouse and surface parking lot into a mixed-use development that brings numerous advantages to the community, including access to a future Metrorail pedestrian tunnel, connecting the east and west sides of the railroad tracks. Its location helps infill sites that bridge the gap between NoMA and the Florida Avenue Market, creating a continuous community comprised of a true mix of uses;

c. Housing and Affordable Housing. The Project will create approximately 650 new residential units, including 50 affordable units, on a site where no residential use currently exists. Approximately half of these units are reserved for households with an annual income no greater than 50% of the Area Median Income;

d. Effective and Safe Vehicular and Pedestrian Access and Transportation Demand Management (“TDM”) Measures.

- (i) The Project utilizes a single curbcut for access to its parking and loading. All vehicular maneuvers take place within the garage and do not require any back-up maneuvers over public space. By limiting all vehicular access to a single curbcut and by eliminating back-up maneuvers, the Project reduces significantly the likelihood of a pedestrian/vehicle conflict. The Project also incorporates a new traffic signal at the south

55

side of the M Street and Delaware intersection to ensure that there are no vehicle/bicycle conflicts as bikes cross over to the cycle track on the southern side of M Street; and

- (ii) One of the more prominent features of the Project is the Metro plaza, which facilitates connections with the NoMA-Gallaudet U. Metrorail Station. The plaza directly responds to this objective as it facilitates a direct connection with the Metrorail Station, whereas, the community east of the railroad tracks is otherwise forced to use Florida Avenue or M Street for Metro access;
- e. Environmental Benefits. The Project is designed to achieve a minimum of 56 LEED points. In addition, the Applicant integrates at least 6,000 square feet of solar panels onsite;
 - f. Employment and Training Opportunities. The Applicant has entered into a First Source Agreement with the Department of Employment Services; and
 - g. Uses of Special Value. The Applicant is offering the following benefits and amenities as uses of special value, in addition to those items referenced above:
 - (i) The Project incorporates several art features throughout the site for public enjoyment. The art engages visitors and helps to create an inviting environment. Several of the art installations will meet the community's expressed interest for playable/active art for children. The Applicant shall design and install, to a cost of up to \$250,000, the following art:
 - A gantry crane/industrial art element in the M Street Plaza inspired by the family-run business that is currently operating on the site and has been based in the District for 101 years;
 - An artistic water feature that complements the gantry crane/industrial art element describe above and activates the M Street Plaza; and
 - At least three pieces of playable or interactive art in the public space along the 3rd Street side of the Project, to be maintained by the Applicant on an ongoing basis;
 - (ii) The Applicant will contribute \$100,000 to an endowment fund, managed by the Project's owners' association in partnership with the NoMA BID, to finance rotating art and murals in the Metro plaza. The \$100,000 fund contemplates an average of \$20,000 spent every three years on a new mural either on the WMATA wall at the back of the Metro Plaza or on the ceiling of the Metro plaza or sculpture in the Metro plaza, resulting in rotating artwork for 15 years after completion of the Project. The type,

location, and design of artwork will be determined by a five-person panel comprised of the property owners' association (three members), the NoMA BID (one member) and ANC 6C (one member); and

- (iii) The Applicant will set aside a minimum of 7,000 square feet of space for maker uses within the Project. Maker uses are defined as "Production, distribution, or repair of goods, including accessory sale of related product; uses encompassed within the Arts, Design, and Creation Use Category as currently defined in 11 DCMR Subtitle B § 200.2, including an Art Incubator and Artist Live Work Space, as currently defined in 11 DCMR Subtitle B § 100.2, but not including a museum, theatre, or gallery as a principal use; production and/or distribution of food or beverages and the accessory sale or on-site consumption of the related food and beverage; design related uses as defined in 11 DCMR Subtitle U Section 700.6(e)." These spaces shall secure a certificate of occupancy specifying a PDR use and the square footage allocated to such use. Prior to issuance of any certificate of occupancy for the building, the Applicant shall provide an update on the status of fulfilling its commitment to provide maker space. If the commitment has not yet been fulfilled, the Applicant shall demonstrate where the balance of the commitment may be accommodated within the building.

Compliance with PUD Standards

- 65. In evaluating a PUD application, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects." The Commission finds that the development incentives for the height, density, use, and flexibility are appropriate and fully justified by the additional public benefits and project amenities proffered by the Applicant. The Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations regarding the requested flexibility from the Zoning Regulations and satisfaction of the PUD standards and guidelines set forth in the Applicant's statement, the DDOT report, and the OP report.
- 66. The Commission credits the testimony of the Applicant and its experts as well as OP, the ANC, and DDOT, and finds that the superior design, site planning, including the Metro plaza and other public spaces, streetscape improvements, housing and affordable housing, are uses of special value, and all constitute acceptable project amenities and public benefits.
- 67. The Commission finds that the PUD as a whole is acceptable in all proffered categories of public benefits and project amenities. The proposed benefits and amenities are superior as they relate to urban design, landscaping, housing and affordable housing, effective and safe transportation access, and uses of special value to the neighborhood and the District as a whole.

55

68. The Commission finds that the character, scale, massing, mix of uses, and design of the PUD are appropriate, and finds that the site plan is consistent with the intent and purposes of the PUD process to encourage high quality developments that provide public benefits. Specifically, the Commission credits the testimony of the Applicant and the Applicant's architectural and transportation planning witnesses that the PUD represents an efficient and economical redevelopment of a strategic and transit-oriented parcel neighboring a Metrorail station.
69. The Commission credits the testimony of OP and DDOT, and accepts the ANCs' report and testimony, noting that the PUD will provide benefits and amenities of substantial value to the community and the District commensurate with the additional height, density, and mix of uses sought through the PUD process. The Commission notes that the proposed massing and mix of uses is consistent with the NoMA Vision Plan.
70. The Commission credits OP and DDOT's testimony that the impact of the PUD on the level of services will not be unacceptable:
- a. DDOT assessed the potential safety and capacity impacts of the proposed action on the District's transportation network and proposed mitigations commensurate with the action; (Ex. 27.)
 - b. DDOT concluded that the Applicant's CTR utilized sound methodology; existing transit service should have capacity to accommodate future demand; the Applicant demonstrated that two intersections with deficient levels of service under the Future with Development scenario can be mitigated by restriping to include an exclusive left-turn lane on at least one approach: 1st and M Street, N.W. (southbound 1st Street, N.E. approach) and 2nd Street and L Street, N.E. (westbound L Street, N.E. approach); and that the Applicant's TDM plan is sufficient for the development and the Applicant has provided additional TDM elements to offset impacts to intersections throughout the study area that cannot be directly mitigated; and (Ex. 27.)
 - c. OP noted that the Project is in keeping with the development magnitude envisioned by the Comprehensive Plan. (Ex. 26.)
71. The Applicant's CTR confirmed that the PUD would not have a detrimental impact on the surrounding transportation network. This is due in large part to the site's proximity to the Metrorail and the proposed TDM plan. The CTR concluded that the Property is surrounded by an expansive local transportation network that allows for efficient transportation options via transit, bicycle, walking or vehicular modes:
- The site is served by a local vehicular network that includes several minor arterials such as M Street and 4th Street, N.E., as well as an existing network of connector and local roadways that provide access to the site;
 - The Metrobus system provides local transit service in the vicinity of the site, with three lines that service to the site;

- There are existing bicycle facilities, including the Metropolitan Branch Trail, 4th Street bike lanes and the M Street Cycle Track; and
 - Most roadways provide sidewalks with crosswalks and anticipated pedestrian routes provide acceptable facilities. (Ex. 22-22A.)
72. The Project reduces the number of curb cuts on the site. There are currently four curb cuts located along 3rd Street. The Project eliminates each of those, with the exception of Amtrak access to the tracks. Instead, all vehicular access to the site will be via a single curb cut on M Street. (*Id.*)
73. This curb cut will serve all of the loading facilities. The Project will provide three loading berths, which the CTR deemed sufficient to serve the anticipated number of deliveries and associated loading activity. The transportation report assumed three shared deliveries per day, up to three residential deliveries per day, 18 retail deliveries per day and two hotel deliveries per day. Twenty-six deliveries can be accommodated by the proposed loading facilities. (*Id.*)
74. The curb cut will also provide access to the parking facilities. The Project will include approximately 356 parking spaces, which exceeds the parking requirement. The Project will also provide approximately 220 secure long-term bicycle spaces, which exceeds the bike parking requirement. In light of these facilities, the PUD-generated parking will not need to use on-street parking. (*Id.*)
75. The elimination of the three curbcuts on 3rd Street creates approximately seven on-street parking spaces. (*Id.*)
76. The capacity analysis of the CTR took into consideration ten developments that have been approved and are located within the vehicular study area of the CTR as well as nine developments that were either going through the entitlement process or were outside the vehicular study area. This was done to better assess the impacts of the Project. (*Id.*)
77. The analysis concluded that the Project would have impacts on six intersections and that those impacts can be mitigated:
- 3rd Street and Florida Avenue – this intersection can be improved by adjusting signal timings so that the northbound and southbound approaches receive more green time;
 - First Street and M Street, N.W. – The Applicant studied this intersection and DDOT will continue to monitor the intersection to determine if an exclusive left turn lane for the southbound approach is warranted. Otherwise, signal timing changes to reduce the delay along northbound and southbound travel will mitigate any impacts;
 - North Capitol Street and M Street – This intersection falls under the NoMA two-way conversion plan, which will result in a westbound approach where one does

52

not exist today. DDOT studied operations at this intersection; the Applicant's report explored short-term operational mitigations that could be implemented prior to issuance of DDOT's full study;

- First Street and M Street, N.E. – Similar to above, DDOT studied the impact of the NoMA two-way conversion plan; the Applicant's report explored short-term operational mitigations that could be implemented prior to issuance of DDOT's full study;
 - 2nd Street and L Street, N.E. – The westbound approach of the intersection can be modified to allow a westbound left turning lane by restricting parking along the north side of L Street, which allows the intersection to operate at acceptable conditions; and
 - 2nd Street and K Street, N.E. – Signal timing adjustments were made to allow more green time for the northbound and southbound approach.
78. The Project is well served by Metrobus and Metrorail. The NoMa-Gallaudet U Metrorail Station is located less than one-tenth of a mile from the Property. The site is also serviced by Metrobus with stops located in the vicinity of the Property.
79. DDOT has developed a plan to identify transit challenges and opportunities and to recommend investments, in response to population growth that challenges District transit infrastructure, as outlined in *Transit Future System Plan*. This report marks Florida Avenue as the site for a future streetcar line running from Woodley Park/Adams Morgan to Congress Heights. It also identifies Florida Avenue as a corridor in need of a Metro Express.
80. The Commission credits the testimony of the Applicant's traffic consultant, who submitted a comprehensive transportation review that concluded that the PUD would not have adverse effects due to traffic, parking, or loading impacts. The Applicant is providing a substantial TDM package, that DDOT supports, which will not only mitigate impacts from the Project, but also will generally improve existing conditions. Specifically, the Applicant will improve pedestrian circulation around the Property, encourage use of alternative modes of transportation, and minimize vehicular conflicts by reducing the number of curbcuts onsite. Any traffic, parking, or other transportation impacts of the PUD on the surrounding area are capable of being mitigated through the measures proposed by the Applicant and are acceptable given the quality of the public benefits of the PUD, particularly in light of the connection to Metro being proffered. (Ex. *Id.*)
81. The Commission acknowledges one of the environmental features of this Project is that it will involve remediating an existing brownfield and that the Applicant will remediate the contamination currently on the site and safeguard against future contamination. DOEE has granted conditional approval of the Applicant's Voluntary Remediation Action Plan. The Commission supports efforts to remediate contaminated properties. (Ex. 22.)

52

82. The water and sanitary service usage resulting from the Project will have an inconsequential effect on the District's delivery systems. The site is currently served by all major utilities. The Project's proposed storm water management and erosion control plans will minimize impact on the adjacent properties and existing storm water systems. (Ex. 2.)
83. The Project will satisfy all District stormwater requirements. BMP facilities will be strategically located downstream of surface flow to capture and retain stormwater per DOEE regulation. The approved stormwater facilities mark a major improvement beyond the current facilities onsite. (Ex. 22C, Sheet 6.09.)
84. The Project incorporates bioretention facilities that will facilitate retaining and using water on-site
85. The development plans included detailed provisions controlling dust and pollutants during construction. (Ex. 22C, Sheet 6.07.)

Compliance with the Comprehensive Plan

86. The Project furthers the following Guiding Principles of the Comprehensive Plan, as outlined and detailed in Chapter 2, the Framework Element: (Ex. 12.)
 - a. Change in the District of Columbia is both inevitable and desirable. The key is to manage change in ways that protect the positive aspects of life in the city and reduce negatives such as poverty, crime, and homelessness; (217.1)
 - b. Redevelopment and infill opportunities along corridors and near transit stations will be an important component of reinvigorating and enhancing our neighborhoods. Development on such sites must not compromise the integrity of stable neighborhoods and must be designed to respect the broader community context. Adequate infrastructure capacity should be ensured as growth occurs; (217.6.)
 - c. Growth in the District benefits not only District residents, but the region as well. By accommodating a larger number of jobs and residents, we can create the critical mass needed to support new services, sustain public transit, and improve regional environmental quality; (217.7.)
 - d. The recent housing boom has triggered a crisis of affordability in the city, creating a hardship for many District residents and changing the character of neighborhoods. The preservation of existing affordable housing and the production of new affordable housing both are essential to avoid a deepening of racial and economic divides in the city. Affordable renter- and owner-occupied housing production and preservation is central to the idea of growing more inclusively; and (218.3.)



- e. Increased mobility can no longer be achieved simply by building more roads. The priority must be on investment in other forms of transportation, particularly transit. Mobility can be enhanced further by improving the connections between different transportation modes, improving traveler safety and security, and increasing system efficiency. (220.1.)
87. The PUD process is an avenue to transform the Property to a higher and better use that contributes to the surrounding community. Whereas the existing industrial use on-site is insular and detached from the community, the Project will integrate the parcel with the neighborhood and will facilitate connections with the broader community that do not currently exist. The PUD is aligned with many goals and objectives of the District of Columbia Comprehensive Plan, namely providing residential uses within the Central Washington Area Element and adjacent to Metro stations.
88. The Future Land Use Map ("FLUM") includes the Property in the mixed-use Medium Density Residential/Production, Distribution and Repair land use category. The proposed rezoning is consistent with this as it facilitates the construction of a high-quality mixed-use project. The C-3-C Zone District allows for a mix of uses, including residential uses, which would not be feasible under the existing zoning designation. The Project consists of a 5.25 FAR of residential uses, which is consistent with the medium-density residential designation; and 1.4 FAR of hotel and retail uses, which is consistent with the PDR designation. The proposed height, density, and uses of the PUD is not inconsistent with this designation.
89. The context of the Project also speaks to the appropriateness of the proposed height and density. The Property immediately abuts railroad tracks to its west, which creates obvious challenges and necessitates raising the residential level above the railroad tracks. The podium allows for a vertical buffer between the residential use and the railroad tracks. The Project includes a podium that varies in height from 14 feet to 22 feet in order to create this differentiation. The entirety of the podium counts against the gross floor area of the site; yet, it functions as a new "grade" for the base of the Project. Whereas some of the podium uses would typically be located below grade and would not have an FAR consequence, they do in this instance because it is located above grade.
90. OP testified that reserving 7,000 square feet of area for PDR uses is consistent with the PDR designation of the site. The PDR designation also calls for tourism support uses, such as a hotel, which is reflected in the Project. (November 3, 2016 Tr., p. 98.)
91. The Generalized Policy Map ("GPM") includes the Property in the Land Use Change Area category. This GPM category is described as follows: "Land Use Change Areas are areas where change to a different land use from what exists today is anticipated." The Project converts an underutilized industrial site to a mixed-use development that engages and contributes to the community and is consistent with its GPM designation.
92. The Commission credits the testimony of the Applicant and OP regarding the compliance of the PUD with the District of Columbia Comprehensive Plan. The development is consistent with and furthers the goals and policies in the map, citywide, and area

elements of the plan. The Commission has weighed the elements of the Comprehensive Plan and finds that the elements listed below are priorities for the District and are promoted by the Project: (Ex. 2, 22, 37A1-37A3, 46-46B.)

- a. The Commission finds that the proposed PUD is not inconsistent with the written elements of the Comprehensive Plan and promotes the policies of its Land Use, Transportation, Environmental, Housing, and Urban Design Citywide Elements and its Central Washington Area Element;
- b. The Project implements Land Use Element policies that encourage growth and revitalization on an underutilized site adjacent to a Metrorail station. Providing residential uses near a Metrorail station is not inconsistent with the Comprehensive Plan. The Property is also located in the Central Employment Area, which is appropriate for the greatest concentration of the city's private office development and higher density mixed land uses, including commercial/retail, hotel, residential, and entertainment uses; (See land use elements 1.1.3, 1.3.1, 1.3.2, 1.3.3, 1.41., 2.1.3, 2.2.4, 2.4.1, 2.4.5, 3.1.4.)
- c. The Project implements Transportation Element policies that promote transit-oriented development and urban design improvements and discourages auto-centric practices. The PUD provides direct access to the Metrorail Station through the construction of the Metro plaza. Such a portal is a significant benefit to the community; (See transportation elements 1.1.4, 1.2.3.)
- d. The Project implements Housing Element policies that encourage expansion of the city's supply of high-quality market-rate and affordable housing, including affordable housing units that provide deeper affordability limits. The expansion of residential uses is especially supported in the Central Washington Area; (See housing elements 1.1, 1.1.1, 1.1.3, 1.1.4, 1.1.6.)
- e. The Project implements Urban Design Element policies that call for enhancing the aesthetic appeal and visual character of areas around major thoroughfares. The PUD significantly improves an underutilized parcel of land along a key entrance to the City, the Amtrak railroad tracks. The PUD also enhances the streetscape along M and 3rd Streets and Florida Avenue; and (See urban design elements 2.2.1, 2.2.3, 2.2.5, 3.1.7.)
- f. The Project advances several objectives of the Central Washington Area Element, including the development of residential uses, provision of hotel and hospitality services and the introduction of an overall mix of uses to create activity and interest. (See Central Washington Area elements 1.1.1, 1.1.4, 1.1.10, 2.8.1, 2.8.3.)

93. The Commission credits the submissions of the Applicant and OP that the PUD is consistent with and furthers the goals of the NoMA Vision Plan. The NoMa plan lists a number of recommendations for this sub-area. Those relevant to this Project include:

- Locating the greatest height and density near the NoMa Metro station;
- Enhance connections to the Florida Avenue Market and strive for a synergy of uses in new project plans;
- Work with DC Commission on the Arts and Humanities to ensure a strong art presence in streets and public spaces, to include visual artists in preliminary phases of projects, and to fund artist/underpass projects;
- Encourage diversity of housing types, including live-work and flexible space for artists and artisans;
- Work with WMATA to study connections to New York Avenue Metro Station, including pedestrian links between the Florida Avenue Market and the metro station; and
- Encourage public art in streetscape design as part of the proposed public realm plan and in individual projects. (Ex. 2, 12, 26.)

94. Specifically regarding uses, the plan states that potential uses could include:

- Arts and design-oriented businesses and creative industries that can be broadly defined around the goal of creating job diversity. Potential tenants could include: technology companies, furniture manufacturers and designers, architects, engineers, electronics distributors, sign-makers, metal fabricators, jewelers, artists/sculptors, graphic designers, software engineers, video, radio and television production, motion picture and sound recording, broadcasting, publishing industries, internet-related services, in addition to other uses;
- Non-profit office uses;
- Retail, in particular at ground floor, neighborhood-serving, smaller scale, such as coffee shops, dry cleaners, restaurant/café/bar/club; including design-related retail, showroom component of live-work uses, and uses that reinforce the connection between the Florida Avenue Market and the Metrorail Station entrance at M Street.” (Ex. 2, 12, 26.)

95. The Project meets the plan guidance of concentrating height and density near Metro, and greatly enhances the streetscape at the edge of this site. The building allows for improved connections to Metro by reserving a pass-through to a potential future pedestrian tunnel to the station. The application also meets the Plan’s goals to provide a diversity of housing types. The application also provides a strong arts and creative economy presence, with the dedication of at least 7,000 square feet of space to maker uses. (Ex. 2, 12, 26.)

Agency Reports

96. By report dated October 24, 2016, OP recommended approval of the application. OP confirmed that the Project supports the written elements of the Comprehensive Plan and is not inconsistent with the Future Land Use and Generalized Policy maps of the Comprehensive Plan. OP also noted that the Project is consistent with the NoMA Vision Plan with its proposed height and density and mix of uses. (Ex. 26.)
97. OP concluded that the benefits and amenities were commensurate given the flexibility requested. (Ex. 26.)
98. OP recommended approval of the application subject to the following: (Ex. 26; November 3, 2016 Tr., pp. 97-100.)
- a. Provide a greater commitment to PDR, maker or related uses.
 - At the public hearing, however, OP testified that the proffered 7,000 square feet of PDR uses was adequate and consistent with the PDR designation; (*Id.*)
 - b. OP does not support the requested flexibility in the location of the PDR or maker uses.
 - At the public hearing, however, OP testified that it supported the requested flexibility, understanding that flexibility was necessary to accommodate different maker uses; (*Id.*)
 - c. The design should achieve a greater LEED-equivalent rating.
 - At the public hearing, however, OP testified that it believed the proposed sustainability features were appropriate despite the fact the Applicant was not seeking certification at the LEED-Gold level. It acknowledged that the Project incorporates other green features that are not adequately accounted for in the LEED scoring system; (*Id.*)
 - d. The Applicant is proposing some significant art features for the Project. Additional detail is needed to ensure that the community fully realizes this Project benefit.
 - OP was satisfied with the level of information provided by the Applicant at the public hearing, understanding that the Applicant would be responsible for maintenance of the artwork; (*Id.*)
 - e. The Applicant should commit to LSDBE and First Source agreements, or provide a rationale for the lack of a commitment.
 - OP was satisfied that the Applicant agreed to enter into a First Source agreement with the Department of Employment Services; and (*Id.*)
 - f. Provide details about the location and size of signage

55

- OP was satisfied with the details that were provided at the public hearing in the Applicant's post-hearing submission.
99. By report dated October 24, 2016, DDOT noted its support of the application. DDOT noted that it had no objections to the PUD though it did expect continued coordination with the Applicant on public space issues, the final design of the curbcut on M Street, proposed loading, the final location of the Capital Bikeshare, and proposed restriping on 1st and L Streets. (Ex. 27.)
100. The Applicant will continue to coordinate with DDOT with respect to the following items: (Ex. 27.)
- a. Traffic signal and geometric modifications at M Street/Delaware Avenue/Site driveway;
 - b. Final design of public space;
 - c. Loading Management Plan will limit truck size to 40 feet or less;
 - d. Re-striping at 1st Street/M Street, N.W. and 2nd Street/L Street, N.E.;
 - e. The location of the Capitol Bikeshare station; and
 - f. The final location of the Florida Avenue curb line.

Advisory Neighborhood Commission Reports

101. ANC 6C submitted a letter in support of the application, authorizing Tony Goodman to testify at the hearing. The ANC voted unanimously, 4:0, to support the application and its proposed amenities, including affordable housing with reduced AMI requirements; a public plaza along M Street facing the Uline Arena; and creation of an accessway at N Street under the train racks providing better access to the Metro station. (Ex. 23)
102. Mr. Goodman testified at the hearing that the application was a model case demonstrating how the PUD process can be done successfully. He further testified that this Project responded to community needs and desires. (November 3, 2016 Tr., pp. 107-110.)
103. Mr. Goodman noted that the Applicant undertook extensive public outreach and reached out to long-term neighbors in the immediate vicinity of the Project. (*Id.*)
104. Mr. Goodman testified that the UMN neither attended any public meetings on the Project nor reached out to him to discuss the Project or to voice any concerns. (*Id.*)

Parties in Support and in Opposition

105. Other than the ANC, which was automatically a party to this application, there were no additional parties to this application, either in support or in opposition.

Persons and Organizations in Support or Opposition

106. The Coalition for Smarter Growth submitted a letter in support of the application. The Coalition noted that it supported the Applicant's sustainability program and agreed that the LEED program does not accurately reflect the sustainable benefits of the Project. It noted that LEED does not appropriately value other Sustainable DC commitments, such as the goal to shift to a 75% non-driving mode share for individual trips. Unfortunately, LEED is not designed to give appropriate credit to the environmental benefits of the vehicle trip reduction features of transit-oriented development. The provision of the Metro station entrance provides significant transportation benefits for the greater community and the cost associated with accommodating this entrance on private property for the good of a larger area, and overall improved transit accessibility should be considered. Shortening the walk to the NoMa Metro station is a significant measure to make riding transit more convenient for the rapidly growing east side of the railroad tracks. This walk connection will increase transit use and bicycling, and reduce the desire to use a private motor vehicle. This link is critically important to fulfill both the community's desire for this shortened access to the Metro station, and to achieve a higher level of environmental performance for the area. (Ex. 24.)
107. Cheryl Cort testified in support of the application at the public hearing on behalf of the Coalition. She noted that the Project proposed a favorable parking ratio and incorporated TDM strategies that mitigate the proposed density of the Project. (November 3, 2016 Tr., pp. 111-113.)
108. Over 100 residents submitted letters in support of the application: 37 letters in support were submitted by immediate neighbors of the Project; 59 letters in support were submitted by neighbors living in the 20002 zip code; and six letters in support were provided by others who live farther away from the Project. The letters detailed support for the introduction of residential uses on the Property, including affordable housing. The neighbors also noted support for the public open spaces and artwork incorporated into the Project. The residents concluded that the PUD would enhance the neighborhood, improve pedestrian circulation and bring new residents to the community. (Ex. 30-32.)

CONCLUSIONS OF LAW

1. Pursuant to 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 of quality of public benefits, and that it protects and advances the public health, welfare, and convenience." (11 DCMR § 2400.2.)
2. The Commission used the PUD process to ensure that impacts on neighborhood stability, traffic, parking and environmental quality were assessed and adequately mitigated.

55

3. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider the application as a consolidated PUD and it has the authority to approve a PUD-related map amendment. The Commission may impose development guidelines, conditions, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts.
4. The Property meets the minimum area requirements of Chapter 24 of the Zoning Regulations.
5. Proper notice of the proposed PUD was provided in accordance with the requirements of the Zoning Regulations and as approved by the Commission.
6. The development of the PUD will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a mix of uses with more attractive and efficient overall planning and design not achievable under matter-of-right standards. Here, the height, character, scale, massing, mix of uses, and design of the proposed PUD is appropriate. The proposed redevelopment of the Property, with a mix of residential, retail, and lodging uses, capitalizes on the Property's transit-oriented location and is compatible with citywide and area plans of the District of Columbia, including the NoMA Vision Plan, which was adopted by the Council.
7. The Commission has judged, balanced, and reconciled the relative value of the Project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects, and concludes approval is warranted for the reasons detailed below. It has specifically studied the impacts of this Project and has determined that the benefits far exceed the impacts of the Project; nevertheless, impacts of the Project can be mitigated.
8. The PUD complies with the applicable height and bulk standards of the Zoning Regulations and will not cause a significant adverse effect on any nearby properties. The residential, lodging and retail uses for this PUD are appropriate for the Property's location. The Project's height, bulk, and uses are consistent with the District's planning goals for the surrounding neighborhood.
9. The Commission notes that the Property is surrounded by medium- and high-density developments, which underscores the appropriateness of the proposed development. It also underscores that the Project will not adversely affect neighboring properties; it will not adversely affect light and air of neighboring properties.
10. The PUD provides superior features that benefit the surrounding neighborhood to a significantly greater extent than the matter-of-right development on the Property provides. The Commission finds that the urban design, site planning, public space improvements, efficient and safe transportation features and measures, housing and affordable housing, ground-floor retail uses, and uses of special value are all significant public benefits. A primary benefit of this Project is the Metro plaza, which will benefit the community significantly. The impact of the PUD is acceptable given the exceptional quality of the public benefits of the PUD.

55

11. The Commission notes that the impact of the PUD on the surrounding area and the operation of city services is not unacceptable. The Commission agrees with the conclusions of the Applicant's traffic expert and DDOT that the proposed PUD will not create adverse traffic, parking, loading or pedestrian impacts on the surrounding community nor will it create adverse impacts on the capacity of the road network. The application will be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
12. Approval of the PUD is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP and finds that the proposed PUD is consistent with the Property's Medium-Density Residential and PDR designations on the Future Land Use Map and furthers numerous goals and policies of the written elements of the Comprehensive Plan as well as other District planning goals for the immediate area, including the NoMA Vision Plan.
13. The Commission notes that the Future Land Use Map is not a zoning map. Whereas zoning maps are parcel-specific, and establish detailed requirements for setbacks, 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. By definition, the Map is to be interpreted broadly. The densities within any given area on the Future Land Use Map reflect all contiguous properties on a block—there may be individual buildings that are higher or lower than these ranges within each area. Similarly, the land use category definitions describe the general character of development in each area, citing typical building heights (in stories) as appropriate. It should be noted that the granting of density bonuses (for example, through planned unit developments) may result in heights that exceed the typical ranges cited in the Comprehensive Plan. It is also appropriate to allow greater residential building heights where those buildings are surrounded by permanent open space, as is the case in the instant case. Accordingly, the Commission finds that the proposed heights and densities is appropriate given the extensive open space incorporated into the Project. Moreover, the Project is located adjacent to railroad tracks and high-rise developments; as such, its context further supports the massing of the development.
14. The Property is located in the PDR and medium-density designations of the Future Land Use Map. The two designations are mapped in concert, accordingly, when one delves into what is being proposed for the Property with more specificity, it is clear that the proposal fits squarely within its Comprehensive Plan designation: the Project includes approximately 5.2 FAR of residential use, 1.1 FAR of hotel use and 0.3 FAR of retail use. The residential proposal fits squarely within a medium density residential project and the hotel and retail uses fit squarely within the PDR designation.
15. The Commission concludes that the proposed PUD is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.

55

16. The PUD will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
17. The Commission notes that the inclusionary zoning program approved by this order shall serve as the affordable housing requirement for this Project, regardless of whether inclusionary zoning requirements should be amended in the future.
18. The Applicant proposed improvements for the public space immediately abutting its property and while the Commission does not have jurisdiction over the development of public space, it supports the proposed improvements. It understands the Applicant will work with DDOT regarding the specific improvements to the public space.
19. The proposed phasing of the Project mitigates the impact of construction on the community. It allows only two phases of construction and establishes a clear timeframe within which construction must commence for each phase. The time period put forth is reasonable in light of the size and complexity of the Project. The Project will also minimize the presence of dust during construction, minimizing impacts on neighboring properties.
20. The Commission notes UMN's submission into the record and states the following:
 - a. DDOT and the Applicant analyzed the impacts of this Project and determined that any impacts of the Project can be mitigated; indeed, many will be mitigated by the Applicant's TDM strategies or modifications to intersection operations;
 - b. Hotel use is consistent with the goals and objectives of the Central Washington Area Element and is not inconsistent with the PDR designation on the FLUM;
 - c. The Applicant is coordinating with DOEE in the remediation of the site, which will improve present conditions on the site;
 - d. LEED is not the only benchmark by which to measure the environmental sustainability of a site. The Project will provide access for an entire community to a Metro station, which promotes many principles of sustainability; it will voluntarily remediate a contaminated site and it will incorporate solar panels, all of which is above and beyond what is required;
 - e. The Applicant is voluntarily remediating an existing brownfield for the construction of the PUD, which improves the environmental condition of the site considerably and is not otherwise required; and
 - f. The Project is not displacing residential use and, thus, is not displacing existing residents. Moreover, the Project will provide residential uses where none currently exist or are even permitted. The Project will also provide affordable housing; but for this Project, no affordable housing would otherwise be permitted or provided.

21. The Commission concludes that there were no material issues of contested fact.
22. The Commission concludes that based on the transportation network improvements provided by the Project, including the reduction in curbcuts, access to a future Metro tunnel connection, and provision of alternative modes of transportation, including a Capital Bikeshare station that the transportation network is strengthened by the Project. It further concludes based on the Findings of Fact that any transportation impacts of the Project can be mitigated.
23. 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) to give great weight to the recommendations of OP in all zoning cases. The Commission carefully considered the OP reports and found OP's reasoning persuasive in recommending approval of the application.
24. 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 positions of ANC 6C in support of approving the application and concur in its recommendation of approval. The Commission credits the ANC with understanding the needs and wants of the community and give weight to its testimony that the PUD responds to those needs and wants.
25. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for the review and approval of a consolidated planned unit development and PUD-related map amendment from the C-M-3 Zone District to the C-3-C Zone District for the Property for the mixed-use development described herein, subject to the following conditions:

A. Project Development

1. The Project shall be developed in accordance with the architectural drawings submitted into the record as Exhibit 22, as modified by Exhibits 37 and 46 and the guidelines, conditions, and standards herein (collectively, the "Plans"). The Plans will incorporate:
 - a. Approximately 6,000 square feet of space in the Metro plaza;
 - b. The Applicant will record an easement in the land records **prior to the issuance of a residential certificate of occupancy** for the northern building to provide public access to the Metro plaza and to accommodate a

55

connection to a future pedestrian tunnel to the NoMA-Gallaudet U Metro station;

- c. Approximately 3,000 square feet of space for the M Street plaza; and
 - d. Approximately 500 square feet of space for the Florida Avenue plaza.
2. The Project will have flexibility from the following zoning requirements:
- a. Section 411.4(c): special exception relief to allow a restaurant in the hotel penthouse;
 - b. Section 411.9: relief to allow varying heights for the habitable penthouse space;
 - c. Section 775.5: relief from the side yard requirement;
 - d. Section 2115.9: relief to allow include valet parking spaces in the proposed parking supply;
 - e. Section 2201.1: relief from the requirement to provide a 55-foot loading berth for the residential uses; and
 - f. Section 2605: The Applicant is exploring the potential for establishing the southern residential building as a condominium building. In the event it does so, it seeks flexibility to locate all of the affordable units available to households with an annual income no greater than 50% AMI in the northern (rental) residential building.
3. The Applicant will have flexibility with the design of the PUD in the following areas:
- a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, signage, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
 - b. To vary final selection of the exterior materials within the color ranges and general material types approved, based on availability at the time of construction;
 - c. The Applicant requests flexibility to shift the location of the affordable units as the floor plans are refined so long as the proportion of affordable units to market rate units along the western property line remains the same and otherwise complies with the requirements of § 2605. The proffered levels of affordable housing shall not be modified;

- d. To make minor refinements to exterior details, dimensions, and locations, including belt courses, sills, bases, cornices, railings, balconies, trim, frames, mullions, spandrels, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or are needed to address the structural, mechanical, or operational needs of the building uses or systems;
- e. To vary the exterior design of the retail space per the specifications of the retailer;
- f. To vary the proposed residential unit range and hotel room range by 10%;
- g. To vary the number of proposed parking spaces by 10% and to refine the parking layout in an effort to create a more efficient plan;
- h. To extend the footprint of the garage toward the southern lot line so long as it remains within the lot lines and below grade along both M and 3rd Streets. The extension of the garage will not increase the proposed parking beyond the flexibility noted above;
- i. To provide approximately 10,000 square feet of additional retail space below grade in the northern residential building along Florida Avenue and approximately 7,000 square feet on the second floor of the northern residential building along Florida Avenue. It also seeks flexibility to provide potential mezzanine space within retail spaces, per tenant specifications;
- j. To adjust details of the 3rd Street streetscape upon coordination coordinate with other stakeholders and relevant District agencies;
- k. To provide interim, "pop-up" retailers and movable fixtures in the Metro plaza;
- l. To modify the penthouse design for the hotel per specifications of the final operator. The parameters of the massing (height, density, and setback) will not change and no additional relief is permitted as a part of this flexibility;
- m. To reduce or eliminate the Florida Avenue projection in the event the sidewalk is not widened, per current DDOT plans; and
- n. To modify the location of the structural wall supporting the Amtrak track bed and the design of the area immediately adjacent, based on the final engineering of the foundation system developed in coordination with Amtrak.

55

B. Transportation

1. The Applicant shall abide by the terms of the loading management plan for the life of the Project, which requires compliance with the following:
 - a. Loading dock manager will be designated by the building management;
 - b. All loading, delivery, and trash collection operations will be required to use 40-foot trucks or less in length, and will be required to use the loading facilities internal to the Project;
 - c. All loading, delivery, and trash collection activity will be required to utilize the building's internal service corridors to access the loading facilities, remaining on private property;
 - d. All residential move ins/move outs will be required to be scheduled in a manner that coordinates with retail tenant deliveries;
 - e. Trucks using the loading facilities will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System;
 - f. The dock manager will be responsible for disseminating DDOT's Freight Management and Commercial Vehicle Operations document to drivers as needed to encourage compliance with District laws and DDOT's truck routes. The dock manager will also post these documents in a prominent location within the service area; and
 - g. Local to the site, service vehicle activity will be directed to use the routing shown in Exhibit 34 in the record. The goal is to minimize truck traffic in the neighborhood by having it utilize the shortest paths to/from Florida Avenue, a DDOT designated truck route.
2. The Applicant shall abide by the terms of the TDM management plan, which requires compliance with the following:
 - a. The Applicant will exceed minimum zoning requirements for bicycle parking/storage facilities at the proposed development. This includes secure parking located on-site and short-term bicycle parking around the perimeter of the site that exceed zoning requirements, as well as a bike service area;

- b. The Applicant will unbundle the cost of residential parking from the cost of lease or purchase and charge a market rate for the area;
- c. The Applicant will identify a TDM Leader (for planning, construction, and operations). There will be one TDM leader who will coordinate with the managers of the retail, residential, and hotel components of the development. The contact information for the TDM leader will be shared with goDCgo and DDOT. The TDM leader will work with goDCgo to receive free TDM marketing materials and guidance, as well as to enforce TDM measures within the development;
- d. The Applicant will provide TDM materials to new residents in the Residential Welcome Package materials. At a minimum, this package will include a Get Around Guide from goDCgo and info about bikesharing and carsharing;
- e. The Applicant will install Transportation Information Center Displays (electronic screens) within the residential, hotel, and office lobbies, containing real-time information related to local transportation alternatives;
- f. The Applicant will fund the installation of a new Capital Bikeshare station and one year of maintenance for the neighborhood;
- g. The Applicant will purchase 10 electric bikes and install 10 electric bike charging stations to be shared by residents and guests. Additionally, the Applicant will install eight publically accessible electric bike charging stations;
- h. The Applicant will devote six parking spaces for electric car charging stations; and
- i. The Applicant will purchase 20 shopping carts for tenants to run daily errands and grocery shopping.

C. Benefits and Amenities

1. **Affordable Housing.** The Applicant shall construct approximately 550,000 square feet of residential gross floor area. It shall reserve eight percent of the residential gross floor area, approximately 44,550 square feet, as affordable housing. At least 50% (approximately 22,275 square feet) of this set aside shall be reserved for households with a median income no greater than 50% of the Area Median Income. The remainder of the affordable units shall be reserved for households with an annual income no greater than 80% of the Area Median Income. The units reserved for households with an annual income no greater than 50% AMI may be located entirely in the Northern building if the Southern building is delivered as a condominium building. If the Southern building is

55

delivered as a rental building, the Applicant shall reserve four percent of the residential gross floor area for 50% AMI units and four percent of the residential gross floor area for 80% AMI units. More specifically, the affordable housing shall be provided as follows:

- a. The affordable housing shall be provided in accordance with the following charts:

Northern Building (if southern building is delivered as a condominium)

Residential Unit Type	Residential GFA / Percentage of Total	Income Type	Affordable Control Period	Affordable Unit Type*
Total	392,185 sf/100%		Life of Project	Rental
Market Rate	360,810 sf/92%	Market	Life of Project	Rental
IZ	9,099 sf/2.3%	80% AMI	Life of Project	Rental
IZ	22,275 sf/5.7%	50% AMI	Life of Project	Rental

Southern Building (if delivered as a condominium)

Residential Unit Type	Residential GFA / Percentage of Total	Income Type	Affordable Control Period	Affordable Unit Type
Total	164,689 sf/100%		Life of Project	Condo
Market Rate	151,514 sf/92%	Market	Life of Project	Condo
IZ	13,175 sf/8%	80% AMI	Life of Project	Condo

Northern Building (if southern building is delivered as rental)

Residential Unit Type	Residential GFA / Percentage of Total	Income Type	Affordable Control Period	Affordable Unit Type*
Total	392,185 sf/100%		Life of Project	Rental
Market Rate	360,810 sf/92%	Market	Life of Project	Rental
IZ	15,687 sf/4%	80% AMI	Life of Project	Rental
IZ	15,687 sf/4%	50% AMI	Life of Project	Rental

Southern Building (if delivered as rental)

Residential Unit Type	Residential GFA / Percentage of Total	Income Type	Affordable Control Period	Affordable Unit Type*
Total	164,689 sf/100%		Life of Project	Rental
Market Rate	151,514 sf/92%	Market	Life of Project	Rental
IZ	6,588 sf/4%	80% AMI	Life of Project	Rental
IZ	6,588 sf/4%	50% AMI	Life of Project	Rental

- b. The affordable housing required as a result of providing specified habitable space in the penthouse shall trigger affordable housing in accordance with the following chart:

55

Penthouse Requirements

Penthouse	Residential GFA	Income Type	Affordable Control Period	Affordable Unit Type*	Notes
Hotel					
Habitable space triggering affordable requirement	3,575 sf				IZ units will be located in northern residential building
Affordable, (non-IZ requirement)	894 sf	50% AMI	20 years	Rental	
Northern Building					
Habitable space triggering IZ	5,161 sf				IZ units will be located in northern residential building
IZ requirement	413 sf	50% AMI	Life of project	Rental	
Southern Building					
Habitable space triggering IZ	3,805 sf				IZ units will be located in northern residential building, if southern building is a condominium
IZ requirement	304 sf	50% AMI	Life of project	Rental	

2. **Sustainability.** The Applicant shall demonstrate that the Project has been designed to achieve at least 56 LEED (v. 2009) points prior to the issuance of a certificate of occupancy for each structure. Evidence of satisfying this requirement will be provided in the form of an architect's certification provided to the Zoning Administrator.

3. The Applicant shall provide 6,000 square feet of solar panels on the Property. Evidence of satisfying this requirement will be provided prior to issuance of the final residential certificate of occupancy for the Project.

4. **PDR Uses.** The Applicant shall set aside a minimum of 7,000 square feet of space for PDR or maker uses ("Required Uses") within the Project. Required Uses are defined as "Production, distribution, or repair of goods, including accessory sale of related product; uses encompassed within the Arts, Design, and Creation Use Category as currently defined in 11 DCMR Subtitle B § 200.2, including an Art Incubator and Artist Live Work Space, as currently defined in 11 DCMR Subtitle B § 100.2, but not including a museum, theatre, or gallery as a principal use; production and/or distribution of food or beverages and the accessory sale or on-site consumption of the related food and beverage; design related uses as defined in 11 DCMR Subtitle U Section 700.6(e)." These spaces shall secure a certificate of occupancy specifying a PDR use and the square footage allocated to such use. Prior to issuance of any certificate of occupancy for the building, the Applicant shall provide an update on the status of fulfilling its commitment to provide maker space. If the commitment has not yet been fulfilled, the Applicant shall demonstrate where the balance of the commitment may be accommodated within the building.

55

5. **Art. Prior to issuance of the final residential certificate of occupancy for the Project**, the Applicant shall install art in the public spaces of the Project, at a cost of approximately \$250,000. The Applicant shall be responsible for maintenance of the art pieces **for the life of the Project**. The art pieces will include the following:
 - a. A gantry crane or similar industrial art element in the M Street Plaza, including an artistic water feature; and
 - b. At least three pieces of playable or interactive art in the public space along 3rd Street side of the Project.
6. The Applicant shall contribute \$100,000 to an endowment fund, managed by the Project's owners' association in partnership with the NoMA BID, to finance rotating art and murals in the Metro plaza. The contribution shall be made **prior to issuance of a certificate of occupancy for the Northern building**. The endowment will fund artwork, including murals and sculptures, which will rotate every two to three years for approximately 15 years upon issuance of a residential certificate of occupancy for the Project. The type, location, and design of artwork will be determined by a five-person panel comprised of the property owners' association (three members), the NoMA BID (one member), and ANC 6C (one member). The Applicant shall provide proof of funding an escrow account **prior to issuance of the final residential certificate of occupancy for the Project**.
7. **First Source.** The Applicant shall execute a First Source Agreement with the Department of Employment Services. A copy of the agreement shall be entered into the record prior to issuance of the final Order.
8. **Transit Incentives.** The Applicant shall provide the following transit incentives, some of which are simultaneously considered mitigation features of the Project, as described above in Conditions B.2. (d)-(i):
 - a. The Applicant shall install a transit screen that is viewable by the public in the Metro plaza **prior to the issuance of a residential certificate of occupancy for the Northern building**;
 - b. **Prior to the issuance of a residential certificate of occupancy for the Northern building**, the Applicant shall install a Capital Bikeshare station and maintain it for a period of one year, to the cost of up to \$100,000;
 - c. **Prior to the issuance of a residential certificate of occupancy for the Northern building**, the Applicant shall devote six parking spaces for electric car charging stations, at an estimated cost of \$60,000;
 - d. **Prior to issuance of the residential certificate of occupancy for the Northern building**, the Applicant shall purchase 10 electric bikes from

55

Riide, or similar company, and install ten electric bike charging stations for residents and hotel guests;

- e. **Prior to issuance of the residential certificate of occupancy for the Northern building**, the Applicant shall install eight publically accessible electric bike charging stations;
- f. **Prior to issuance of a residential certificate of occupancy for the Northern building**, the Applicant will purchase 20 shopping carts for tenants to run daily errands and grocery shopping; and
- g. **Prior to issuance of a residential certificate of occupancy for the Northern building**, the Applicant shall install a new traffic signal at the garage entrance located at the intersection of Delaware Avenue and M Street.

D. Miscellaneous

1. No building permit shall be issued for the Project 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 of the Department of Consumer and Regulatory Affairs (DCRA). Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The approval shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit for the Northern Residential Building. Construction of the Northern Residential Building must begin within three years of the effective date of this Order. An application for the building permit for the Southern Residential Building and Hotel must be filed within four years of the effective date of this Order. Construction on the Southern Residential Building and Hotel must begin within five years of the effective date of this Order.
3. In accordance with the DC Human Rights Act of 1977, as amended, DC Official Code §§ 2-1401 01 et al (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, familial responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

55

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


On November 3, 2016, upon the motion of Vice Chairman Miller, as seconded by Chairman Hood, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the application at the conclusion 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; Third Mayoral Appointee position vacant, not voting).

On December 12, 2016, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of 4-0-0 (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Peter A. Shapiro, not present, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *DC Register*, that is on August 11, 2017.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

 for

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

52

Doc #: 2020014941
Filed & Recorded
02/04/2020 02:32 PM
IDA WILLIAMS
RECORDER OF DEEDS
WASH DC RECORDER OF DEEDS
RECORDING FEES \$25.00
SURCHARGE \$6.50
TOTAL: \$31.50