ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 17-09
Case No. 17-09

Consolidated Planned Unit Development
FP Eckington Holdings, LLC

_____ __, 2018

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on December 14, 2017, to consider an application for a consolidated planned unit development ("PUD") and a related Zoning Map amendment filed by FP Eckington Holdings, LLC (the "Applicant"). The Commission considered the application pursuant to Subtitle X, Chapter 3 and Subtitle Z of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of Subtitle Z, Chapter 400. For the reasons stated below, the Commission hereby **APPROVES** the application.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On April 21, 2017, the Applicant filed an application with the Commission for the consolidated review and approval of a PUD and a related Zoning Map amendment for the subject property which is located at Square 3581, Lot 15 (the "Site").

2. The Applicant proposes to construct a multifamily residential building with ground floor retail (the "Project"). The maximum building height will be 81 feet, 6 inches to the top of the roof and 83 feet to the top of the parapet. The Project includes approximately 313,316 square feet of gross floor area, or 4.03 FAR, with approximately 328 residential units including five artist live-work spaces and approximately 9,136 square feet devoted to retail use. The Project also includes approximately 124 parking spaces in a below grade parking garage.

3. The Site is currently split zoned PDR-2 and PDR-4. The Applicant requests a rezoning of the Site to the MU-5-A District.

4. At its public meeting held on July 24, 2017, the Commission voted to schedule a public hearing on the application.

5. On August 15, 2017, the Applicant submitted a Prehearing Statement which included revised architectural sheets. (Exhibits ["Ex"] 15-15G.) The Prehearing Submission responded to questions raised by the Commission at the set down meeting, including: (i) additional information regarding the building's design; (ii) additional information regarding the sustainable design elements of the Project; (iii) additional information regarding the amount of Inclusionary Zoning ("IZ") and affordable housing for the Project; (iv) updated information regarding consistency with the Comprehensive Plan;

and (v) additional information regarding the proffered public benefits and project amenities. The Prehearing Submission also provided updated information as requested by the Office of Planning ("OP").

6. On November 22, 2017, the Applicant submitted a Supplemental Prehearing Submission with architectural plans, which provided updated information regarding: (i) the Project's revised architecture and design; (ii) the Applicant's proffered public benefits and project amenities including the amount of affordable housing provided within the Project; (iii) the Applicant's outreach with District agencies; (iv) the Applicant's community outreach; and (v) the Applicant's Transportation Demand Management ("TDM") measures. (Ex. 28-28C.)

7. On December 13, 2017, the Applicant submitted a response to the reports of OP and of the Department of Energy and the Environment ("DOEE"). (Ex.33-33D.) The Applicant also submitted a separate response to the report of the District Department of Transportation ("DDOT"). (Ex.34-34A.)

8. On December 13, 2017, the Eckington Civic Association ("ECA") filed a request for party status in support of the application.

9. After proper notice, the Commission held a public hearing on the Application on December 14, 2017.

10. At the public hearing, the Commission granted the ECA's request for party status. As a result, the parties to the case were the Applicant, Advisory Neighborhood Commission ("ANC") 5E, and the ECA.

11. The Applicant presented four principal witnesses at the public hearing, including Josh Etter, on behalf of Foulger-Pratt, representing the Applicant; Sarah Alexander, an expert in architecture, on behalf of Torti Gallas Urban, the architects for the Project; Erwin N. Andres, an expert in transportation planning and analysis, on behalf of Gorove/Slade Associates, Inc; and Shane L. Dettman, an expert in land use and zoning, on behalf of Holland & Knight LLP. Based upon their professional experience, as evidenced by the resumes submitted for the record, Ms. Alexander, Mr. Andres, and Mr. Dettman were qualified by the Commission as experts in their respective fields.

12. At the public hearing, OP testified that the Applicant's proffered public benefits and project amenities are significant and outweigh the relatively minor development incentives and flexibility requested by the Applicant. (Transcript [Tr.] at pg. 39.) In addition, OP testified the PUD and related Zoning Map amendment is not inconsistent with the Comprehensive Plan. (Tr. at pg. 39.) However, OP also testified that they were unable to support the Project and requested additional affordable housing and production, distribution, and repair ("PDR") related uses. (Tr. at pg. 47.) DDOT testified in support of the Project at the public hearing.

13. ANC 5E, the ANC within which the Site is located, submitted a letter in support of the Project including the height, density, and uses proposed, with conditions relating to further review of the community benefits associated with the Project (Ex. 36A.) Commissioner Hannah Powell (the Single Member District Representative) testified at the public hearing on behalf of the ANC and indicated that ANC 5E supported the Project, subject to the Applicant and the ANC working out the final allocation of the donated funds.

14. At its November 6, 2017, public meeting, the ECA voted 12-0 to support the Project including the Applicant's proffered public benefits and project amenities. ECA President Katrina Velasquez also testified in support of the Project at the public hearing.

15. The NoMa Parks Foundation ("NPF") submitted a letter in support of the Project. (Ex. 37.)

16. Mr. Michael Clark, Sr., the President of the Edgewood Civic Association testified on behalf of the Edgewood Civic Association in opposition to the Project. Mr. Clark did not have any concerns relating to the height, density, or uses proposed for the PUD. His concerns related to the amount of affordable housing proposed for the Project and the Applicant's outreach to the Edgewood Civic Association. At the request of the Commission, Commissioner Hannah Powell, and ECA President Katrina Velasquez, contacted Mr. Clark regarding the Edgewood Civic Association's inclusion generally in the review process for PUDs and specifically as it relates to this case. Mr. Clark was also present at the ANC's December 19, 2017, public meeting to discuss the Applicant's community benefits package. Subsequent to that meeting, Mr. Clark recommended that the Applicant donate an additional $2,500 for a TV and/or projector to support the programs at the Harry Thomas Recreation Center. The Applicant has agreed to the request from the Edgewood Civic Association and has now included those additional funds as part of its amenities and benefits.

17. FedEx also submitted a letter in opposition to the Project. (Ex. 11-11C.) However, FedEx did not testify at the public hearing. FedEx's concerns relate to a private agreement between FedEx and the Applicant.

18. At the conclusion of the public hearing, the Commission left the record open for the Applicant's Post-Hearing Submission, ANC 5E's response to the Applicant's Post-Hearing Submission, and ANC 5E's additional resolution regarding the Project.

19. On January 8, 2018 the Applicant submitted a Post-Hearing Submission in response to the Commissions comments at the public hearing. The Post-Hearing Submission included the Applicant's revised public benefits and project amenities in response to the comments from ANC 5E and Mr. Clark. (Ex. __.) In addition, in response to OP's comments the revised public benefits and amenities include the Applicant's commitment to providing an additional artist live-work space, which increases the amount of PDR uses and affordable housing provided in the Project. (Ex. __.)

20. ANC 5E submitted an additional letter dated _____, 2018 indicating that at a duly noticed public meeting on January 16, 2018, at which notice was properly given and a quorum was present, ANC 5E voted to _____. (Ex. __.)

21. The Commission took proposed action to approve the PUD and related Zoning Map amendment on January 29, 2018, by a vote of _____.

22. The proposed action was referred to the National Capital Planning Commission ("NCPC") on _____, pursuant to § 492 of the Home Rule Act.

23. The Executive Director of NCPC, by delegated action dated _____, found that _____.

24. The Commission took final action to approve the PUD and related Zoning Map amendment on _____, 2018.

The Site and Surrounding Area

25. The Site is located at the southeast corner of Harry Thomas Way, N.E. and R Street, N.E. and is currently vacant. To the north is the Penn Center building, which is currently used as a District-owned warehouse. To the east are the Metropolitan Branch Trail ("MBT") and the WMATA tracks. The land directly to the south is the South Park, as defined below, and further to the south is a PEPCO substation.

26. Residential uses are predominantly found to the west and northwest. To the northwest, the zoning is RF-1 and these areas of RF-1 zoning are improved with attached rowhouse dwellings. To the southwest is the Gale project, which was approved as a PUD (Z.C. Case No 05-23, subsequently modified by Z.C. Case Nos. 05-23A-B). The Gale consists of three buildings, the tallest of which has a maximum building height of 64 feet, 6 inches, with an overall density of 3.3 FAR. The Gale project was also rezoned as part of the PUD from the M zone district to the CR zone district (the PDR-4 zone to MU-9 zone under the current zoning regulations).

27. Immediately to the west, across Harry Thomas Way, is the approved JBG/Boundary PUD project (Z.C. Case No. 15-15). The approved JBG/Boundary project – known as Eckington Yards – will consist of three buildings, the tallest of which will be constructed to a height of approximately 102 feet. The maximum density for Eckington Yards is 5.2 FAR. The project is centered around a pedestrian alley and plaza that terminates across the street from the Project. The Eckington Yards project was rezoned as part of the PUD from the M zone district to the CR zone district (the PDR-4 zone to MU-10 zone under the current zoning regulations).

Existing and Proposed Zoning

28. The Site is currently split zoned PDR-2 and PDR-4. Approximately, 81% is zoned PDR-4 and 19% is zoned PDR-2.

29. The PDR-2 District is intended to permit medium-density commercial and PDR activities employing a large workforce and requiring some heavy machinery under controls that minimize any adverse impacts on adjacent, more restrictive zones. 11-J DCMR § 200.2. The PDR-2 District permits a maximum height of 60 feet, with the same height permitted for a PUD. 11-J DCMR §§ 203.1 and 303.7. The PDR-2 District permits a maximum FAR of 3.0 for restricted uses and 4.5 FAR for permitted uses. 11-J DCMR § 202.1. The maximum FAR for a PUD in the PDR-2 District is 3.6 for restricted uses and 5.4 for permitted uses. 11-X DCMR § 303.3.

30. The PDR-4 zone is intended to permit high-density commercial and PDR activities employing a large workforce and requiring some heavy machinery under controls that minimize any adverse impacts on adjacent, more restrictive zones and minimize non-industrial uses. 11-J DCMR § 200.4. The PDR-4 District permits a maximum height of 90 feet, with the same height permitted for a PUD. 11-J DCMR §§ 203.1 and 303.7. The PDR-4 District permits a maximum FAR of 1.0 for restricted uses and 6.0 FAR for permitted uses. 11-J DCMR § 202.1. The maximum FAR for a PUD in the PDR-4 District is 1.2 for restricted uses and 7.2 for permitted uses. 11-X DCMR § 303.3.

31. Multi-family residential use is not permitted in either the PDR-2 or PDR-4 District. New residential uses are limited in the PDR-2 and PDR-4 Districts to either: (1) an apartment unit for a caretaker watchman, or janitor employed on the premises; or (2) an apartment unit that is integrated with and accessory to an artist studio. 11-U DCMR § 801.1(v).

32. The application includes a request to rezone the Site to the MU-5-A District to allow for the development of the multifamily residential building. The MU-5 Districts are intended to permit medium-density, compact mixed-use development with an emphasis on residential use. 11-G DCMR § 400.4(a). In addition, the MU-5 Districts provide for areas with facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core. 11-G DCMR § 400.4(b). The MU-5 Districts are located on arterial streets, in uptown and regional centers, and at rapid transit stops. 11-G DCMR § 400.4(c).

33. The MU-5-A District permits a maximum matter-of-right height of 65 feet, with 70 feet permitted for IZ projects, with no limit on the number of stories. 11-G DCMR § 403.1. The maximum permitted FAR is 3.5, with up to 4.2 FAR for IZ projects, and with a maximum non-residential FAR of 1.5. 11-G DCMR § 402.1.

34. Under the PUD guidelines for the MU-5-A District, the maximum height is 90 feet and the maximum FAR is 5.04, with a maximum non-residential FAR of 2.01. 11-X DCMR §§ 303.7 and 303.3.

35. A tabulation of the PUD's development data is included on Sheet G07, titled "Zoning Analysis", submitted with the Applicant's Post-Hearing Submission, and marked as Ex. 41A of the record. The architectural drawings titled "Eckington Park", prepared by Torti Gallas Urban dated November 21, 2017, and marked as Exs. 28A1-28A3 of the

record, as modified by Sheet G07, titled "Zoning Analysis", submitted with the Applicant's Post-Hearing Submission, and marked as Ex. 41A of the record are collectively referred to hereinafter as the "Plans".

Description of the PUD Development

36. The Project proposes the development of a vacant site with a multifamily residential building, including ground floor retail and five two-story, artist live-work spaces. The Project has been designed to fit within its unique setting since it is located to the north of a proposed new park having more than 2 acres of open space immediately to the south (the "South Park") and the extension of the South Park to the north with more than 20,050 square feet of the open space on the eastern portion of the Site (the "East Park"). The East Park is part of the Site but will be conveyed to the NPF to be used for the realignment of the MBT, a neighborhood dog park, and related open space.

37. The Project will have approximately 313,916 square feet of gross floor area, or 4.03 FAR, with approximately 328 units and a landscaped central courtyard with a pool. The maximum height of the building is 81 feet, 6 inches to the top of the roof and 83 feet to the top of the parapet. The Project includes two small mechanical penthouses on the main roof, each with a maximum height of 12 feet. All portions of the penthouses will be set back 1:1 in accordance with the Zoning Regulations.

38. Nine two-story loft units will line the east façade and have direct access to the East Park. Five of the nine two-story loft spaces will be artist live-work spaces. These artist-live work spaces will be reserved for local artists earning equal to or less than 60% of the median family income ("MFI") and will remain affordable for the life of the Project.

39. In response to the Commissions comments, the Applicant revised the design of the Project to include four distinct façade types, each which responds to their unique location in the overall urban design framework and each of which has some frontage on Harry Thomas Way. Specifically, the two façade types on Harry Thomas Way directly respond to the approved PUD located across Harry Thomas Way, as shown on Sheet A18 of the Plans. The third façade type located at the southwest corner is modern while still retaining a strong industrial identity consistent with previous uses within this portion of Eckington. This façade is an important architectural expression because it is the termination of the horizontal axis from the Eckington Yards project immediately to the west and it also fronts on the South Park.

40. The fourth and final façade is able to have a more impressive scale and size consistent with other buildings that face the train tracks, since these facades are generally larger in scale than those more internal to the Eckington neighborhood. At the same time, the larger façade wraps the northwest corner onto Harry Thomas Way and has been designed to respect the smaller context to the northwest of the Project in the following ways: (i) the top floor is set back 10 feet; (ii) a strong top to the building has been created at the sixth floor with a strong cornice line and a small setback; and (iii)

balconies are included at the 5th floor to further reduce the scale of the building and introduce a finer grain of detail to the façade.

41. In order to focus pedestrian activity on Harry Thomas Way, which provides access to the South Park and to the retail uses for both the Project and Eckington Yards, the primary residential entrance is located on Harry Thomas Way. A secondary residential entrance is located from a walkway fronting the South Park. Retail entries are located along Harry Thomas Way and the walkway fronting the South Park.

42. All access to parking for the Project is from R Street, N.E. While R Street dead ends at the WMATA tracks, a private driveway extending to north provides access to the industrial uses abutting the tracks. Locating the parking entrance away from Harry Thomas Way minimizes pedestrian and vehicular conflicts. The below-grade parking garage includes approximately 124 parking spaces, which exceeds the parkign requirement under the Zoning Regulations. 11-C DCMR § 702.1.

43. Loading is also accessed from R Street, N.E. The Project includes two loading berths at 30 feet and two 100 square foot platforms. This proposed loading satisfies the requirements of the Zoning Regulations, which require one loading berth at 30 feet, one service/delivery space at 20 feet, and one 100 square foot platform. The loading will be shared among the uses per 11-C DCMR § 901.8. In order to minimize conflicts between trucks accessing the Site and bicyclers using R Street to access the MBT, the loading berth has been designed to achieve front-in/front-out loading access.

44. The Project includes approximately 174 long term bicycle parking spaces in an enclosed bike storage area in the below-grade garage and will include 30 short term bicycle parking spaces in the form of 15 U-racks in public space adjacent to the Site. This amount of bicycle parking exceeds the 111 bicycle parking spaces and 20 short term bicycle parking spaces required for the Project under the Zoning Regulations. *See* 11-C DCMR § 802.1.

45. The Project will be designed to achieve a minimum of 60 points, which is equivalent to the LEED Gold standards under LEED NC-2009. The Project incorporates a host of sustainable features including a green roof, bio-retention planters, and permeable pavers. The Project also includes low-flow plumbing fixtures, Energy Star rated appliances, and additional energy efficiency measures such as advanced insulation. Material selection for the Project includes low-and no-VOC components and Green Label flooring. The Project also will include a robust waste management and recycling program.

46. In response to the comments from the Commission and DOEE, the Applicant incorporated approximately 1,500 square feet of solar panels on the roof of the Project, which will generate approximately 1% of the building's total energy use. The solar panels have been oriented to maximize their southern exposure and to locate them in the most linear fashion.

Zoning Flexibility

47. The Applicant requests flexibility to have a side yard of five feet where 13 feet, 10 inches is required pursuant to 11-G DCMR § 406.1. In the MU-5-A District, no side yard is required, but if a side yard is provided, it must be at least two inches wide per foot of building height, but not less than five feet wide.

48. The reduced side yard will not result in any adverse impacts to the open space on the Site or nearby properties, since the side yard is located on the south frontage and adjacent to the South Park. A side yard is being provided in order to construct a code-required walkway between the Site and the South Park. This walkway will provide access to the retail uses and the secondary residential entrance. It will also provide bike and pedestrian access to shuttle elevators connecting to the below-grade parking garage. The walkway will not be perceived as a side yard because it will open on to the large South Park.

Development Flexibility

49. The Applicant also requests flexibility in the following additional areas:

a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria and mechanical rooms, provided that the variations do not change the exterior configuration of the building;

b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction;

c. To increase the final number of residential units by no more than 5% above the total number approved to respond to market demand, or to decrease the final number of residential units within the approved gross floor area in order to accommodate demand for larger units;

d. To vary the location, attributes and general design of the streetscape incorporated in the project to comply with the requirements of and the approval by the DDOT Public Space Division;

e. To make refinements to the garage configuration, including layout, parking spaces and other elements, so long as the number of parking spaces provided is at least the minimum number of spaces required by the Zoning Regulations;

f. To make refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, venting, window mullions and spacing, or any other changes to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit or any other applicable approvals;

g. To modify or revise the landscape design of the East Park so long as no portion of the principal building extends into the area of the East Park and that the East Park is maintained only for the realignment of the MBT, a dog park, and related open space;

h. To locate retail entrances in accordance with the needs of the retail tenants and vary the façades as necessary within the general design parameters proposed for the project and to vary the types of uses designated as "retail" use on the PUD Plans to include the following use categories: (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); and (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j)); and

i. To vary the font, message, logo, and color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the approved PUD Plans.

Public Benefits and Amenities

50. *Superior, Landscaping, or creation or preservation of open spaces (11-X DCMR § 305.5(b)).* The Project includes the creation of important public open spaces, including the following:

a. The Applicant will deed to NPF approximately 20,050 square feet of the Site for creation of the East Park to house the realigned MBT, a neighborhood dog park, and general open space. The land area for the creation of the East Park is approximately 27% of the Site.

b. The Applicant will donate $165,000 for improvements to the neighborhood dog park within the East Park.

51. *Superior urban design and architecture; Site planning and efficient and economical land utilization (11-X DCMR § 305.5(a) and (c)).* The Project is designed to be compatible with the adjacent residential community and to enhance both the East Park and South Park, since the Site sits at the confluence of these two important neighborhood amenities. The Project results in the replacement of a vacant and underutilized site and provides extra eyes on the East Park and South Park.

52. *Commemorative works or public art (11-X DCMR § 305.5(d)).* The Applicant has incorporated public art into the Project in two locations. Art installations will be provided at the ground floor fronting on the MBT and on the upper level roof deck at the southeast corner of the Project. Precedent images for the ground floor art installation are included at Sheet A29 of the Plans. An initial proposed rendered piece for the roof deck has been included on Sheet A28 of the Plans. The public art piece for the roof deck is being designed and curated by No Kings Collective, which works with

new and established District artists to create pop-up exhibitions, murals and client-focused design materials.

53. *Housing & Affordable Housing (11-X DCMR § 305.5(f) and (g)).*

a. The Project results in the creation of new housing consistent with the goals of the Zoning Regulations and the Comprehensive Plan, including the Future Land Use Map. Overall, the Project will replace a vacant site with approximately 328 units. This exceeds the amount of housing that would have been provided if the Site was developed as a matter-of-right under the existing PDR zoning as no multifamily residential use is permitted in PDR Districts.

b. In accordance with the IZ Regulations, the Project will contain approximately 19,580 square feet of IZ units, reserved for households earning equal to or less than 60% of the MFI. Detailed IZ calculations are included on Sheet G07 of the Plans. This represents a substantial increase in the amount of affordable residential floor area when compared to the fact that no affordable housing would be generated if the Site was developed as a matter-of-right. *See* 11-X DCMR § 305.5(g) ("Affordable housing; except that affordable housing provided in compliance with the Inclusionary Zoning requirements of 11-C DCMR, Chapter 22, shall not be considered a public benefit except to the extent it exceeds what would have been required through matter-of-right development under existing zoning."). In order to support the District's goal of providing more family-sized affordable units, and in response to requests by both ANC 5E and the ECA, the Applicant will reserve 14 two-bedroom units and four two-story, three-bedroom units on the ground floor as IZ units. Pursuant to 11-X DCMR § 305.5(f)(3), three-bedroom units are specifically identified as a public benefit, even if they are market rate units. However, the Applicant is committed to providing both market rate and IZ three-bedroom units.

c. The Applicant will also reserve five two-story loft spaces that front on the East Park as affordable artist live-work spaces. These artist-live work spaces will be reserved for local artists earning equal to or less than 60% of the MFI. This equals approximately 6,728 square feet of additional affordable housing in the Project above what is required under the IZ Regulations. As shown on Sheet A02 of the Plans, the artist live-work spaces will front on the East Park. In order to further activate the East Park, the Applicant has designed these artist live-work spaces to be accessible to the public in the event the resident artists use the space for a public showing. The artist-live work spaces will remain affordable for the life of the Project and will be administered through a partnership with Cultural Development Corporation ("CuDC") in accordance with the outline marked as Ex. 33B of the record.

54. *Employment and training opportunities (11-X DCMR § 305.5(h)).* The Applicant will provide at least four construction training seminars regarding construction trades which will be made available to students at McKinley Technology High School. The

Applicant will also fund up to two internships for students of McKinley Technology High School, which is part of the $25,000 funds being devoted to McKinley Technology High School for specific priorities, as discussed below.

55. *Environmental and sustainable benefits (11-X DCMR § 305.5(k)).* The Project is designed to integrate a host of sustainable features, including a green roof and approximately 1,500 square feet of solar panels on the building's roof, as shown on Sheet A05 of the Plans. The solar panels will generate approximately 1% of the building's total energy use. The Project will also be designed to achieve a minimum of 60 points, which is equivalent to the LEED Gold standards under LEED NC-2009 in accordance with 11-X DCMR § § 305.5(k)(5).

56. *Streetscape plans (11-X DCMR § 305.5(l)).* The Applicant will construct a pedestrian-friendly streetscape abutting the Site, including new paving for the sidewalks, street lighting fixtures, and new and replacement shade trees.

57. *Transportation infrastructure (11-X DCMR § 305.5(o)).* The Applicant will donate $80,000 to fund the realignment of the MBT as it crosses the Site through the East Park. The realignment results in the elimination of the hard right angle along this portion of the MBT, creating a more gentle curve to access the MBT to north of R Street. The realignment will increase safety on the MBT for all District residents who utilize this vital form of transportation to commute and travel throughout the city. Based on current estimates, the $80,000 donation is anticipated to fully fund the realignment of the MBT. The Project includes 174 secure, long-term bike parking spaces within the building as well as a bicycle repair station for tenants. The Applicant will install 30 short-term bike parking spaces near the MBT.

58. *Uses of special value to the neighborhood or the District of Columbia as a whole (11-X DCMR § 305.5(q)).*

a. The Applicant will donate $350,000 to NPF to assist with improvements in the South Park, including funding for the South Park Amphitheater. All remaining money donated will fund the construction food service kiosks within the South Park.

b. The Applicant has also agreed to donate a total of $62,500 to local schools, the Harry Thomas Recreation Center, and the Bloomington Civic Association to fully fund the following initiatives:

i. <u>McKinley Technology High School</u>: $25,000 allocated as follows: $15,000 for construction trade internships for McKinley Technology students; and $10,000 to purchase laptops/computers to replace outdated technology.

ii. <u>Harmony Elementary</u>: $8,500 to purchase Chromebooks to support in-classroom educational technology and standardized testing methods.

iii. Langley Elementary: $15,000 to purchase laptops to replace outdated technology and to increase the total number of work stations available for student use.

iv. Harry Thomas Recreation Center: $11,000 allocated as follows: $8,500 to purchase tablets/computers for before/after school programs focused on enhancing literacy skills for children ages pre-k to 5th grade; and $2,500 to purchase a new TV or projector.

v. Bloomington Civic Association Scholarship Fund: $3,000 total to fund two (2) scholarships for high school students who live within the District-recognized boundaries of Bloomingdale and/or are a student or alumni of McKinley Technology High School or Dunbar High School.

59. In close consultation with the ECA, the Applicant has committed to contribute $40,000 to a partnership between Manna, Inc. and the Latino Economic Development Center ("LEDC") to fund affordable housing training and assistance for Eckington residents who rent or own in the Eckington neighborhood. The partnership will conduct a neighborhood facilities tenant's rights workshops and detailed training on how to apply/qualify for local affordable housing programs. A door to door survey will be conducted to promote awareness and determine training priorities. A detailed outline of the program is marked as Ex. 33D of the record.

60. Transportation Demand Management: The Applicant will implement the following transportation demand management ("TDM") strategies to reduce travel demand:

a. The Applicant will identify TDM Leaders (for planning, construction, and operations). The TDM Leaders will work with goDCgo staff to create free customized marketing materials and a TDM outreach plan for residents and retail employees, including developing a site-specific transportation guide for residents and visitors.

b. The Applicant will provide updated contact information for the TDM Leader and report TDM efforts and amenities to goDCgo staff once per year.

c. The Applicant will stock Metrorail, Metrobus, DC Circulator, Capital Bikeshare, Guaranteed Ride Home, DC Commuter Benefits Law, and other brochures through building management.

d. The Applicant will unbundle all parking costs from the cost of the leases. The parking costs shall be based on the average parking rate for multi-family developments within a quarter-mile of the Site that have been constructed within the last 5 years.

e. For a total of three years, the Applicant will offer to each new residential lease either a one-year membership to Capital Bikeshare or a one year membership to a carsharing service in an amount of $85 for an annual membership. The maximum amount the Applicant will pay for this benefit is $27,880.

f. The Applicant will provide approximately 174 long-term bicycle parking spaces in the garage and 30 short-term bicycle parking spaces in the form of 15 U-racks within and along the perimeter of the Site.

g. The Applicant will install Transportation Information Center Displays (kiosks or screens) within the lobby of the building, containing information related to local transportation alternatives.

h. The Applicant will dedicate two spaces for carsharing services to use with the right of first refusal. If the Applicant is unable to secure a carsharing provider for the two dedicated carsharing spaces, then the Applicant shall host WABA's Everyday Bicycling Seminars two times a year for a total of three years.

i. The Applicant will include a provision in all residential leases restricting the building's tenants from obtaining Residential Parking Permits.

j. The Applicant will provide at least one shopping cart for every 25 residential units for a total of 13 shopping carts.

k. The Applicant will provide two electric vehicle charging stations at the Site.

l. The Applicant will install a bicycle maintenance facility within the long-term bicycle parking area.

61. The Applicant will fund the installation of striping and signage necessary to convert the intersection of Eckington Place, N.E. and Harry Thomas Way, N.E. to an all-way stop controlled intersection. The improvements shall consist of the installation of stop signs, stop bars along Eckington Place, NE, new crosswalks along Eckington Place, N.E. and Harry Thomas Way, N.E., ADA compliant curb ramps that align with each crosswalk, and detectable warning strips at each curb ramp at the intersection of Eckington Place, N.E. and Harry Thomas Way, N.E., subject to approval by DDOT. The Applicant shall also construct curb extensions at the intersection of Eckington Place, N.E. and Harry Thomas Way, N.E., pending DDOT's final redesign of Eckington Place, N.E. and subject to approval by DDOT. The Applicant will also construct curb extensions on the southwest and southeast corners of the intersection of Harry Thomas Way, N.E. and R Street, N.E., subject to approval by DDOT.

Compliance with PUD Standards

62. The Application complies with the standards for a PUD set forth in 11-X DCMR, Chapter 3 of the Zoning Regulations

63. The Project offers a high level of public benefits and project amenities. When compared with the amount of development flexibility requested and project impacts, the Application satisfies the balancing test required in *11*-X DCMR § 304.3, as is further discussed below.

64. The Site is approximately 77,898 square feet in land area, or 1.79 acres. For a PUD in the MU-5-A District, the Zoning Regulations require a minimum land area of 15,000 square feet. 11-X DCMR § 303.1. As a result, the Project complies with the minimum area requirements

65. The development is of exceptional merit and in the best interest of the city. The Project will significantly improve the existing area by virtue of the exceptional architectural design and the replacement of vacant and underutilized Site with uses that are not inconsistent with the Comprehensive Plan.

66. The PUD and related Zoning Map amendment are not inconsistent with the Comprehensive Plan as is set forth in Findings of Fact ("FF") Nos ___ below.

67. The Project has been evaluated under the PUD guidelines for the MU-5-A District. The Project is within the height and density permitted for a PUD within the MU-5-A District.

68. The Project has been evaluated by the relevant District agencies as outlined in FF Nos ___ below. Neither the Zoning Commission nor the Office of Planning identified any unacceptable project impacts on the surrounding area but instead found the impacts to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project, as is further discussed below. In addition, DDOT identified impacts that were capable of being mitigated and confirmed at the public hearing that the Applicant is committed to mitigating any unfavorable impacts resulting from the PUD. (Tr. at pg. 41.)

Compliance with Guiding Principles of the Comprehensive Plan

69. The Commission finds that the Project is not inconsistent with the Comprehensive Plan for the National Capital, including the land use designation assigned to the Site on the Future Land Use Map (the "FLUM"), and the general policy designation on the Generalized Policy Map (the "GPM").

70. The purposes of the Comprehensive Plan are six-fold: (1) to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development; (2) to guide executive and legislative decisions on matters affecting the District and its citizens; (3) to promote economic growth and jobs for District residents; (4) to guide private and public development in order to achieve District and community goals; (5) to maintain and enhance the natural and architectural assets of the District; and (6) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District. (D.C. Code §1-245(b)).

71. The Project is not inconsistent with these purposes as it will promote the social, physical and economic development of the District through the provision of a high-quality, mixed-use building and a neighborhood park on the Site. The Project will also help improve the surrounding neighborhood by providing housing, including affordable housing, jobs, and neighborhood-serving retail and five artist live-work spaces.

72. Future Land Use Map: The FLUM of the Comprehensive Plan (January 2013), adopted as part of the Land Use Element of the Comprehensive Plan for the National Capital, designates the Site as mixed-use (Medium Density Residential/Production, Distribution, and Repair). Areas with mixed-use designations on the FLUM are areas where a mixing of two or more land uses is encouraged. 10A DCMR § 225.18.

73. Specifically, the Commission finds that the provision of five artist live-work units is not inconsistent with *Policy CW-2.8.2; East of the Tracks and Eckington Place Transition Areas*, which encourages the creation of a "production/arts and live-work, mixed use area east of the CSX railroad tracks between H Street, N.E. and Florida Avenue N.E., and in the area east of Eckington Place and north of New York Avenue. 10A DCMR § 1618.10.

74. Legislative history describing mixed uses areas on the FLUM states that the uses depicted in these areas are not mandatory. These mixed use areas, which include existing commercial centers and development opportunity areas, are areas *where a variety of uses is encouraged but is not required*". D.C. Council Committee Report for Bill 5-507, District of Columbia Comprehensive Plan Act of 1984 Land Use Element Amendment Act of 1984, dated December 4, 1984 (emphasis added). Similar language is reflected in the description of Mixed Use areas in the existing Comprehensive Plan Framework Element which states "The [FLUM] indicates areas where the mixing of two or more land uses is *encouraged*. 10-A DCMR § 225.18 (emphasis added). Because these uses are encouraged, the project incorporates 4 artist live-work units.

75. In addition, the FLUM is not a zoning map and is intended to be interpreted broadly. 10-A DCMR § 226. As stated in the OP Report, whereas zoning maps are parcel-specific and establish detailed requirements for setbacks, height, use, parking, and other attributes, the FLUM does not follow parcel boundaries and its categories do not specify allowable uses or dimensional standards. (Ex. 12, pg. 9.)

76. According to the Framework Element, the Medium Density Residential land use category is used to define neighborhoods or areas where mid-rise (4-7 stories) apartment buildings are the predominant use. Pockets of low and moderate density housing may exist within these areas. The Medium Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. The R-5-B and R-5-C Zone districts are generally consistent with the Medium Density designation, although other zones may apply.[1] 10A DCMR § 225.5.

[1] The Comprehensive Plan was last adopted in 2006, prior to the effective date of the 2016 Zoning Regulations ("ZR16"). Thus, the definitions contained in the Framework Element of the various land use designations of the

77. The PDR land use category is used to define areas characterized by manufacturing, warehousing, wholesale and distribution centers, transportation services, food services, printers and publishers, tourism support services, and commercial, municipal, and utility activities which may require substantial buffering from noise-, air pollution- and light-sensitive uses such as housing. A variety of zone districts apply within PDR areas, recognizing the different intensities of use and impacts generated by various PDR activities. 10A DCMR § 225.12.

78. The Project contemplates the construction of a medium density, seven-story, multifamily residential building with ground floor retail and two-story artist live-work spaces. The Comprehensive Plan text specifically identifies a seven-story building as being consistent with a Medium Density Residential designation on the FLUM. Pursuant to 11-G DCMR § 404.4(a), the MU-5 Districts are intended to permit medium-density, compact mixed-use development with an emphasis on residential use.

79. The Applicant will provide five two-story artist live-work spaces, all of which will be reserved for local artists with incomes equal to or less than 60% MFI. As a result, the Applicant is providing uses that further the Site's PDR designation since artist live-work spaces are explicitly included within the Arts, Design, and Creation use category, and Arts, Design, and Creation uses are permitted in PDR Districts as a matter of right. *See* 11-B DCMR § 200.2(e) and 11-U DCMR § 801.1(e). The proposed amount of artist live-work space is appropriate when considering it within the guidance for compliance with the Comprehensive Plan and the broader context of the area that has been identified in the FLUM for the mixed-use designation. Specifically, the Commission has approved approximately 77,000 square feet of "maker-space" for the project located immediately west of the Site, which is part of the approximately 105,000 square feet of other PDR-related uses / maker-spaces approved by the Commission within the New York Avenue Gateway / Florida Avenue Market areas of the Ward 5 Works, Industrial Land Transformation Study. This node of PDR-related uses / maker-spaces is a complement to the more than 15,000 square feet of maker spaces located to the north near the Brookland Metrorail Station, and along the MBT corridor.

80. Accordingly, the Commission finds that the proposed rezoning to the MU-5-A District, the Project's compliance with the MU-5-A District height and density development standards, and the proposed range of uses are not inconsistent with the Site's FLUM designation.

81. Generalized Policy Map: The majority of the Site is located in a Land Use Change Area on the GPM, while a small portion at the north of the Site is located in a Neighborhood Conservation Area on the GPM. As described in the Framework Element, the guiding philosophy for Land Use Change Areas is to encourage and facilitate new development and promote the adaptive reuse of existing structures. Many of these areas have the

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Future Land Use Map refer to the zone districts of the 1958 Zoning Regulations. Under ZR16, the zone designations that correspond to the former R-5-B and R-5-C zone districts are RA-2 and RA-3, respectively.

capacity to become mixed-use communities containing housing, retail, services, workplaces, parks and civic facilities. 10A DCMR § 223.11.

82. Neighborhood Conservation areas have very little vacant or underutilized land. They are primarily residential in character. Maintenance of existing land uses and community character is anticipated over the next 20 years. Where change occurs, it will be modest in scale and will consist primarily of scattered property infill housing, public facilities, and institutional uses. Neighborhood Conservation Areas that are designated "PDR" on the Future Land Use Map are expected to be retained with the mix of industrial, office, and retail uses they have historically provided. 10A DCMR § 223.4.

83. The Commission finds that the Project is not inconsistent with both of the above GPM designations. Specifically, the Applicant is proposing to redevelop a vacant site with uses that are consistent with the Site's designation on the FLUM, as detailed above, supporting the Land Use Change Area designation. In addition, at the northwest corner of the Site, the building height is lowered to 70 feet, and the façade contains lowered balconies and a dropped minor cornice, which results in a reduced scale of building that relates well to the lower scale residential development to the northwest of the Site. Moreover, the proposed PDR use (artist live-work spaces) is compatible with existing residential uses in the vicinity of the Site. The PDR use will also front on the East Park and face the WMATA tracks and industrial uses to the east. Thus, the Project addresses the Site's designation as both a Neighborhood Conservation Area and Land Use Change area on the GPM.

84. Compliance with Guiding Principles of the Comprehensive Plan: The Commission finds the Project to be not inconsistent with the Comprehensive Plan guiding principles relating to managing growth and change, creating successful neighborhoods, increasing access to education and employment, connecting the city, and building green and healthy communities, as follows:

a. Managing Growth and Change: The Project is not inconsistent with several of the principles contained within this section that focus on overcoming physical, social, and economic obstacles to ensure that the benefits and opportunities available to District residents are equitably distributed. Specifically, in order to manage growth and change, the Comprehensive Plan encourages, among other factors, growth in both residential and non-residential sectors, with residential uses comprising a range of housing types to accommodate households of varying sizes and income levels, and nonresidential uses that include services that support residents. The Comprehensive Plan also states that redevelopment and infill opportunities along corridors and near transit stations are an important part of reinvigorating and enhancing District neighborhoods as well as the surrounding region. The Project is not inconsistent with these goals. Redeveloping the Site, which is currently vacant, with a mixed-use building comprised of residential units, neighborhood-serving retail, artist live-work spaces, and a neighborhood park will benefit the residents and employees who live and work in the neighborhood, and will help further development along the MBT. The retail space

and artist live-work spaces will create new jobs for District residents and provide additional neighborhood-serving amenities to new and existing residents. In addition, the proposed building will help grow the District's tax base and help reinvigorate the existing neighborhood fabric. The new residential units will greatly assist in addressing the continuing demand for additional housing, including artist housing and affordable housing in the District.

b. Creating Successful Neighborhoods: One of the guiding principles for creating successful neighborhoods is to protect and stabilize neighborhood businesses, retail districts, parks, and other facilities, and to reinforce neighborhood identity and provide destinations and services for residents. In addition, noting the crisis of affordability that has resulted from the continued housing boom in the District, the guiding principles recognize the importance of preserving existing affordable housing and producing new affordable housing to avoid deepening of racial and economic divides in the city. Citizen participation and quality, responsive neighborhood services are also recognized as keys ingredients to creating successful neighborhoods, such participation includes garnering public input in decisions about land use and development, from development of the Comprehensive Plan to implementation of the Plan's elements. The Project is not inconsistent with each of these principles. The Applicant worked closely with ANC 5E, the ECA, and other neighborhood stakeholders and associations to ensure that the Project provides uses that respond to the neighborhood's current demands. The Applicant also sought to address questions and concerns raised by the Edgewood Civic Association at the public hearing. In addition, the Applicant worked with NPF on creating the East Park and programs and amenities for the South Park. The Project responds to the communities demands by providing a substantial number of additional residential units within a walkable, town center environment that is in close proximity to several modes of transit, including Metrorail and the MBT. In addition, not only will the proposal result in additional retail uses, the Applicant has committed to providing artist live-work spaces on the ground-floor of the Project and the creation of the East Park, which will include a neighborhood dog park. This will also result in a new artistic destination along the MBT.

c. Increasing Access to Education and Employment: The guiding principles pertaining to increasing access to education and employment focus on growing economic activity in the District, as well as improving the lives and economic well-being of District residents. To do this from a policy and transportation perspective, the Comprehensive Plan recognizes the importance of improving access to education and jobs by capitalizing on the city's location at the center of the region's transportation systems. Providing more efficient, convenient, and affordable transportation for residents increases resident access to jobs within the District and the surrounding region. Moreover, expanding the economy means increasing shopping and services for many District neighborhoods, bringing tourists beyond the National Mall and into the city's business districts, and creating more opportunities for local entrepreneurs and small businesses. The

Project will advance the District's goals of improving access to jobs and education by redeveloping a vacant Site with a mixed-use building that will provide a substantial amount of new housing, including artist live-work spaces, and retail use directly adjacent to the MBT, and in close proximity to other modes of public transportation. The close proximity to transit will increase resident's and artist's ability to access educational opportunities and jobs without owning a vehicle and without the added expenses associated with vehicle ownership. This is especially relevant to those residents living in the affordable dwelling units that will be integrated into the Project and made available to households earning no more than 60% of the MFI. Furthermore, the Project includes five two-story, artist live-work spaces. The artist live-work spaces will also be designated as being affordable for households earning no more than 60% of the MFI. The proposed retail space will expand the District's economy in the Eckington neighborhood and along the MBT. This will create more opportunities for small and local businesses to thrive and create new employment opportunities for residents and will bring new artist centric enterprises along the East Park and MBT.

d. Connecting the City: The Project is not inconsistent with guiding principles pertaining to connecting the city. The Site is well-served by public transportation, including numerous Metrobus routes and is in close proximity to the NoMa-Gallaudet U Metrorail station (0.5 miles). The Project includes streetscape improvements that will improve mobility and circulation around the Site and throughout the neighborhood, including a much needed realignment of the MBT. The realignment of the MBT will increase bicycler safety through the removal of the hard right turn that crosses the Site. The streetscape and landscape design for the Project fosters a pedestrian-friendly environment along the perimeter of the Site, and creates a seamless integration with the proposed East Park and South Park.

e. Building Green and Healthy Communities: The Project is not inconsistent with the Comprehensive Plan's guiding principles pertaining to building green and healthy communities. A major component to successfully building green and healthy communities is the use of sustainable building construction and renovation techniques that minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. The Project is designed to integrate a host of sustainable features and will achieve a minimum of 60 points, which is equivalent to the LEED Gold standards under LEED NC-2009.

f. The OP setdown report stated that although the Project would further the overall goals of the Environmental Elements of the Comprehensive plan, it would not necessarily further *Policy E-3.4.3: Environmental Assessments*.(Ex. 12 at p. 16.) With respect to *Policy E-3.4.3: Environmental Assessments*, Section E-3.4 of the Comprehensive Plan states that the District of Columbia Environmental Policy Act ("DCEPA") "requires all District agencies to analyze and disclose the environmental effects of their major actions, including the permitting of new

development" and that this review requirement is initiated during the permitting process with the completion and submission of an Environmental Impact Screening Form ("EISF"). *See* 10A DCMR §§ 616.1 and 616.2 (emphasis added). As required by the DCEPA and 20 DCMR Chapter 72, and consistent with Policy E-3.4.3, the Applicant will submit an EISF to the Department of Consumer and Regulatory Affairs ("DCRA") as part of the building permit review for the Project. The EISF will be reviewed by the Department of Energy and the Environment ("DOEE") and other agencies and utilities as part of their review of the Project. As a result, the Commission finds the Project is not inconsistent with *Policy E-3.4.3* and the Environmental Element of the Comprehensive Plan overall.

g. Overall, the Commission finds the Project not inconsistent with the objectives and policies contained within the citywide and area elements of the Comprehensive Plan, as applicable, as set forth in the Applicant's Summary of Compliance with the Comprehensive Plan (Ex. 2H) and the reports of the Office of Planning. (Exs. 12 and 30.) Specifically, the Commission finds that the provision of five artist live-work units is not inconsistent with *Policy CW-2.8.2; East of the Tracks and Eckington Place Transition Areas,* which encourages the creation of a "production/arts and live-work, mixed use area east of the CSX railroad tracks between H Street, N.E. and Florida Avenue N.E., and in the area east of Eckington Place and north of New York Avenue. 10A DCMR § 1618.10. In addition, the Commission also finds that the Project furthers *Policy H-1.3.1: Housing For Families,* which encourages providing a larger number of housing units for families with children by encouraging new three-bedroom apartments and is also not inconsistent with the Site's designation as PDR on the FLUM. *See* 10A DCMR § 505.6. Finally, the Project is not inconsistent with those policies contained within the Arts and Culture element supporting new affordable housing opportunities for the creative workforce. *See* 10A DCMR § 1409

Office of Planning Reports and Testimony

85. On July 14, 2017, OP submitted a report recommending setdown of the application. (Ex. 12.) The OP setdown report stated that the Project is "not inconsistent with the Comprehensive Plan" (Ex. 12, p. 1). The OP report further explained that the Project is consistent with the PUD Site's designations on the FLUM and GPM but suggested that compliance with the Comprehensive Plan could be strengthened through the provision of additional artist live work spaces. *Id.* at pg. 5. However, the OP report concluded that the Project is not inconsistent with the Comprehensive Plan since "[t]he project would not be as dense or as tall as what could be built by-right on the site." *Id.*

86. On December 4, 2017, OP submitted a hearing report (Ex. 30.) The OP hearing report stated that "the proposed PUD appears to be a well-designed project that would contribute to the availability of transit-accessible housing, District arts production policies, the creation of new public parks, and the enhancement of alternative modes of transportation." (Ex. 30, p. 1.) The OP hearing report recommended approval of the application and advised that the Applicant: (i) further clarify the proposal's consistency with the

Comprehensive Plan's direction that the Site is appropriate for a mix of uses including PDR; (ii) clarify minor discrepancies among residential FAR and square footages in different charts on Sheet G07; (iii) should increase the affordable housing commitment; (iv) provide procedures to ensure that the rental of the proffered low-income artist live-work space meets income guidelines for the life of the Project; (v) clarify that the proffered market rate artist live-work spaces will be dedicated for the life of the Project; (vi) commit to consulting with DHCD prior to the issuance of a building permit to ensure that all artist live-work spaces are consistent with the District's Artist Live and Work program and other housing policies; (vii) commit to executing an agreement with a recognized arts organization for the administration of all of the artist live-work spaces; (viii) commit to including the NPF on the selection panels for the proposed public artwork; (ix) provide greater detail on equipment and features in the East Park and South Park for which the applicant will pay, in a format that ensures the trackability of compliance with the conditions related to the proffer; (x) provide a draft agreement with the NPF concerning responsibilities for physical improvements and maintenance related to the East and South Parks; (xii) provide details about the design of ground floor retail entrances; (xii) clarify how the applicant will engage in outreach to the adjacent neighborhood for employment opportunities in the ground floor retail spaces; (xii) proffer a First Source Agreement and/or a Certified Business Enterprise Agreement or provide an explanation of why it is not being proffered. On December 13, 2017, the Applicant filed a response to OP's hearing report addressing all of the above outlines issues. (Ex. 33-33D.)

87. At the public hearing, OP testified that the Applicant's proffered public benefits and project amenities are significant and outweigh the relatively minor development incentives and flexibility requested by the Applicant. (Tr. at pg. 39.) In addition, OP testified that the PUD and related Zoning Map amendment are not inconsistent with the Comprehensive Plan. (Tr. at pg. 39.) However, OP also testified that they were unable to support the PUD and requested additional affordable housing and PDR related uses. (Tr. at pg. 47.). On January 9, 2018, the Applicant submitted its Post-Hearing Submission which included the Applicant's commitment to provide an additional artist live work space in the Project. As a result, the Applicant is providing 10.7% of the residential square footage of the Project as affordable housing (8% for IZ and 2.7% for artist live-work units).

88. On _____, the OP submitted its Post-Hearing Report (Ex.___).

89. As a result, the Commission finds that the Applicant responded to all of OP's concerns.

DDOT Report and Testimony

90. On December 4, 2017, DDOT submitted a hearing report. (Ex. 31.) The DDOT hearing report indicated no objection to the application subject to the Applicant:

    a. Enhancing the TDM measures to include the following elements:

i. Provide at least one shopping cart for every 25 residential units for a total of 13 shopping carts;

ii. If an agreement is not reached with a car sharing service to occupy the two dedicated car sharing spaces in the garage then the applicant will provide an additional year of Capital Bikeshare memberships to new residents. Also, remove reference to on-street car-sharing spaces;

iii. Clarify in the TDM plan that the unbundled cost of parking will be based on the average market rate within a quarter mile, rather than the lowest cost of nearby parking spaces; and

iv. Provide two electric car charging stations.

91. The DDOT report also requested that the Applicant: (i) submit an all-way stop warrant analysis to DDOT for the intersection of Harry Thomas Way and Eckington Place, NE; (ii) install a bicycle/pedestrian counter with digital display along the MBT in the vicinity of the Site; (iii) should design and fund the restriping of Harry Thomas Way, N.E. between Eckington Place and R Street, N.E. to accommodate one-way protected bicycle lanes on both sides, subject to DDOT approval; (iv) fund and construct curb extensions on all corners of the intersection of Harry Thomas Way/3rd Street and R Street, N.E. consistent with the design of protected bicycle lanes on Harry Thomas Way, N.E. subject to DDOT approval; (v) connect the R Street, N,E, sidewalk along the northern edge of the building to the MBT; and (iv) confirm that the Applicant commits to keeping the MBT open during construction of the Project.

92. The Applicant responded to the DDOT's hearing report by memorandum dated December 13, 2017[2], prepared by Gorove/ Slade Associates and as supplemented by the testimony of Mr. Andres at the public hearing. (Ex. 34-34A.)

93. At the public hearing, Mr. Aaron Zimmerman of DDOT testified that DDOT was agreeable to the Applicant's revised TDM measures and public space improvements to mitigate the impacts of the Project and that DDOT has no objection to the application. (Tr. at pg. 41.)

94. As a result, the Commission finds that the Applicant responded to all of DDOT's concerns.

DOEE Report

95. On December 4, 2017, DOEE submitted a hearing report. (Ex. 29.) The DOEE hearing report indicated no objection to the application and indicated that any comments can be "fully addressed through any of DOEE's normal regulatory review processes." (Ex. 29 at pg. 1.). DOEE had the following recommendations for the project:

[2] The Applicant's memorandum incorrectly references December 13, 2016.

- DOEE's Watershed Protection Division (WPD) recommended that the project capture a 1.7" rain storm event.

- DOEE's Air Quality Division (AQD) recommends that the applicant consider using lower-emitting technologies to the extent possible to provide power, heating, and cooling.

- DOEE encouraged that the project incorporate solar panels that would generate a minimum of 1% - 3% of the buildings' total energy use. DOEE also recommended that the applicant take advantage of financial programs and opportunities that would finance an increased commitment to sustainability.

- DOEE asks that this project increase its commitment to sustainability and achieve a minimum of LEED Gold certification under LEED v4.

96. On December 13, 2017, the Applicant filed a response to OP's hearing report. (Ex. 33-33D.) In its response the Applicant confirmed that it will continue to work with DOEE through their normal regulatory review process to address any of their open recommendations. With respect to stormwater management, the Project will meet the regulatory requirements for retention and treatment of stormwater, as shown on Sheets CIV600 through CIV650 of the Plans. The Applicant will continue to work with DOEE during the permitting process to further refine the stormwater management plan. The Applicant submitted a second response to address DOEE's comments in its Post-Hearing Submission. (Ex. 41-41D.)

97. As requested by DOEE, the Applicant will provide approximately 1,500 square feet of solar panels on the roof of the building, which will generate approximately 1% of the building's total energy use. The solar panels have been oriented to maximize their southern exposure and to locate them in the most linear fashion. The Applicant will continue to work with DOEE during the permitting process in the event that additional solar panels or new technology can be incorporated into the project.

98. With respect to LEED v4, the Applicant registered the project with LEED during the initial design phase of the PUD. At the time of initial design and registration, the LEED standard was LEED NC-2009. As a result, the Applicant is committed to designing the PUD to the LEED Gold Standard under LEED NC-2009.

99. As a result, the Commission finds that the Applicant responded to DOEE's concerns.

Interagency Review

100. Pursuant to 11-X DCMR § 304.4, the Commission shall find that the Project does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the Project.

101. In this case, and as set forth in the OP setdown report, OP circulated the application to DOEE, the Department of Housing & Community Development ("DHCD"), DDOT, the Department of Parks and Recreation ("DPR"), DC Public Schools ("DCPS"), Department of Public Works (DPW), Department of Aging ("DOA"), Department of Employment Services (DOES); Fire and Emergency Medical Services Department ("FEMS"), the Metropolitan Police Department ("MPD"), DC Water, and WMATA. (Ex. 12 at pg. 29.)

102. The Applicant has worked closely with DDOT to determine the appropriate location for the access to the below-grade parking and loading facilities and the location of the grated electric vaults. On June 22, 2017, the District of Columbia Public Space Committee approved the concept plan for these locations. (Ex. 15G.)

103. On November 13, 2017, the Applicant attended an interagency meeting with OP, DDOT, DOEE, and DPR during which the Applicant responded to relevant agency comments.

104. Other than DDOT and DOEE, there are no comments in the record from any of the aforementioned agencies.

105. Based on the evidence in the case record, the Commission finds that the Project will not have any negative impacts on the surrounding area and will not have an unacceptable impact on the operation of city services and facilities.

Advisory Neighborhood Commission

106. ANC 5E, the ANC within which the Site is located, submitted a letter dated December 13, 2017, indicating that at a duly noticed special public meeting on December 11, 2017, at which notice was properly given and a quorum was present, ANC 5E voted to support the PUD, with conditions relating to further review of the community benefits associated with the PUD. The ANC raised no concerns relating to the design, height, bulk or use of the Project.

107. ANC 5E has reviewed the PUD at several meetings, including at its May 21, 2017, public meeting, where the ANC focused on the Project's design. In addition, ANC 5E focused on the community benefits at the following meetings: ANC 5E public meeting on October 17, 2017; ANC 5E public meeting on November 21, 2017; ANC 5E Committee of the Whole meeting on December 2, 2017; ANC 5E special public meeting on December 11, 2017; ANC 5E public meeting in December 19, 2017; and ANC 5E public meeting on January 16, 2018.

108. Commissioner Hannah Powell (the Single Member District Representative) testified at the public hearing on behalf of the ANC and indicated that ANC 5E supported of the Project subject to further review of the community benefits associated with the PUD. (Ex. 38.)

109. ANC 5E submitted an additional letter dated _____, 2018 indicating that at a duly noticed special public meeting on January 16, 2018, at which notice was properly given and a quorum was present, ANC 5E voted to _____.

Eckington Civic Association – Party in Support

110. The ECA reviewed the PUD and community benefits package at several meetings including its January 9, 2017, public meeting, September 25, 2017, ECA Development Committee meeting, October 2, 2017, public meeting, and November 6, 2017, public meeting.

111. At its November 6, 2017, public meeting, the ECA voted 12-0 to support the Project and the community benefits proffered by the Applicant.

112. On December 13, 2017, the Eckington Civic Association ("ECA") filed a request for party status in support of the application. At the public hearing the ECA was granted party status.

113. At the public hearing, ECA President Katrina Velasquez testified that the Applicant worked closely with the ECA to developed a community benefits package that was responsive to the needs of Eckington residents. (Tr. at pg. 53.)

Contested Issues

Affordable Housing and Compliance with the PUD Requirements of* 11-X DCMR § 304 *et. seq.

114. At the public hearing OP testified that they were unable to support the Project and requested that the Applicant provide additional affordable housing as an amenity for the PUD. (Tr. at pg. 47.)

115. The Applicant provided evidence and arguments that the Applicant's proffered public benefits and project amenities are significant and far outweigh the relatively minor development incentives and flexibility requested by the Applicant. The Applicant is requesting flexibility to have a side yard of five feet where 13 feet, 10 inches is required pursuant to 11-G DCMR § 406.1. The only other flexibility requested by the Applicant is the Zoning Map amendment from the PDR-2 and PDR-4 District, which is arguably inconsistent with the Site's Mixed-use (Medium Density Residential/Production, Distribution, and Repair) FLUM designation since residential is not permitted in PDR Districts, to the MU-5-A District. The PUD has a lower height and FAR than is permitted by the MU-5-A Zone District regulations. The maximum building height of 83 is consistent with the matter of right height under the current zone designation (i.e. 90 feet for PDR-4) and the maximum FAR of 4.03 is less dense compared to what would be permitted as a matter of right under the current zone designations, which is a blended FAR of 5.72.

116. The Applicant has proffered public benefits and project amenities in numerous categories outlined in the Zoning Regulations, including the provision of benefits (land

and funding) that result in much-needed parks and open spaces. The Project includes affordable housing with a focus on larger, family-sized units. The Applicant commits to contribute a total of $62,500 to local schools, the Harry Thomas Recreation Center, and the Bloomington Civic Association, for specific priorities that can be fulfilled prior to the issuance of a certificate of occupancy for the Project

117. A PUD may qualify for approval by being particularly strong in only one or a few of the categories listed in 11-X DCMR § 305 *et. seq.*, but must be acceptable in all proffered categories and superior in many. 11-X DCMR § 305.12. The Applicant's proffered public benefits and project amenities are particularly strong in the creation or preservation of open spaces and is acceptable or superior in all of the additional categories.

118. At the public hearing, OP testified that the benefits and amenities balanced against the flexibility requested. (Tr. at pg. 39.)

119. Following the public hearing, the Applicant agreed to provide an additional artist live-work space reserved for local artists earning equal to or less than 60% of the MFI, which will remain affordable for the life of the Project. This additional artist live-work space results in an increase of the overall amount of affordable housing in the Project, which supports the policies for additional affordable housing about which OP testified at the hearing. Specifically, the Applicant commits to reserving 10.7% of the residential square footage of the Project as affordable housing (8% for IZ and 2.7% for artist live-work spaces). This amount of affordable housing represents a substantial increase in the amount of affordable residential floor area when compared to the fact that no affordable housing would be generated if the Site was developed as a matter-of-right under the existing zoning. *See* 11-X DCMR § 305.5(g) ("Affordable housing; except that affordable housing provided in compliance with the Inclusionary Zoning requirements of 11-C DCMR, Chapter 22, shall not be considered a public benefit except to the extent it exceeds what would have been required through matter-of-right development under existing zoning.")

120. OP filed a supplemental report on January __, 2018 (Ex. __) finding _____.

121. The Zoning Commissions finds that the Applicant's proffered public benefits and project amenities are sufficient and outweigh the development incentives and flexibility requested by the Applicant.

Consistency with the Comprehensive Plan and the Site's Designation on the FLUM

122. In its report and testimony, OP requested that the Applicant provide additional PDR related uses in order to comply with the FLUM.

123. At the hearing, the Applicant provided evidence that the Project complies with the FLUM in accordance with FF Nos. ____.

124. After the public hearing, the Applicant agreed to incorporate another artist live-work space into the Project, which increases the amount of PDR uses provided in the Project.

125. The provision of five artist live-work units is not inconsistent with *Policy CW-2.8.2; East of the Tracks and Eckington Place Transition Areas*, which encourages the creation of a "production/arts and live-work, mixed use area east of the CSX railroad tracks between H Street, N.E. and Florida Avenue N.E., and in the area east of Eckington Place and north of New York Avenue. 10A DCMR § 1618.10. The Project is also not inconsistent with those policies contained within the Arts and Culture element, which encourages new affordable housing opportunities for the creative workforce. *See* 10A DCMR § 1409

126. As a result, the Applicant is providing uses that further the Site's PDR designation since artist live-work spaces are explicitly included within the Arts, Design, and Creation use category, and Arts, Design, and Creation uses are permitted in PDR Districts as a matter of right. *See* 11-B DCMR § 200.2(e) and 11-U DCMR § 801.1(e). The proposed amount of artist live-work space is appropriate when considering it within the guidance for compliance with the Comprehensive Plan and the broader context of the area that has been identified in the FLUM for the mixed-use designation, as discussed above.

127. While the additional artist live-work space will result in the elimination of one three-bedroom unit on the ground floor of the building, the Project still includes a substantial number of two and three-bedroom units to support the housing policies of the Comprehensive Plan. Overall, approximately 38% of the units in the project are proposed to be two- and three-bedroom units. Additionally, the Applicant has committed to reserve 14 two-bedroom units and 4 three-bedroom units as IZ units. Thus, the PUD and requested Zoning Map amendment is not inconsistent with the Comprehensive Plan since it furthers *Policy H-1.3.1: Housing For Families*, which encourages providing a larger number of housing units for families with children by encouraging new three-bedroom apartments and is also not inconsistent with the property's designation as PDR on the Future Land Use Map. *See* 10A DCMR § 505.6.

128. OP filed a supplemental report on January __, 2018 (Ex. __) finding _____.

129. The Commission finds that the Project is not inconsistent with the Mixed Use: Medium Density Residential / PDR FLUM designation, since the Project is a mixed-use project containing residential, retail, and artist live-work spaces.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (a) results in a project superior to what would

result from the matter-of-right standards; (b) offers a commendable number or quality of meaningful public benefits; and (c) protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan. 11-X DCMR § 300.1.

2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. Development of the property included in this application carries out the purposes of 11-X DCMR, Chapter 3 of the Zoning Regulations to encourage the development of well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

4. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The mix of uses for the Project is appropriate for the Site. The impact of the Project on the surrounding area is not unacceptable. Accordingly, the Project should be approved.

5. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

6. The Applicant's requests for flexibility are not inconsistent with the Comprehensive Plan. Moreover, the PUD benefits and amenities are reasonable tradeoffs for the requested development flexibility.

7. Approval of the PUD is appropriate because the Project is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the Project 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 Map of the District of Columbia.

8. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP reports in this case and, as explained in this decision, finds its recommendation to grant the application persuasive.

9. 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. ANC 5E's report expressed no issues or concerns. Because the ANC expressed no issues or concerns, there is nothing for the Zoning Commission to give

great weight to. *See* Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment, 141 A.3d 1079, 1087 (D.C. 2016).

10. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2- 1401 et seq. (2007 Repl.).

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission **ORDERS APPROVAL** of the application for a Consolidated PUD. The Zoning Commission also **ORDERS APPROVAL** for the PUD-related Zoning Map amendment to rezone the Site from PDR-2 and PDR-4 District to the MU-5-A District. This approval is subject to the following guidelines, conditions, and standards. Whenever compliance is required prior to, on or during a certain time, the timing of the obligation is noted in bold and underlined text.

A. PROJECT DEVELOPMENT

1. The PUD shall be developed in accordance with the plans titled "Eckington Park", prepared by Torti Gallas Urban dated November 21, 2017, and marked as Exs. 28A1-28A3 of the record, as modified by Sheet G07 titled "Zoning Analysis", submitted with the Applicant's Post-Hearing Submission, and marked as Ex. 41A of the record (collectively the "Plans").

2. The Applicant shall have flexibility with the design of the PUD in the following areas:

    a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria and mechanical rooms, provided that the variations do not change the exterior configuration of the building;

    b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction;

    c. To increase the final number of residential units by no more than 5% above the total number approved to respond to market demand, or to decrease the final number of residential units within the approved gross floor area in order to accommodate demand for larger units;

    d. To vary the location, attributes and general design of the streetscape incorporated in the project to comply with the requirements of and the approval by the DDOT Public Space Division;

e. To make refinements to the garage configuration, including layout, parking spaces and other elements, so long as the number of parking spaces provided is at least the minimum number of spaces required by the Zoning Regulations;

f. To make refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, venting, window mullions and spacing, or any other changes to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit or any other applicable approvals;

g. To modify or revise the landscape design of the East Park so long as no portion of the principal building extends into the area of the East Park and that the East Park is maintained only for the realignment of the MBT, a dog park, and related open space;

h. To locate retail entrances in accordance with the needs of the retail tenants and vary the façades as necessary within the general design parameters proposed for the project and to vary the types of uses designated as "retail" use on the PUD Plans to include the following use categories: (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); and (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j)); and

i. To vary the font, message, logo, and color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the approved PUD Plans.

B. PUBLIC BENEFITS

1. **Prior to the issuance of a certificate of occupancy for the Project,** the Applicant shall deed to the NoMa Parks Foundation approximately 20,050 square feet of the Site for creation of the East Park to house the realigned MBT, a neighborhood dog park, and general open space.

2. **Prior to the issuance of a certificate of occupancy for the Project,** the Applicant shall donate $165,000 to NoMa Parks Foundation, or its designee, to fund the construction of a neighborhood dog park within the East Park. The Applicant shall provide proof to the Zoning Administrator that the funds have been donated and are being used in accordance with this condition.

3. **Prior to the issuance of a certificate of occupancy for the Project**, the Applicant shall construct the streetscape and landscape improvements as shown on Sheets L-01 though L-06 of the Plans, subject to DDOT approval.

4. **For the life of the Project,** the Applicant shall provide art installations at the ground floor fronting on the MBT and on the upper level roof deck at the southeast corner of the Project.

5. **For the life of the Project,** the Applicant shall provide the following housing and affordable housing:

   a. The Applicant shall set aside 8% of the residential square footage of the Project as IZ units reserved for households earning equal to or less than 60% of the MFI. The Applicant shall reserve a minimum of 14 two-bedroom units and 4 two-story, three bedroom units on the ground floor as IZ units.

   b. The Applicant shall reserve five, two-story loft spaces that front on the East Park as artist live-work spaces. The artist-live work spaces shall be reserved for local artists earning equal to or less 60% MFI. The artist live-work spaces shall be administered through a partnership with CuDC in accordance with the outline marked as Ex. 33B of the record.

   c. The affordable housing units shall be distributed in accordance with the chart below; and

Residential Unit Type	Net Residential Square Feet/ Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	244,744 sf (100%)	328	N/A	N/A	N/A
Market Rate	218,436 sf (89.3%)	307	Market Rate	N/A	Rental
IZ	19,580 sf (8%)	16	Up to 60% MFI	Life of the project	Rental
Non IZ affordable	6,728 sf (2.7%)	5	Up to 60% MFI	Life of the project	Rental

d. The covenant required by D.C. Official Code §§ 6-1041.05(a)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with this Condition.

6. **Prior to the issuance of a certificate of occupancy for the Project,** the Applicant shall demonstrate to the Zoning Administrator that it has provided at least four construction skills training seminars for the students at McKinley Technology High School during construction of the Project, in accordance with the outline marked as Ex. 41C of the record.

7. **The Applicant shall submit with its building permit application,** a checklist evidencing that the Project has been designed to achieve 60 points under LEED NC-2009, which is equivalent to the USGBC LEED Gold standard.

8. **Prior to the issuance of a certificate of occupancy for the Project,** the Applicant shall provide approximately 1,500 square feet of solar panels on the building's roof, as shown on Sheet A05 of the Plans.

9. **During the operation of the building,** the Applicant shall provide a Transportation Management Program, as set forth in the Transportation Demand Management ("TDM") section of the Comprehensive Transportation Review in the record at Ex. 26A, as supplemented by the Applicant's Response to DDOT in the record at Ex. 34A, and as further supplemented by the Applicant at the public hearing. The TDM Plan shall include the following:

   a. The Applicant shall identify TDM Leaders (for planning, construction, and operations). The TDM Leaders shall work with goDCgo staff to create free customized marketing materials and a TDM outreach plan for residents and retail employees, including developing a site-specific transportation guide for residents and visitors.

   b. The Applicant shall provide updated contact information for the TDM Leader and report TDM efforts and amenities to goDCgo staff once per year.

   c. The Applicant shall stock Metrorail, Metrobus, DC Circulator, Capital Bikeshare, Guaranteed Ride Home, DC Commuter Benefits Law, and other brochures through building management.

   d. The Applicant shall unbundle all parking costs from the cost of the leases. The parking costs shall be based on the average parking rate for multi-family developments within a quarter-mile of the Site that have been constructed within the last 5 years.

   e. For a total of three years, the Applicant shall offer to each new residential lease either a one-year membership to Capital Bikeshare or a one year membership to a

carsharing service in an amount of $85 for an annual membership. The maximum amount the Applicant will pay for this benefit is $27,880.

f. The Applicant shall provide approximately 174 long-term bicycle parking spaces in the below-grade parking garage. The Applicant shall provide approximately 30 short-term bicycle parking spaces in the form of 15 U-racks within and along the perimeter of the Site, subject to approval by DDOT.

g. The Applicant shall install Transportation Information Center Displays (kiosks or screens) within the lobby of the building, containing information related to local transportation alternatives.

h. The Applicant shall dedicate two spaces for carsharing services to use with the right of first refusal. If the Applicant is unable to secure a carsharing provider for the two dedicated carsharing spaces, then the Applicant shall host WABA's Everyday Bicycling Seminars two times a year for a total of three years.

i. The Applicant shall include a provision in all residential leases restricting the building's lessees from obtaining Residential Parking Permits.

j. The Applicant shall provide at least one shopping cart for every 25 residential units, for a total of 13 shopping carts.

k. The Applicant shall provide two electric vehicle charging stations at the Site.

l. The Applicant shall install a bicycle maintenance facility within the long-term bicycle parking area.

10. **Prior to the issuance of a certificate of occupancy for the Project,** the Applicant shall fund the installation of striping and signage necessary to convert the intersection of Eckington Place, N.E. and Harry Thomas Way, N.E. to an all-way stop controlled intersection. The improvements shall consist of the installation of stop signs, stop bars along Eckington Place, NE, new crosswalks along Eckington Place, N.E. and Harry Thomas Way, N.E., ADA compliant curb ramps that align with each crosswalk, and detectable warning strips at each curb ramp at the intersection of Eckington Place, N.E. and Harry Thomas Way, N.E., subject to approval by DDOT. The Applicant shall also construct curb extensions at the intersection of Eckington Place, N.E. and Harry Thomas Way, N.E., pending DDOT's final redesign of Eckington Place, N.E. and subject to approval by DDOT. The Applicant shall also construct curb extensions on the southwest and southeast corners of the intersection of Harry Thomas Way, N.E. and R Street, N.E., subject to approval by DDOT.

11. **Prior to the issuance of a certificate of occupancy for the Project,** the Applicant shall contribute $80,000 to the NoMa Parks Foundation, or its designee, to fund the realignment of the MBT as it crosses the Site through the East Park. The Applicant shall provide proof to the Zoning Administrator that the funds have been donated and are being used in accordance with this condition.

12. **Prior to the issuance of a certificate of occupancy for the Project,** the Applicant shall contribute $350,000 to the NoMa Parks Foundation, or its designee, to fund the construction of an amphitheater in the South Park and to the extent funds remain, to construct food services kiosks in the South Park. The Applicant shall provide proof to the Zoning Administrator that the funds have been donated and are being used in accordance with this condition.

13. **Prior to the issuance of a certificate of occupancy for the Project,** the Applicant shall donate a total of $62,500 to local schools, the Harry Thomas Recreation Center, and the Bloomington Civic Association to fully fund the following initiatives:

    a. McKinley Technology High School: $25,000 allocated as follows: $15,000 for construction trade internships for McKinley Technology students; and $10,000 to purchase laptops/computers to replace outdated technology.

    b. Harmony Elementary: $8,500 to purchase Chromebooks to support in-classroom educational technology and standardized testing methods.

    c. Langley Elementary: $15,000 to purchase laptops to replace outdated technology and to increase the total number of work stations available for student use.

    d. Harry Thomas Recreation Center: $11,000 allocated as follows: $8,500 to purchase tablets/computers for before/after school programs focused on enhancing literacy skills for children ages pre-k to 5th grade; and $2,500 to purchase a new TV or projector.

    e. Bloomington Civic Association Scholarship Fund: $3,000 total to fund two (2) scholarships for high school students who live within the District-recognized boundaries of Bloomingdale and/or are a student or alumni of McKinley Technology High School.

    f. **Prior to the issuance of a certificate of occupancy for the Project,** the Applicant shall provide proof to the Zoning Administrator that the identified items or services has been or are being provided in accordance with this condition.

14. **Prior to the issuance of a certificate of occupancy for the Project,** the Applicant shall contribute $40,000 to a partnership between Manna, Inc. and the LEDC to fund affordable housing training and assistance for Eckington residents in accordance with the outline marked as Ex. 33D of the record. The Applicant shall provide proof to the Zoning Administrator that the funds have been donated and that the services have been or are being provided in accordance with this condition.

C. MISCELLANEOUS

1. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

2. The PUD shall be valid for a period of two (2) years from the effective date of this Order. Within such time an application shall be filed for a building permit, with construction to commence within three (3) years of the effective date of this Order.

3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

4. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

On January 29, 2017, upon the motion of _____, as seconded by _____, the Zoning Commission took PROPOSED ACTION to APPROVE the application at its public meeting by a vote of 5-0-0 (Anthony J. Hood, Robert E. Miller, Peter G. May, Michael G. Turnbull, and Peter Shapiro to approve).

On _____, upon the motion of _____, as seconded by _____, the Zoning Commission took FINAL ACTION to APPROVE the application at its public meeting by a vote of _____ (Anthony J. Hood, Robert E. Miller, Peter G. May, Michael G. Turnbull, and Peter Shapiro to approve).

In accordance with the provisions of 11-Z DCMR § 604.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the D.C. Register; that is, on _____.

ANTHONY HOOD **Chairman,** **Zoning Commission**	**SARA B. BARDIN** **Director.** **Office of Zoning**