



PLANNED UNIT DEVELOPMENT COVENANT

**Z.C. CASE NO. 17-10
The Warrenton Group
(Consolidated PUD and Related Map Amendment
@ Square 5196, Lots 19, 37, 805, and 814)**

THIS PLANNED UNIT DEVELOPMENT COVENANT (this “Covenant”), is made as of this 30th day of April, 2019, by and between **NANNIE HELEN OWNER, LLC**, a District of Columbia limited liability company (the “Owner”), and the **DISTRICT OF COLUMBIA**, a municipal corporation (the “District”).

WITNESSETH:

WHEREAS, Owner owns in fee simple the property known as Lots 19, 37, 805, and 814 in Square 5196 (the “PUD Site”), known as premises address 5119-5123 and 5127 Nannie Helen Burroughs Avenue, N.E. and 612 Division Avenue, N.E., Washington, D.C., as is more particularly described in Zoning Commission Case No. 17-10 and in Exhibit A attached hereto and incorporated herein;

WHEREAS, pursuant to Chapter 3 of Subtitle X of the Zoning Regulations of the District of Columbia (Title 11 of the District of Columbia Municipal Regulations, the “Zoning Regulations,” to which all subsequent references are made unless otherwise specified), the Zoning Commission of the District of Columbia (the “Commission”) approved an application for a Planned Unit Development (the “PUD”) and related Zoning Map amendment for the PUD Site by Z.C. Order No. 17-10, dated January 29, 2018, which became final and effective on March 30, 2018 (the “Order”);¹

WHEREAS, Chapter 3 of Subtitle X requires that Owner enter into this Covenant with the District assuring that the Owner (and its successors in title) develop and use the PUD Site

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only as approved by the Commission in the Order and all modifications, alterations or amendments thereto;

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

1. Approved Plans, Terms and Conditions. The terms and conditions of the Zoning Commission's approval of the PUD and related Zoning Map amendment for the PUD Site in the Order (as the same may be amended and/or modified from time to time), are incorporated herein by reference and made a part hereof as Exhibit B and shall be considered a part of this Covenant. The PUD Site shall be developed and used in accordance with the plans approved by the Order and in accordance with the conditions and restrictions contained in the Order, subject to such changes thereto as the Zoning Administrator of the District of Columbia (the "ZA") may authorize pursuant to Subtitle A § 304.5, or changes made by the Commission pursuant to Subtitle Z, Sections 703 or 704. Owner covenants that it shall use the PUD Site only in accordance with the terms of the Order, as the same may be further amended and/or modified from time to time, subject to the terms and conditions contained herein and the provisions of Subtitle X, Chapter 3.

2. Additional Time to Construct PUD. If Owner should fail to file for a building permit for and/or to commence construction of the approved PUD within the time specified in Subtitle Z, Sections 702.2 or 702.3 and the Order, the Commission may duly consider an application for an extension of time for good cause in accordance with and subject to the limitations of Subtitle Z, Section 705.

¹ Owner acquired the PUD Site after the Commission approved the Order and so assumed the responsibilities and rights of the Applicant in the Order (The Warrenton Group).

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, NANNIE HELEN OWNER, LLC, a District of Columbia limited liability company, has caused this Covenant to be signed in its name by Stephen Green, its duly authorized Chief Operating Officer, for purposes of executing, acknowledging and delivering this Covenant, as the act and deed of said NANNIE HELEN OWNER, LLC, all as of the day and year hereinbefore written.


OWNER:

NANNIE HELEN OWNER, LLC,
a District of Columbia limited liability company

By: Nannie Helen Manager, LLC,
a District of Columbia limited liability company,
its sole member

By: Nannie Helen NHPF, LLC,
a District of Columbia limited liability company,
its sole member

By: The NHP Foundation
a District of Columbia nonprofit corporation,
its sole member

By: 
Name: Stephen Green
Title: Chief Operating Officer

DISTRICT OF COLUMBIA, to wit:

This Covenant was acknowledged before me on the 18 day of March, 2019, by Stephen Green, the Chief Operating Officer of The NHP Foundation, a District of Columbia nonprofit corporation, the sole member of Nannie Helen NHPF, LLC, a District of Columbia limited liability company, the manager of Nannie Helen Manager, LLC, a District of Columbia

limited liability company, the sole member of Nannie Helen Owner LLC, a District of Columbia limited liability company.

WITNESS my hand and official seal this 18 day of March, 2019
Casey Root
Notary Public

[Notarial Seal]

My Commission Expires: 4/30/19



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

DISTRICT:

DISTRICT OF COLUMBIA,
a municipal corporation

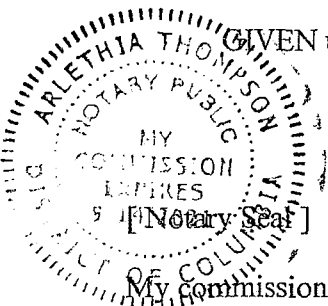
By: Kimberly A. Bassett
Secretary of the District of Columbia

[CORPORATE SEAL]

DISTRICT OF COLUMBIA, ss:

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

GIVEN under my hand and seal this 30 day of April, 2019.



Arlethia Thompson
Notary Public, D.C.

My commission expires: 09/14/2021

APPROVED:

Matthew LeGrant

Matthew LeGrant

Zoning Administrator

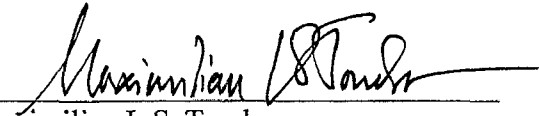
Department of Consumer and Regulatory Affairs

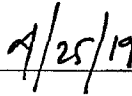
(PUD Covenant for Square 5196, Lots 19, 37, 805, and 814 per Z.C. Order 17-10)

3-25-19

Date

APPROVED AS TO LEGAL SUFFICIENCY:





Maximilian L.S. Tondro

Assistant Attorney General, *Section Chief*

Office of the Attorney General for the District of Columbia

(PUD Covenant for Square 5196, Lots 19, 37, 805, and 814 per Z.C. Order 17-10)

EXHIBIT A

Lot 37 in Square 5196 in the subdivision made by Nathan Fishkin, as per plat recorded in Liber No. 128 at folio 104 of the Records of the Office of the Surveyor for the District of Columbia.

Lot 19 in Square 5196 in the subdivision made by Sydney F. Marshall of part of a track of land now known as "Beverly", as per plat recorded in Liber No. County 21 at folio 20 of the Records of the Office of the Surveyor for the District of Columbia.

Part of a Public Alley Closed as per plat recorded in Liber No. 199 at folio 89 of the Records of the Office of the Surveyor for the District of Columbia and being bounded and described as follows:

BEGINNING for the same at the northwest corner of Lot 19 as shown on a plat recorded in Liber No. County 21 at folio 20 of the Surveyor's Office Records and running thence

S 14° 31' 00" W 9.57 feet to a point; thence

N 75° 29' 00" W 7.50 feet to a point thence

N 14° 31' 00" E 7.63 feet to the southerly line of a 15-foot wide public alley; thence

East 7.7 feet along the southerly line of the said public alley to the northwest corner of Lot 19 and the point of beginning

NOTE: At the date hereof the above described land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as Lot 814 in Square 5196.

Lot 22 and the East 13 feet front on Grant Street by the full depth thereof of Lot 23 in Square 5196 in a subdivision made by Sydney F. Marshall called "Beverly", as per plat recorded in Liber 21 at folio 20 in the Office of the Surveyor for the District of Columbia.

NOTE: At the date hereof the above described land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as Lot 805 in Square 5196.

EXHIBIT B

ZONING COMMISSION ORDER NO. 17-10

[appended]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 17-10
Z.C. Case No. 17-10
The Warrenton Group
(Consolidated PUD and Related Map Amendment
@ Square 5196, Lots 19, 37, 805, and 814)
January 29, 2018

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on November 16, 2017, to consider an application for a consolidated planned unit development (“PUD”) and a related zoning map amendment filed by The Warrenton Group (“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, Hearings, and Post-Hearing Filings

1. On May 5, 2017, the Applicant filed an application with the Commission for consolidated review of a PUD and a related Zoning Map amendment from the MU-3 zone to the MU-5-A zone for the properties located 5119-5123 and 5127 Nannie Helen Burroughs Avenue, N.E. and 612 Division Avenue, N.E. (Square 5196, Lots 19, 37, 805 and 814) (collectively, the “Property”).
2. The Applicant proposes to redevelop the Property with a mixed-use PUD that includes approximately 86 residential units, comprised of one-bedroom and two-bedroom units, all of which will be reserved for households with incomes not exceeding 60% of the median family income (“MFI”) and approximately 2,400 square feet of ground-floor commercial/non-residential uses (“Project”). Of the 86 units, 28 will be replacement units for the Lincoln Heights and Richardson Dwellings properties controlled by the D.C. Housing Authority (“DCHA”), in accordance with the *Lincoln Heights & Richardson Dwellings New Communities Initiative Revitalization Plan*, which was approved by the City Council on December 19, 2006, pursuant to Resolution No. 16-923 (“New Communities Initiative”).

3. By report dated June 16, 2017, the District of Columbia Office of Planning (“OP”) recommended that the application be set down for a public hearing. (Exhibit [“Ex.”] 13.) At its public meeting on June 26, 2017, the Commission voted to schedule a public hearing on the application.
4. The Applicant filed its pre-hearing submission on August 1, 2017, and a public hearing was timely scheduled for the matter. (Ex. 19-19G.) On August 8, 2017, the notice of public hearing was sent to all owners of property located within 200 feet of the Property; Advisory Neighborhood Commission (“ANC”) 7C, the ANC in which the Property is located; Commissioner Patricia Malloy, the Single Member District Representative for ANC 7C01, and to Councilmember Vincent Gray, whose Ward includes the Property. A description of the proposed development and the notice of the public hearing in this matter were published in the *DC Register* on August 18, 2017.
5. On October 11, 2017, the Applicant filed its Comprehensive Transportation Review (“CTR”). (Ex. 26-26A.)
6. On October 27, 2017, the Applicant filed its supplemental pre-hearing submission. (Ex. 28A-28AA3.) The supplemental pre-hearing submission included: (i) a comprehensive set of revised architectural plans and elevations; (ii) responses to outstanding issues from the set down of the application; and (iii) a statement regarding additional public benefits proffered by the Applicant.
7. On November 6, 2017, OP submitted a hearing report. (Ex. 29.) The OP hearing report recommended approval of the application. (Ex. 29, p. 1.)
8. On November 6, 2017, the District Department of Transportation (“DDOT”) submitted a hearing report. (Ex. 30.) The report stated that DDOT has no objection to the approval of the consolidated PUD subject to certain listed revisions and conditions, which were addressed by the Applicant’s memorandum dated November 14, 2017, prepared by Gorove/ Slade Associates. (Ex. 32-32A.)
9. ANC 7C filed a resolution in support of the Project indicating that at its regularly scheduled and duly noticed public meeting of June 8, 2017, at which a quorum of commissioners was present, it voted 6-0-1 to support the application. (Ex. 16.) The resolution stated that ANC 7C supports the application including the Applicant’s proposal for 86 units of affordable housing.
10. The parties to the case were the Applicant and ANC 7C. Commissioner Antawan Holmes, the Chairperson of ANC 7C, testified on behalf of the ANC.
11. The Commission convened a public hearing on the application on November 16, 2017. At the public hearing, the Applicant presented the following witnesses: Warren Williams, on behalf of the Applicant; Sean Pichon of PGN Architects, PLLC, architects for the Project; Erwin Andres of Gorove/Slade, transportation consultant for the Project. Based upon their professional experience and qualifications, the Commission qualified Mr. Pichon as an

expert in planning and architecture, and Mr. Andres as an expert in transportation planning and engineering.

12. Karen Thomas with OP and Aaron Zimmerman with DDOT testified in support of the application at the public hearing.
13. No persons testified in opposition to the Project at the to the public hearing.
14. David Smith and Nia Hope Bess, president and vice president, respectively, of the Deanwood Civic Association (“DCA”), testified as undeclared persons. They spoke to the importance of the Strand Theater as a historic and cultural resource, and a desire for community input regarding the reuse of the building. Mr. Smith also expressed concern about the concentration of affordable housing in this section of the city. In her testimony, Ms. Hope Bess acknowledged the Applicant’s effort to support small and local businesses by expanding the PUD benefits and amenities package to give businesses or organizations owned and/or operated by a Ward 7 SBE or CBE preference for the ground-floor retail space. In response to the testimony by Mr. Smith and Ms. Hope Bess, the Commission encouraged the Applicant to continue discussions about the project with the DCA. The Applicant provided evidence of such in its post-hearing submission, which documented that Applicant’s presentation to the DCA at its meeting on November 27, 2017. (Ex. 38.)
15. At the conclusion of the public hearing, the Commission closed the record and took proposed action to approve the application.
16. On November 27, 2017, the Applicant filed its required initial list of proffers and draft conditions pursuant to 11-C DCMR § 308.8, (Ex. 37-37A), and its post-hearing submission, which included revised architectural sheets. The updated sheets include a slightly darker color palette for the exterior of the building in order to address the Commission’s concerns about the long-term appearance of the building. The post-hearing submission also included an expanded benefits and amenities package and a statement regarding the Applicant’s additional community outreach. (Ex. 38-38A.)
17. On December 7, 2017, the Applicant submitted its final list of proffers and proposed conditions pursuant to 11-C DCMR § 308.12, which included revisions suggested by the Office of the Attorney General. (Ex. 40-40A.)
18. On December 18, 2017, the Applicant submitted its proposed findings of fact and conclusions of law. (Ex. 41A.)
19. The proposed action was referred to the National Capital Planning Commission (“NCPC”) on November 27, 2017, pursuant to § 492 of the Home Rule Act.
20. By letter dated December 29, 2017, NCPC’s Director of Urban Design and Plan Review stated that NCPC staff had determined that the project is exempt from NCPC review, pursuant to NCPC’s submission guidelines. (Ex. 42.)

21. The Commission took final action to approve the PUD on January 8, 2018.

The Property and Surrounding Area

22. The Property consists of approximately 17,029 square of land area, including a portion of the adjacent public alley to be closed located at the southwest corner of the intersection of Nannie Helen Burroughs and Division Avenues, N.E.
23. The historic Strand Theater is immediately east of the Property. The theater, which is vacant, is listed on the DC Inventory of Historic Sites and on the National Register of Historic Places. The Applicant will renovate the historic structure in connection with the PUD. The Property is also surrounded by the surface parking lot of the Sargent Memorial Presbyterian Church to the west and south. The main church building is located west of the Property. The Property is well served by several Metrobus routes, including six routes within 0.2 miles of the Property.
24. The Applicant requested a Zoning Map amendment to rezone the Property from the MU-3 zone to the MU-5-A zone. As detailed in Findings of Fact (“FF”) Nos. 46-48, the Commission finds that the requested map amendment is consistent with Future Land Use Map designation of mixed use Moderate-Density Residential and Low-Density Commercial.

The Applicant

25. The Applicant is The Warrenton Group, a privately held real estate development firm that specializes in mixed-income residential and mixed-use developments. The Applicant is involved in two other projects in the immediate area that are also providing replacement units for Lincoln Heights and Richardson Dwellings – Deanwood Hills (Z.C. Order No. 15-10) currently under construction at 5201 Hayes Street, N.E., and the Deanwood Town Center (Z.C. Case No. 17-19) proposed for the northwest corner of the intersection of Nannie Helen Burroughs and Division Avenues, N.E.

Existing and Proposed Zoning

26. The Property is currently zoned MU-3. The MU-3 zones are intended to permit low-density mixed-use development and provide convenient retail and personal service establishments for the day-to-day needs of a local neighborhood, as well as residential and limited community facilities with a minimum impact upon surrounding residential development. (11-G DCMR § 400.2.) The MU-3 Zone permits the following development standards:
- Height: 40 feet and three stories; 40 feet for a PUD; (11-G DCMR § 403.1; 11-X DCMR § 303.7.)
 - Density: 1.0 FAR; 1.2 FAR with Inclusionary Zoning (“IZ”), with a maximum of 1.0 FAR for non-residential use; and 1.44 FAR for a PUD, with a maximum of 1.34 FAR for non-residential use; and (11-G DCMR § 402.1; 11-X DCMR § 303.3.)

- Lot Occupancy: The maximum lot occupancy for residential use is 60% and 100% for non-residential use. (11-G DCMR § 104.1.)
27. The Applicant proposes to rezone the Property to the MU-5-A Zone, which permits the following development standards:
- Height: 65 feet; 70 feet with IZ, with no limit on the number of stories; and 90 feet for a PUD; (11-G DCMR § 403.1; 11-X DCMR § 303.7.)
 - Density: 3.5 FAR; 4.2 FAR with IZ, with a maximum non-residential FAR of 1.5; and 5.04 FAR for a PUD, with a maximum non-residential FAR of 2.01; (11-G DCMR § 402.1; 11-X DCMR § 303.3.)
 - Lot Occupancy: The maximum lot occupancy for residential use is 80% and 100% for non-residential uses; (11-G DCMR § 404.1.)
 - Rear Yard: The minimum rear yard is 15 feet; (11-G DCMR § 405.2.)
 - Side Yard: No side yard is required for a building or structure other than a detached single dwelling unit or semi-detached single dwelling unit; however, if a side yard is provided it shall be at least two inches wide for each one foot of height of the building but no less than five feet; (11-G DCMR § 406.1.)
 - Parking for Residential, multiple dwelling unit: one space per three dwelling units in excess of four units; (11-C DCMR § 701.5.)
 - Parking for Retail: In excess of 3,000 square feet, one space per each 1,000 square feet of gross floor area; (11-C DCMR § 701.5.)
 - Parking for Community Space: In excess of 3,000 square feet, one space per each 1,000 square feet of gross floor area; (11-C DCMR § 701.5.)
 - Bicycle Parking for Residential Apartment: one space for each three dwelling units (long term); one space for each 20 dwelling units (short term); (11-C DCMR § 802.1.)
 - Bicycle Parking for Retail: one space for per 7,500 square feet (long term); one space per 3,500 square feet (short term); (11-C DCMR § 802.1.)
 - Bicycle Parking for Community Space: one space for per 10,000 square feet (long term); one space per 20,000 square feet (short term); (11-C DCMR § 802.1.)
 - Loading for Residential More than 50 Units: one loading berth, one loading platform and one service/delivery space; (11-C DCMR § 902.2.)

- Loading for Retail with 5,000 to 20,000 square feet of gross floor area: one loading berth, one loading platform and one service/delivery space; (11-C DCMR § 902.2.)
- Loading for Community Space with 5,000 to 20,000 square feet of gross floor area: one loading berth and one loading platform; and (11-C DCMR § 902.2.)
- Green Area Ratio (“GAR”): The minimum required GAR is 0.3. (11-G DCMR § 407.1.)

Description of the PUD Project

28. As shown on the architectural drawings (the “Plans”), the Applicant proposes to redevelop the Property with a mixed-use building containing approximately 1,389 square feet of ground-floor retail; approximately 1,223 square feet of community space; and a five-story apartment house above. The apartment house will consist of approximately 78,216 square feet of gross floor area, generating approximately 86 units. The PUD will have a maximum density of 4.59 FAR; a maximum non-residential density of approximately 0.8 FAR (including 0.2 FAR for the retail and community space on the ground floor of the building); and a maximum building height of 68 feet.
29. The PUD includes a ground-level parking garage with 20 vehicle parking spaces and 45 bicycle parking spaces. The ground-level parking garage is accessed via a 15-foot public access easement on the southern portion of the Property.
30. The building includes a resident lounge connected to a landscaped courtyard, community spaces, a multipurpose room, a computer lab, and gym on the second floor, all of which will be made available to all of the building’s residents.
31. The PUD will be certified under the *Enterprise Green Communities* standard and will use Enterprise Green Communities certification to meet the applicable Green Building Act Requirements. The Green Building Act states that the Enterprise Green Communities standard was developed for affordable housing, and shall be used for projects with at least 15% District financing. The Enterprise Green Communities Checklist for the Project is included on Sheet A-34 of the Plans.

Development Flexibility

32. The Applicant requested flexibility to provide two 20-foot service/delivery spaces in lieu of a 30-foot loading berth and a 100-square-foot loading platform as required under 11-C DCMR § 901.1.
33. The Applicant has requested flexibility in the following areas:
 - a. To be able to provide a range in the number of residential units – 86 units, plus or minus 10% – so long as all of the residential units are reserved for households with

incomes not exceeding 60% of the MFI and up to 28 units are reserved as replacement units for the Lincoln Heights/Richardson Dwellings communities controlled by the DC Housing Authority;

- b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
- c. To vary the final selection of the color of the exterior materials, within the color ranges reflected in the approved architectural drawings, without making changes to the exterior materials; and to make minor refinements to exterior details, locations and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim; and any other changes that do not substantially alter the exterior design necessary to comply with all applicable District of Columbia laws and regulations;
- d. To be able to provide solar panels on the roof of the building, so long as the solar panels comply with all setback requirements of the Zoning Regulations and there is no reduction the amount of green roof for the Project;
- e. 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;
- f. 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 Plans; and
- g. 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 PUD and to vary the types of uses designated as “retail” use on the approved 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)).

Project Benefits and Amenities

34. Historic Preservation (§ 305.5(e)). In connection with the PUD, the Applicant will renovate the historic Strand Theater and will seek a commercial tenant to occupy the space. The Strand Theater was listed on the DC Inventory of Historic Sites on June 26, 2008, and the National Register of Historic Places on November 25, 2008. When it opened in 1928, it was the first motion picture theater constructed east of the Anacostia River for African-American patrons and was one of the centers of the Deanwood community’s social life for more than 40 years. It was also reflective of the trend in the early motion picture industry to provide affordable but segregated neighborhood-based entertainment.

35. Affordable Housing (§ 305.5(g)). The PUD’s most significant benefit is the creation of new housing, including additional affordable housing units, consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative. If the Property was developed as a matter of right, the Applicant would be required to set aside the greater of eight percent of the gross floor area dedicated to residential use including penthouse habitable space, or 75% of its achievable bonus density to inclusionary units for households with incomes not exceeding 60% of MFI. However, the PUD will be an all affordable building with 28 of the units serving as replacement units for the Lincoln Heights and Richardson Dwellings communities. This is a significantly greater amount of affordable housing, and at deeper levels of affordability, than would have been required if the Property was developed as a matter of right. The charts below indicate that none of the affordable housing will be subject to the Inclusionary Zoning (“IZ”) requirements set forth in Subtitle C, Chapter 10 of Title 11 DCMR. This is because the Applicant will be requesting that the Zoning Administrator grant an exemption from those requirements pursuant to 11-C DCMR § 1001.6. The Commission makes no finding as to whether the exemption should be granted, and notes that if the request is denied, the requirements of Chapter 10 of Title 11-C DCMR as well as the IZ Act as defined at 11- B DCMR § 100.1 will apply.

36. The Applicant will provide affordable housing in accordance with the chart below:

Residential Unit Type	Floor Area/ % of Total	# of Units	Income Type	Affordable Control Period	Affordable Unit Type	Notes
Total	76,888/100%	86	Up to 60% of MFI	Life of the Project	Rental	
Affordable Non-IZ**	6,151/8%	7	Up to 60% of MFI	Life of the Project	Rental	Pursuant to § 1001.6
Affordable Non-IZ/ Replacement Units	18,862/25%	Up to 28	Up to 60% of MFI		Rental	Subject to HAP Contract with DCHA ***
Affordable Non-IZ	58,026/68%	Min. of 58	Up to 60% of MFI	Life of the Project	Rental	All units that are not replacement units shall be Affordable Non-IZ units

* Refers to the residential gross floor area, but the floor area may be adjusted to subtract the building core factor.

** If the IZ exemption is denied, these units shall be Inclusionary Zoning units instead of Affordable Non-IZ units.

*** These shall be replacement units for the Lincoln Heights and Richardson Dwellings communities. The HAP contract will determine the actual number of replacement units and the control period for those units. At the conclusion of the control period, the former Replacement Unit shall convert to an “Affordable Non-IZ” unit.

37. Employment and Training Opportunities (§ 305.5(h)). The Applicant has entered into a First Source Employment Agreement with the Department of Employment Services, which requires that District residents are given priority for new jobs created by municipal

financing and development programs. The Applicant has also entered into a SBE agreement with the District Department of Small and Local Business Development to ensure that a preference is made to District-based firms pursuing District government issued procurement opportunities. Copies of these agreements are attached as Exhibits H and I of the Applicant's statement in support. (Ex. 4H-4I.)

38. Within 120 days of the Commission's final action approving the PUD, the Applicant will host a job fair for residents of the Deanwood neighborhood and the Lincoln Heights and Richardson Dwelling communities. The job fair will include applications for training and employment opportunities related to the construction and operation of the PUD.
39. Building Space for Special Uses (§ 305.5(j)). The Applicant will dedicate approximately 1,223 square feet of the ground floor as a community room, which will be made available to the broader community for meetings and neighborhood activities
40. Environmental Benefits (§ 305.5(k)). The PUD will meet the requirements of the *Enterprise Green Communities* standard for residential buildings. It will employ environmentally sustainable strategies as called for in the Green Communities standard such as high efficiency mechanical systems, lighting, and windows; low-flow plumbing systems; and energy star appliances; low-emitting and recycled construction materials; and an extensive green roof and courtyard.
41. Uses of Special Value to the Neighborhood or the District as a Whole ((§ 305.5(q)). The proposed development implements the "Physical Plan" element of the New Communities Initiative. Among other things, this small area plan calls for 140 replacement units for the Lincoln Heights and Richardson Dwellings properties, in order for those properties to be redeveloped with new mixed-income residential communities.
42. The Applicant will set aside approximately 1,200 square feet of the ground-floor retail/commercial space for neighborhood serving retail or services, with preference being given to a business or organization owned and/or operated by a Ward 7 SBE or CBE.
43. As part of the PUD, the Applicant will relocate the China Cafe carryout currently located at 612 Division Avenue, N.E. The restaurant will be relocated to the south along Division Avenue and will include the construction of a new restaurant. This will allow for the continued operation of a valued local business.

Comprehensive Plan

44. The Commission finds that the PUD advances the purposes of the Comprehensive Plan; is consistent with the Future Land Use Map and Generalized Policy Map; complies with the guiding principles in the Comprehensive Plan; and furthers a number of the major elements of the Comprehensive Plan.
45. Purposes of the Comprehensive Plan. 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) (§ 1-301.62). The Commission finds that the Project significantly advances these purposes by promoting the social, physical, and economic development of the District through the provision of a high-quality residential development that will increase the housing supply, improve the District's natural and architectural assets, promote economic growth and jobs for District residents, and improve the surrounding community. The Project will achieve community goals by providing significant new affordable housing, and will do so through the construction of aesthetically pleasing new buildings that respect the character of the surrounding neighborhood without generating any adverse impacts.

46. Future Land Use Map. According to the District of Columbia Comprehensive Plan Future Land Use Map, the Property is designated as mixed-use Moderate-Density Residential and Low-Density Commercial. The Moderate-Density Residential designation is used to define the District's row house neighborhoods, as well as its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single family homes, two- to four-unit buildings, row houses, and low-rise apartment buildings. In some of the older inner city neighborhoods with this designation, there may also be existing multi-story apartments, many built decades ago when the areas were zoned for more dense uses (or were not zoned at all). The R-3, R-4, R-5-A Zone Districts are generally consistent with the Moderate Density Residential category; the R-5-B Zone District and other zones may also apply in some locations. (10A DCMR § 225.4.)

The Low-Density Commercial Designation is used to define shopping and service areas that are generally low in scale and character. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts uses that draw from a broader market area. Their common feature is that they are comprised primarily of one- to three-story commercial buildings. The corresponding zone districts are generally C-1 and C-2-A, although other districts may apply. (10A DCMR § 225.8.)

47. The Framework Element of the Comprehensive Plan provides that the Land Use Map is not a zoning map. (*See* 10A DCMR § 226.1(a); *see also* Z.C. Order No. 11-13.) Whereas zoning maps are parcel-specific and establish detailed requirements for setback, height, use, parking, and other attributes, the Future Land Use Map does not follow parcel boundaries and its categories do not specify allowable uses or dimensional standards. (*Id.*) By definition, the Map is to be interpreted broadly. (*Id.*) Furthermore, the land use category definitions describe the general character of development in each area, citing typical building heights (in stories) as appropriate. The granting of density bonuses (for example, through PUDs) may result in heights that exceed the typical ranges cited here. (*Id.* at § 226.1(c).) The zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan, including the

citywide elements and the area elements, as well as approved Small Area Plans. (*Id.* at § 266.1(d).)

48. The Project requires a map amendment to the MU-5-A zone, which is intended to “permit medium density, compact mixed use development with an emphasis on residential use.” (11-G DCMR § 400.4.) The Project is six stories tall, and the Future Land Use Map’s description of “Medium Density Residential” states that it is “used to define neighborhoods where mid-rise (4-7 stories) apartment buildings are the predominant use.” (10A DCMR § 225.5.) The Commission nonetheless believes that the Project is not inconsistent with the Future Land Use Map. The Future Land Use Map calls for a mix of Moderate-Density Residential and Low-Density Commercial uses for the Property. While the Project’s density and height exceed what would be permitted in the highest intensity moderate mixed-use zone, MU-4, the additional residential density permitted in the MU-5-A zone allows the Project to provide additional 0.99 FAR of residential space than would be permitted through a PUD under MU-4 zoning. All of this additional density will be used to provide affordable housing in this Project for residents with incomes not exceeding 60% MFI and replacement units for Lincoln Heights and Richardson Dwellings. The Commission therefore believes that this is one of the instances in which the granting of bonus density and height through a PUD that exceeds the typical ranges designated on the Future Land Use Map is appropriate because of the superior public benefits of this particular PUD, and that as a result, this location is one in which a different zone than those listed as “generally consistent” with the moderate density residential category on the Future Land Use Map is appropriate. (*See* 10A DCMR § 226.1(c).) This is further supported by the fact that the MU-5-A (previously, the C-2-B Zone) is specifically identified as a corresponding zone district in the *Lincoln Heights & Richardson Dwellings New Communities Initiative Revitalization Plan*, which was approved by the City Council on December 19, 2006, pursuant to Resolution No. 16-923. (Ex. 4E.) The Commission therefore finds that the Project is not inconsistent with the Future Land Use Map.
49. Generalized Policy Map. The Generalized Policy Map of the Comprehensive Plan designates the Property as a Main Street Mixed-Use Corridor. Main Street Mixed-Use Corridors are traditional commercial business corridors with a concentration of older storefronts along the street. The service area for Main Streets can vary from one neighborhood (e.g., 14th Street Heights or Barracks Row) to multiple neighborhoods (e.g., Dupont Circle, H Street, or Adams Morgan). Their common feature is that they have a pedestrian-oriented environment with traditional storefronts. Many have upper-story residential or office uses. Conservation and enhancement of these corridors is desired to foster economic and housing opportunities and serve neighborhood needs. Any development or redevelopment that occurs should support transit use and enhance the pedestrian environment. (10A DCMR § 223.14.)
50. The Commission finds that the proposed map amendment will help implement the policies embodied in the Generalized Policy Map by strengthening the Nannie Helen Burroughs/ Division Avenue Main Street Corridor through the redevelopment of underutilized and blighted parcels into an active and productive use. Redevelopment of the Property will benefit the existing businesses in the neighborhood and the District, generally.

Furthermore, redevelopment of the Property will result in improvements to the public realm adjacent to the Property, thus improving pedestrian circulation along this portion of Division Avenue.

51. Guiding Principles and Major Elements of the Comprehensive Plan. The Commission further finds that the PUD is consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, increasing access to education and employment, connecting the city, and building green and healthy communities, as discussed in the paragraphs below.
52. Managing Growth and Change. In order to manage growth and change in the District, the Comprehensive Plan encourages diversity and asserts that the District “cannot sustain itself by only attracting small, affluent households. To retain residents and attract a diverse population, the city should provide services that support families [and prioritize] sustaining and prompting safe neighborhoods... and housing for families.” (10A DCMR § 217.2.) Diversity also means maintaining and enhancing the District’s mix of housing types... [with] housing developed for households of different sizes, including growing families as well as singles and couples.” (10A DCMR § 217.3.) The Comprehensive Plan also states that redevelopment and infill opportunities along corridors is an important part of reinvigorating and enhancing neighborhoods. (10A DCMR § 217.6.) The Commission finds that the PUD is fully consistent with each of these goals since the PUD results in redevelopment of the Property into a vibrant, mixed-use, mixed-income development intended to attract a diverse population of residents.
53. Creating Successful Neighborhoods. One of the guiding principles for creating successful neighborhoods is to protect, maintain, and improve residential neighborhoods. (10A DCMR § 218.1.) The preservation of existing affordable housing and the production of new affordable housing both are essential to avoid a deepening of racial and economic divides in the city. (10A DCMR § 218.3.) Public input in decisions about land use and development is an essential part of creating successful neighborhoods, from development of the Comprehensive Plan, to implementation of the Plan's elements. (10A DCMR § 218.8.) The Commission finds that the PUD furthers these goals because it will simultaneously protect and improve the existing residential neighborhood while producing new affordable housing on a vacant site. The Applicant has engaged neighborhood stakeholders, and will continue to do so as part of the PUD process, to ensure that redevelopment of the site creates a positive impact on the neighborhood.
54. Building Green and Healthy Communities. The Commission finds that the Project is consistent with the guiding principles of the Building Green and Healthy Communities Element. One of the guiding principles for building green and healthy communities is that building construction and renovation should minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. (10A DCMR § 221.3.) The PUD will meet the requirements of the *Enterprise Green Communities* standard for residential buildings. The PUD will employ environmentally sustainable strategies as called for in the Green Communities standard such as: high efficiency mechanical systems, lighting, and windows; low flow plumbing

systems; and energy star appliances; low-emitting and recycled construction materials; and an extensive green roof and courtyard.

55. The Commission also finds that the PUD furthers the objectives of the *Lincoln Heights & Richardson Dwellings New Communities Initiative Revitalization Plan*, which was approved by the City Council on December 19, 2006, pursuant to Resolution No. 16-923, which encourages rezoning the Property to C-2-B zone (MU-5-A under the Zoning Regulations of 2016). (Ex. 4E.) The PUD will provide up to replacement housing units for Lincoln Heights/Richardson Dwellings, as well as additional housing.
56. The Commission also finds that the PUD furthers the objectives and policies from various elements of the Comprehensive Plan, including the Land Use, Transportation, Housing, Environmental Protection, Economic Development Element, Urban Design Citywide elements, Infrastructure Element and the Far Northeast and Southeast Area Element, as set forth in the Applicant's Statement in Support and the OP Reports. (Ex. 4, 13, 29.)

Office of Planning Reports

57. On June 16, 2017, OP submitted a report to the Commission recommending that the application be set down for a public hearing. (Ex. 10.) The OP report stated that the Project "is not inconsistent with the Comprehensive Plan" and "generally meets the specific recommendations outlined in the Lincoln Heights/Richardson Dwellings Small Area Plan (2006)." (Ex. 13, p. 1.) The report also recommended that the Applicant provide the following: (i) an improved plan set, including streetscape plans and on-street perspectives; (ii) provide consistent data regarding the overall gross floor area and affordable gross floor area; (iii) CTR and Transportation Demand Management ("TDM") measures; (iv) refinement to the flexibility requests; (v) information on whether the Project would be LEED-Gold; and (vi) consideration of the provision of a green roof and solar panels.
58. On November 6, 2017, OP submitted a hearing report reiterating that the application is not inconsistent with the Comprehensive Plan and recommended approval of application including the flexibility requested. (Ex. 29.) OP stated that the "the proposed PUD meets this criterion and would not be inconsistent with the Comprehensive Plan's Generalized Future Land Use Map designation of moderate density residential and low-density commercial, the Generalized Policy Map designation of a Main Street Mixed-Use Corridor and the Guiding Principles of the Framework Element. It also is consistent with the Land Use, Transportation, Housing, Urban Design, and Environmental Elements; as well as the policies of the Far Northeast and Southeast Area Element." (*Id.* at 5.)
59. The Commission finds that the Applicant sufficiently answered all of the outstanding questions posed by OP in its pre-hearing statement, supplemental pre-hearing statement, and at the public hearing. (Ex. 19-19G and Ex. 28-28A-A3.)

DDOT Report and Testimony

60. On November 6, 2017, DDOT submitted a hearing report. (Ex. 30.) The DDOT hearing report indicated no objection to the application subject to the Applicant doing the following:
- a. Revising its loading management plan and implement it for the life of the Project.
 - b. Enhancing the TDM measures to include the following elements:
 - i. Fund and install an expansion of at least four docks to the existing Capital Bikeshare station at the intersection of Division Avenue and Foote Street, N.E. to bring it up to the DDOT minimum standard of 19 docks;
 - ii. Work with a private carshare provider to place at least one carshare vehicle on the Property;
 - iii. Work with goDCgo in order to implement the TDM Management plan;
 - iv. Unbundle parking from the rent or purchase of all units for residents and the retailer;
 - v. Charge at least market rate for parking; and
 - vi. Provide at least eight shopping cars for residential use.
61. The Applicant responded to the DDOT's hearing report by memorandum dated November 14, 2017, prepared by Gorove/ Slade Associates. (Ex. 32-32A.) The memorandum included a revised loading management plan and revised Transportation Demand Management measures.
62. At the public hearing, Aaron Zimmerman of DDOT testified that DDOT was agreeable to the Applicant's revised TDM measures and revised loading management plan and stated that DDOT had no objection to the application, subject to the revised loading management plan and revised Transportation Demand Management measures submitted by the Applicant.

ANC Report

63. ANC 7C, the ANC in which the Property is located, filed a resolution in support of the Project, indicating that at its regularly scheduled and duly noticed public meeting of June 8, 2017, at which a quorum of commissioners was present, ANC 7C voted 6-0-1 to support the application. (Ex. 16.) Commissioner Patricia Malloy, the Single Member District Representative for ANC 7C-01, which includes the Property, also submitted a letter in support of the application. (Ex. 37.)

64. Commissioner Antawan Holmes, Chairperson of ANC 7C, testified on behalf of ANC 7C at the public hearing, encouraging support of small and local businesses and employment opportunities through the PUD. In response, at the public hearing, the Applicant offered to expand the PUD benefits and benefits package to include the following:
- a. Within 120 days of the Commission's final action approving the PUD, the Applicant will host a job fair for residents of the Deanwood neighborhood and the Lincoln Heights and Richardson Dwelling communities. The job fair will include applications for training and employment opportunities related to the construction and operation of the PUD; and
 - b. The Applicant agrees to set aside approximately 1,200 square feet of the ground-floor retail/commercial space for neighborhood serving retail or services. Preference for the lease of the space will be a business or organization owned and/or operated by a Ward 7 SBE or CBE.

These proffers were also documented in the Applicant's post-hearing submission filed on November 29, 2017. (Ex. 38-38A.) Commissioner Holmes also commented on the sudden proliferation of bike share systems in the neighborhood.

Interagency Review

65. OP circulated the application to DDOT, DOEE, the Department of Housing and Community Development ("DHCD"), DC Office of Aging, DC Public Schools, DC Water and DC Fire and Emergency Service for their review of the Project. (Ex. 28, p. 13.) OP's Report included comments from DOEE. Other than DDOT, there are no comments in the record from any of the aforementioned agencies.

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 Property. 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 consistent 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 Property 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 7C'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).) The Commission carefully considered the ANC 7C's position supporting approval of the application and concurred in its recommendation of approval.
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 for the District of Columbia **ORDERS APPROVAL** of the application for consolidated review and approval of a planned unit development and related Zoning Map

amendment from the MU-3 to the MU-5-A zone for Square 5196, 19, 37, 805 and 814. The approval of this PUD is subject to the guidelines, conditions, and standards set forth below.

A. Project Development

1. The Project shall be developed in accordance with the plans titled “Strand Residences,” prepared by PGN Architects, PLLC dated October 26, 2017, and marked as Exhibits 28AA1-28AA3 of the record, and as modified by the plans included with the Applicant’s post-hearing submission dated November 29, 2017, and marked as Exhibit 38A of the record (collectively the “Plans”).
2. The Applicant has flexibility with the design of the PUD in the following areas:
 - a. To be able to provide a range in the number of residential units – 86 units, plus or minus 10%, so long as all of the residential units are reserved for households with incomes not exceeding 60% of the MFI and up to 28 units are reserved as replacement units for the Lincoln Heights/Richardson Dwellings communities controlled by the DC Housing Authority;
 - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - c. To vary the final selection of the color of the exterior materials, within the color ranges reflected in the approved architectural drawings, without making changes to the exterior materials; and to make minor refinements to exterior details, locations and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim; and any other changes that do not substantially alter the exterior design necessary to comply with all applicable District of Columbia laws and regulations;
 - d. To be able to provide solar panels on the roof of the building, so long as the solar panels comply with all setback requirements of the Zoning Regulations and there is no reduction the amount of green roof designed for the Project;
 - e. 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;
 - f. 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 Plans; and

- g. 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 PUD and to vary the types of uses designated as “retail” use on the approved 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)).

B. Public Benefits

1. **Prior to the issuance of a final Certificate of Occupancy for the Project**, the Applicant shall have obtained final approval from DCRA of the building permits required for the installation of the electrical, HVAC and plumbing systems for the Strand Theater, and shall have advertised the leasing of the space for a commercial use.
2. The Applicant shall provide affordable housing as set forth in this condition:
 - a. The Applicant shall provide the affordable housing set forth in the following chart. The chart assumes that the Applicant will be granted an exemption from the Inclusionary Zoning regulations (“IZ Regulations”) set forth in Subtitle C, Chapter 10 of the Zoning Regulations, pursuant to 11-C DCMR § 1001.6 (“IZ Exemption”). However, the Commission takes no position as to whether the IZ Exemption should be granted:

Residential Unit Type	Floor Area/ % of Total*	# of Units	Income Type	Affordable Control Period	Affordable Unit Type	Notes
Total	76,888/ 100%	86	Up to 60% of MFI	Life of the Project	Rental	
Affordable Non-IZ**	6,151/8%	7	Up to 60% of MFI	Life of the Project	Rental	Pursuant to § 1001.6
Affordable Non-IZ / Replacement Units	18,862/ 25%	Up to 28	Up to 60% of MFI		Rental	Subject to HAP Contract with DCHA***
Affordable Non-IZ	58,026/ 68%	Min. of 58	Up to 60% of MFI	Life of the Project	Rental	All units that are not replacement units shall be Affordable Non-IZ units

* Refers to the residential gross floor area, but the floor area may be adjusted to subtract the building core factor.

** If the IZ exemption is denied, these units shall be Inclusionary Zoning units instead of Affordable Non-IZ units.

*** These shall be replacement units for the Lincoln Heights and Richardson Dwellings communities. The HAP contract will determine the actual number of replacement units and the control period for those units. At the conclusion of the control period, the former Replacement Unit shall convert to an “Affordable Non-IZ” unit.

- b. Each control period shall commence upon the issuance of the first certificate of occupancy; and
- c. Should the IZ Exemption be granted, the affordable housing requirements of this condition shall be stated in the covenant required by 11- DCMR § 311.6; and all units not reserved as Replacement Units shall be Affordable Non-IZ units for households not exceeding 60% of MFI.

Should the IZ Exemption be denied, the Applicant shall nevertheless provide affordable housing in accordance with this condition, unless the IZ Regulations impose more restrictive standards. The Applicant shall record the covenant required by the IZ Act as to eight percent of the residential gross floor of the building (which is equal to seven units), and shall execute the monitoring and enforcement documents required by 11-X DCMR § 311.6 as to the remaining residential gross floor area.

- 3. **Prior to the issuance of a Building Permit for the Project**, the Applicant shall submit to the Zoning Administrator a copy of the executed SBE Agreement with DSLBD and a copy of the executed First Source Employment Agreement with DOES.
- 4. **Prior to the issuance of a building permit for the PUD**, the Applicant shall submit to the Zoning Administrator evidence that a job fair for training and employment opportunities related to the construction and operation of the PUD was hosted for residents of the Deanwood neighborhood and the Lincoln Heights and Richardson Dwelling communities.
- 5. **For the life of the Project**, approximately 1,223 square feet of the ground floor of the building shall be used as a community room that will be made available to the broader community for meetings and neighborhood activities.
- 6. **Prior to the issuance of a final Certificate of Occupancy for the Project**, the Applicant shall furnish a copy of its preliminary Enterprise Green Communities certification application to the Zoning Administrator demonstrating that the building has been designed to meet the Enterprise Green Communities standard for residential buildings, as shown on the Enterprise Green Communities Checklist on Sheet A-34 of the Plans. (Ex. 38AA2.)
- 7. **For the life of the Project**, the PUD shall include approximately 1,200 square feet of retail/commercial space at the ground floor of the building. The Applicant shall furnish evidence to the Zoning Administrator that leasing of the space was marketed to businesses or organizations owned and/or operated by Ward 7 SBEs or CBEs.

8. Prior to the issuance of a final Certificate of Occupancy for the Project, the Applicant shall relocate the China Cafe carryout currently located at 612 Division Avenue, N.E. The restaurant shall be relocated to the south along Division Avenue and shall include the construction of a new restaurant.

C. Transportation Incentives – During the operation of the building, the Applicant shall provide a Transportation Management Program, as set forth in the TDM section of the memo prepared by Gorove/Slade Associates, dated November 14, 2017 (Ex. 32A). The TDM Plan shall include the following:

1. The Applicant shall work with DDOT and goDCgo (DDOT's TDM program) to implement TDM measures at the Property.
2. The Applicant shall identify a TDM Leader (for planning, construction, and operations) at the building, who will act as a point of contact with DDOT/Zoning Enforcement with annual updates. The TDM Leader will work with residents to distribute and market various transportation alternatives and options.
3. The Applicant shall share the full contact information of the TDM coordinator for the site with DDOT and goDCgo.
4. The Applicant shall provide TDM materials to new residents in the Residential Welcome Package materials.
5. The Applicant shall meet Zoning requirements to provide bicycle parking facilities at the proposed development. This includes secure parking located on-site and a minimum of eight short-term bicycle parking spaces around the perimeter of the Site (in the form of four bicycle racks).
6. The Applicant shall provide a bicycle repair station to be located in the secure long-term bicycle storage room.
7. The Applicant shall install a Transportation Information Center Display (electronic screen) within the residential lobby containing information related to local transportation alternatives.
8. The Applicant shall fund the expansion of at least four docks to the existing Capital Bikeshare station at the intersection of Division Avenue and Foote Street, N.E., bringing it up to the DDOT minimum standard of 19 docks, at a maximum contribution of \$2,000.
9. The Applicant shall work with a private carshare provider to place at least one carshare vehicle on site. In the event that a carshare provider cannot be secured for this project, the Applicant will offer a one-year Capital Bikeshare membership for each unit for the initial residents of the building or offer the carshare space as an electric vehicle charging station. This contingency plan would allow for the designated carshare space to be available for unrestricted use by the Applicant.

10. The Applicant shall provide at least eight shopping carts for residential use.

D. Loading Management Plan – For the life of the Project, the Applicant shall implement a loading management plan for the PUD as follows:

1. Residents, vendors, and/or on-site tenants shall be required to coordinate and schedule deliveries with an assigned loading coordinator, and the loading coordinator shall be on duty during delivery hours.
2. Residents shall be required to schedule move-in and move-outs with the loading manager through leasing regulations.
3. Trucks accessing the on-site service space shall be limited to a maximum of 20 feet in length. All trucks 20 feet and under must meet service zone requirements.
4. Signage indicating vehicles over 20 feet in length are prohibited in the public alley shall be placed in a conspicuous location to alert all drivers.
5. All residents and tenants shall be required to schedule any loading operation conducted using a truck greater than 20 feet in length. These operations must take place from the street parking alongside Division Avenue, N.E.
6. Residents utilizing moving trucks greater than 20 feet in length shall be required to obtain “Emergency, No Parking” signs during the duration of the move. The fees for this service will be paid by the resident.
7. Commercial loading activity utilizing trucks greater than 20 feet shall utilize parking along Division Avenue, N.E.
8. Deliveries shall be scheduled such that the capacity of the service space is not exceeded. In the event that an unscheduled delivery vehicle arrives while the service space is full, that driver shall be directed to return at a later time when the service space is available. Should a delivery vehicle arrive at a time when the service space is unoccupied and no delivery is immediately scheduled, the driver may utilize the service space for a short period of time.
9. The two surface spaces included in the development shall not be utilized for pickup or drop-off services. These short-term spaces intended for retail purposes are located in the rear of the building, far from the residential and retail entrances on NHB Avenue, N.E. Additionally, while these spaces have a direct connection to the residential building, it is at an unstaffed location. The main residential entrance along NHB Avenue, N.E. shall have a staffed lobby where a security check can be made on who is entering the premises.
10. Inbound and outbound truck maneuvers shall be monitored to ensure that trucks accessing the service space do not block vehicular traffic along the alley except during those times when a truck is actively entering or exiting the loading space.

11. Trucks using the service space shall not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the regulations set forth in DDOT’s Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System.
12. The loading manager shall be responsible for disseminating DDOT’s Freight Management and Commercial Vehicle Operations document to drivers as needed to encourage compliance with District laws and DDOT’s truck routes. The dock manager shall also post these documents in a prominent location within the service area.
13. Trash collection operations shall take place from Division Avenue, N.E., adjacent to the proposed curb cut. This shall be accomplished with the utilization of rolling dumpsters to transfer waste from the trash room to the waste collection truck on Division Avenue, N.E. Responsibility of the waste transfer from the trash room to a curbside location for the collection truck shall be that of the loading manager on duty the morning of waste collection.
14. In compliance with Design and Engineering Manual (DEM) regulations (31.5.5), the proposed curb cut for the relocated alley will be 25 feet away from the adjacent curb cut servicing a church parking lot on Division Avenue, N.E. DEM regulations require five-foot setbacks for on-street parking from the alley edge (45.1.3), thus not allowing enough length for on-street parking between the alley and church parking lot curb cuts. The length between the two curb cuts shall be signed for no parking.
15. Waste collection trucks shall stop in front of the no parking space between the alley and church parking lot curb cuts and alley curb cut to perform waste collection without interference to traffic along southbound Division Avenue, N.E. or on-street parking.

E. 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 Property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The PUD shall be valid for a period of two years from the effective date of this Order within which time an application shall be filed for a building permit. Construction must begin within three years of the effective date of this Order.

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

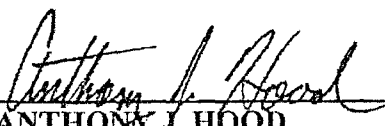
On November 16, 2017, upon the motion of Vice Chairman Miller, as seconded by Commissioner Shapiro, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the application at the conclusion of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

On January 29, 2018, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull 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 March 30, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. GARDIN
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

Commercial Division
Land Use Section



THIS IS TO CERTIFY THAT THIS IS A TRUE COPY

Ida Williams
MAY 01 2019

Order of Deeds, D.C.

MEMORANDUM

TO: Kimberly A. Bassett
Acting Secretary of the District of Columbia

FROM: Maximilian L.S. Tondro
Assistant Attorney General, Section Chief

SUBJECT: PUD Covenant required by Z.C. Order 17-10 (Consolidated PUD and Related Map Amendment @ Square 5196, Lots 19, 37, 805, and 814)

DATE: April 12, 2019

Attached is a covenant (the “**Covenant**”) required by Zoning Commission Order No. 17-10 (the “**Order**”), which approved a planned unit development (“**PUD**”) and related Zoning Map amendment from the MU-3 zone to the MU-5-A zone for property located at Square 5916, Lots 19, 37, 805, and 814 (the “**PUD Site**”) for The Warrenton Group, whose rights and responsibilities were assumed by Nannie Helen Owner, LLC, the current owner of the PUD Site (the “**Owner**”). Decision No. E.1 of the Order provides:

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 property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

Section 311.3 of Subtitle X of the District of Columbia Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations) also requires the Covenant to ensure that the Applicant and its successors will comply with the Order’s conditions of approval, which govern the design and use of the PUD, specify the public benefits that must be provided, and other aspects of the construction and use of the PUD Site. The Order containing these conditions is attached as Exhibit B to the Covenant.

I have determined that the Covenant is legally sufficient and may be executed by the Mayor or you on her behalf. You may release the executed covenant directly to Joseph O. Gaon, Esq., who may be reached at (202) 469-5162, or to another representative of Holland & Knight, the land use counsel for the Owner.

Maximilian L.S. Tondro, Assistant Attorney General

Date

Doc #: 2019044205 Fees: \$31.50
05/01/2019 10:10 AM Pages: 35
Filed and Recorded in Official Records of
WASH DC RECORDER OF DEEDS IDA WILLIAMS

RECORDING FEES
SURCHARGE

\$25.00
\$6.50