

December 16, 2019

**VIA HAND DELIVERY AND IZIS**

Anthony J. Hood, Chairman  
Zoning Commission for the District of Columbia  
441 Fourth Street, NW, Suite 200S  
Washington, DC 20001

**Re: Z.C. Case No. 14-12E: Application of Clarion Gables Multifamily Trust, L.P. (“Gables”) and EAJ 1309 5<sup>th</sup> Street LLC (“Edens”), collectively with Gables, the “Applicant”) to the District of Columbia Zoning Commission for a Second-Stage PUD at 1329 5<sup>th</sup> Street, NE (the “Property”) – Applicant’s Final Proffers and Conditions**

Dear Chairman Hood and Commissioners:

Pursuant to the requirements of Subtitle X, Sections 308.12, the Applicant hereby submits its list of final proffers and corresponding conditions of approval. Set forth below is a chart outlining the proffers for the above-referenced project and the corresponding draft condition that is both specific and enforceable, reflecting comments from the Office of Attorney General. Shown below in redline are the changes to the conditions relative to the Applicant’s December 2, 2019 draft proffers and conditions.

The Applicant further enhanced its proffers regarding affordable housing and sustainability in its December 2, 2019 filing and elaborated on those further proffers in its post-hearing statement filed concurrently with this set of revised conditions.

In addition, as noted in the post-hearing statement, the Applicant requests additional flexibility to address some of the design alternatives identified by the Commission at the November 25, 2019 public hearing. The rationale for this additional flexibility is set forth in the post-hearing statement.

Finally, the Applicant requests permission to file a comprehensive set of final plans after the Commission has taken Final Action on this application. The Applicant believes that DCRA and OAG will find it easier administratively to review a building permit application against a combined set of approved final plans.

<b>Public Benefits</b>	
<b>Proffer</b>	<b>Condition</b>
<p><b><u>Superior Urban Design and Architecture (11-X DCMR § 305.5(a)):</u></b> The Project’s design is reflective of superior architectural and urban design characteristics relative to any matter-of-right development. Key indicia of superior architecture are the Project’s contemporary yet contextual form, its material selection, and its inclusion of high-quality private outdoor spaces.</p>	<ol style="list-style-type: none"> <li>1. The Project and the Plaza shall be constructed in accordance with the plans prepared by HCM and Mahan Rykiel, dated _____ and included in the record at Exhibit ____, modified by the guidelines, conditions, and standards herein (the “<b><u>Final Plans</u></b>”).</li> <li>2. The Property shall be subject to the requirements of the C-3-C Zone District except as set forth herein or modified hereby as shown on the Final Plans. The Project shall be constructed to a maximum height of 120 feet and as measured from the measuring point on 6th Street, NE pursuant to the Final Plans. The Project shall have flexibility from the loading requirements of the 1958 Zoning Regulations and to allow a habitable penthouse for residential amenities, all as set forth in the Final Plans. The Applicant shall have flexibility in the following areas: [See below on pages 3-4]</li> <li>3. <b><u>Prior the issuance of a Certificate of Occupancy for the Project,</u></b> the Applicant shall convert the intersection of 4<sup>th</sup> Street, NE and Morse Street, NE from two-way controlled stop to all-way controlled stop in accordance with DDOT standard requirements.</li> </ol>
<p><b><u>Superior Landscaping (id. § 305.5(b)):</u></b> The Project’s landscaping and hardscaping are also superior to any matter-of-right development. The flexible design of the Plaza and the well-landscaped and programmed rooftops are indicative of the Project’s superior landscaping.</p>	
<p><b><u>Site Planning and Efficient Land Utilization (id. § 305.5(c)):</u></b> The Project makes efficient use of a significant site that is near a Metrorail location, places all parking underground and helps to complete a maturing multi-neighborhood commercial center.</p>	
<p><b><u>Transportation infrastructure beyond that needed to mitigate any potential adverse impacts of the application (id. § 305.5(o)):</u></b> The Project’s pedestrian prioritization and transportation measures were found to be public benefits in the Approved PUD and remain so as part of this Application. The Project’s vehicular parking entrance and exit as well as the loading for the buildings is accessed from the 6th Street, NE at the east side of Union Market. Accordingly, the Project minimizes vehicle-pedestrian conflicts by locating loading off of 6<sup>th</sup> Street, NE and reduces truck sidewalk crossings and maneuvering from 5th Street, NE.</p>	

The Applicant shall have flexibility in the following areas:<sup>1</sup>

- a. To provide a range in the number of residential units in the Project of plus or minus ten percent (10%) relative to the number depicted on the Final Plans and accordingly adjust the type and location of affordable units to reflect the final unit mix of the Project;
- b. To vary the location and design of all interior components, including but not limited to 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 exterior materials within the color ranges ~~and~~ of the material types as proposed, based on availability at the time of construction, without reducing the quality of the materials; and to make minor refinements to exterior details, dimensions and locations, including curtainwall mullions and spandrels, window frames and mullions, glass types, belt courses, sills, bases, cornices, balconies, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or to address the structural, mechanical, design, or operational needs of the building uses or systems;
- d. To vary the final design of retail frontages, including locations of doors, design of show windows and size of retail units and signage, to accommodate the needs of specific retail tenants;
- e. To vary the selection of plantings in the landscape plan depending on seasonal availability within a range and quality as proposed in the Final Plans or otherwise in order to satisfy any permitting requirements of DC Water, DDOT, DOEE, DCRA, or other applicable regulatory bodies;
- f. To make minor refinements to the floor-to-floor heights, so long as the maximum height and total number of stories as shown on the Plans do not change;
- g. To revise the design of the public space surrounding the Property and the landscape and/or streetscape exterior design of the Project, including, without limitation, the gate element(s) between the Plaza and the adjacent sidewalks (in accordance with the Final Plans), to the extent necessary to obtain approvals from District agencies and/or service to the Property from utilities or as would otherwise be in accordance with the Streetscape Design Guidelines;
- h. To make refinements to the approved parking configuration, including layout and number of parking spaces plus or minus ten percent (10%);
- i. To vary the amount, location and type of green roof, solar panels, planted canopies (over the Plaza only), and paver areas to meet stormwater requirements and sustainability goals or otherwise satisfy permitting requirements, so long as the Project achieves a minimum

<sup>1</sup> Edits to the requested flexibility relative to the Applicant's filing in Exhibit 20 are shown as underlined/struck through and reflect the Commission's recommendations and comments from DPR/DOEE.

GAR of 0.2 based on the area of the North Parcel only and provides a minimum of 2,000 square feet of roof area containing solar panels and related equipment;

- j. To vary the final design and layout of the mechanical penthouse to accommodate changes to comply with Construction Codes or address the structural, mechanical, or operational needs of the building uses or systems, so long as such changes do not substantially alter the exterior dimensions shown on the Final Plans and remain compliant with all applicable penthouse setback requirements;
- k. To vary the final design and layout of the indoor and outdoor amenity and plaza spaces to reflect their final design and programming and to accommodate special events and programming needs of those areas from time to time;
- l. To vary the final design of the ground floor frontage, including the number, size, design, and location of windows and entrances, signage, awnings, canopies, and similar storefront design features, to accommodate the needs of the specific tenants within the parameters set forth in the Storefront and Signage Plans;
- m. To vary the final condition of the north façade of the Project (including without limitation modifying or removing windows and/or masonry) in accordance with the alternative design as shown on sheet [ ] of the Final Plans, or within the areas dashed in red on sheet [ ] of the Final Plans in the event a structure is approved to be built to the property line to the north where the portions of such adjacent structure exist;
- n. To utilize the ground floor space for any uses in the retail; service; eating and drinking establishment; PDR/Maker uses; arts, design, and creation; daycare; entertainment, assembly, and performing arts; office/research lab use categories; or any other lawful use in the C-3-C/MU-9 zone;
- o. To change the location and dimensions of the knock out panels in the garage in order to accommodate, on terms reasonably acceptable to the Applicant, an internal connection to a future building to the north of the Property; and
- p. To vary the design of the “surround” on the upper stories of the 5<sup>th</sup> Street, NW façade of the Project to allow construction of a projection-compliant design in accordance with the alternative design as shown on sheet [ ] of the Final Plans.

<p><b><u>Housing in Excess of Matter-of-Right Development (id. § 305.5(f)(1)):</u></b> The Project includes a greater number of housing units than could be developed on the Property as a matter-of-right.</p>		<p>4. <b><u>For the life of the Project,</u></b> the Project shall provide housing in excess of a matter-of-right development of the Property, including affordable housing as set forth in the following chart and in accordance with the location and proportional mix of units (by bedroom count) as shown on Sheet A44 of the Final Plans, subject to Condition A.2(a), and the Project’s total residential GFA shall not exceed the total residential GFA shown here; provided, however, that any reduction in the total amount of residential GFA (and/or number of units) in the Project shall be accompanied by a corresponding reduction in the amount of market rate GFA (and number of units) and affordable housing GFA (and number of units) in proportion to the percentages listed here: [see below]</p> <p>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.</p>			
<p><b><u>Affordable Housing in Excess of Inclusionary Zoning Requirements (id. § 305.5(g)):</u></b> The Project also reserves nine percent (9%) of its residential GFA for affordable housing units, of which affordable units, thirty percent (30%) shall be reserved at 50% MFI, <u>and seventy percent (70%) shall be reserved at 60% MFI.</u></p>					
<b>Residential Unit Type</b>	<b>Total Residential Gross Floor Area (“GFA”)/ Percentage of Total Residential GFA</b>	<b>Units</b>	<b>Reserved for households earning equal to or less than:</b>	<b>Affordability Control Period</b>	<b>Tenure (rental or sale)</b>
<b>Total</b>	287,530 sf of GFA (100%)	300	N/A	N/A	N/A
<b>Market Rate</b>	261,652 sf of GFA (91%)	276	N/A	N/A	N/A
<b>Affordable Housing</b>	7,763 sf of GFA (2.7%)	7	50% MFI	Life of Project	Rental
	18,113 sf of GFA (6.3%)	17	60% MFI	Life of Project	Rental
<p><b><u>Employment and Training Opportunities (id. § 305.5(h)):</u></b> As part of the Approved PUD, the Applicant, through Edens, entered into a First Source Employment Agreement with the Department of Employment Services (“DOES”) to achieve the goal of utilizing District of Columbia residents for at least 51 percent of the new construction jobs created by the Project.</p>		<p>5. <b><u>Prior to the issuance of a building permit for the Project,</u></b> the Applicant shall submit to the Zoning Administrator a copy of the executed First Source Agreement for the Project.</p>			

<p><b><u>Environmental and Sustainable Benefits: LEED Gold (id. § 305.5(k)(5)):</u></b> The Applicant proposes to construct the Project to LEED Gold v4 certification. An updated LEED checklist is included with the Revised Plans. This level of design exceeds the level (i.e., LEED Silver 2009) that was deemed a public benefit under ZR58 by the Commission in the Approved PUD. LEED Gold v4 is the equivalent of LEED Platinum 2009.</p>	<p>6. <b><u>Prior to the issuance of a certificate of occupancy for the Project,</u></b> the Applicant shall provide the Zoning Administrator with evidence that the Project has or will achieve the requisite number of prerequisites and points necessary to secure LEED Gold v4 certification or higher from the U.S. Green Building Council.</p>
<p><b><u>Environmental and Sustainable Benefits: Rooftop Solar (id. § 305.5(k)):</u></b> The Applicant proposes to include on the Project rooftop solar panels, which are another benefit that was not contemplated in the Approved PUD.</p>	<p>7. <b><u>Prior to the issuance of the first certificate of occupancy for the Project,</u></b> the Applicant shall provide the Zoning Administrator with information showing that solar panel systems installed on the Project occupy no less than 2,000 square feet of roof area.</p>
<p><b><u>Building Spaces for Special Uses: PDR/Maker Uses (id. § 305.5(j)):</u></b> The Project newly commits to providing PDR/Maker uses and to building out half of the ground floor non-residential space to specifications that accommodate such uses. This is a new proffer not contained in the Approved PUD.</p>	<p>8. <b><u>Prior to the issuance of a building permit for the Project,</u></b> the Applicant shall demonstrate that the plans contained in the building permit application for the Project satisfy the PDR/Maker use construction specifications as follows: (a) a structural slab load (ground floor) live load of 125 pounds per square inch; (b) clear height of approximately 16 feet from ground-floor slab to bottom of structure above; (c) an electrical supply of 50 watts per square foot; (d) a loading dock that includes a 48-inch raised loading dock and/or levelers; (e) an open floor plan layout; (f) a sound attenuation for mixed-use that satisfies NC-25 minimum noise criteria and includes seven-inch-thick minimum concrete podium slab; (g) HVAC designed for one ton per 300 square feet; and (h) ventilation (Fresh Air / Make-Up Air) louvers at façade.</p> <p>9. <b><u>For a minimum of five (5) years after the date of issuance of the first certificate of occupancy for the Project,</u></b> the Applicant shall reserve a minimum of five percent (5%) of the non-residential gross floor area of the ground floor of the Project for one or</p>

	<p>more of the following PDR/Maker uses: (a) production, sale, and/or distribution of food and beverages (provided that the onsite consumption of food and beverages shall only be permitted when associated with such production, sale, and/or distribution user); (b) food incubators and food hubs; (c) robotics and 3-D manufacturing; (d) small-scale production, distribution or repair of goods and related accessory sales; (e) curation and sale of small-scale production goods; (f) new and locally-owned small businesses as certified with the Department of Small &amp; Local Business Development; (g) “creative economy” uses including incubators, graphic design, product or industrial design, engineering and design, technology design and production, design and product curation, fashion design, horticultural design, green businesses and sustainable design, specialty sports and recreation uses, media/communications production and distribution; and (h) “arts” uses including arts, design and creation uses as defined in Subtitle B, Section 200.2(e) of the Zoning Regulations and entertainment, assembly and performing arts as defined in Subtitle B, Section 200.2(n) of the Zoning Regulations.</p>
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**Transportation Mitigation Measures – Loading and Parking Management**

1. **For the life of the Project**, the Applicant shall implement the following measures with respect to the Project’s loading:
  - a. The Project’s property manager shall designate a loading facility manager (“**Loading Manager**”). The Loading Manager shall coordinate with tenants/residents to schedule deliveries and will be on duty during delivery hours;
  - b. The Loading Manager shall schedule deliveries so as to not exceed the Project’s loading facility capacity, and in the event that an unscheduled delivery vehicle arrives while the Project’s loading facility is full, the Loading Manager shall direct the driver of such vehicle to return at a later time when the loading facility has adequate capacity;
  - c. The Loading Manager shall require all loading activity to take place on private property and not in public right-of-way and shall provide notice to all retail and residential tenants of this requirement;
  - d. The Project’s property manager shall provide all tenants and residents with information regarding loading dock restrictions, rules, and suggested truck routes at lease signing and shall encourage tenants and residents to utilize trucks 30 feet or shorter in length;
  - e. The Project’s property manager shall require all residential tenants to schedule move ins/move outs in advance of the occurrence of same and in a manner that coordinates with the retail delivery schedule;
  - f. The Loading Manager shall not permit trucks using the loading facility to idle and shall require such trucks to follow all District guidelines for heavy vehicle operation including but not limited to 20 DCMR § 900 (Engine Idling), the requirements set forth in DDOT’s “Freight Management and Commercial Vehicle Operations” document, and the primary access routes listed in DDOT’s “Truck and Bus Route System” as applicable from time to time; and
  - g. The Loading Manager shall disseminate to drivers from delivery services that frequently utilize the loading facility (1) suggested truck routing maps and (2) other applicable materials as needed to encourage compliance with District law and DDOT’s truck routes and shall post such documents in a prominent location within the service area.
  
2. **During the period of construction of the Project**, the Applicant shall maintain access on and across the Property to loading facilities and operations for the South Building; provided, however, that the Applicant shall not be prohibited from loading the South Building from adjacent rights of way during the periods of paving, surfacing, and/or subsurface work on the Plaza subject to applicable public space permitting requirements.



3. **For the life of the Project**, the Applicant shall install and maintain (a) electric vehicle charging stations within the garage that can accommodate a minimum of six (6) vehicles at any given time, and (b) at least five (5) electrical outlets in each of the long-term bicycle storage rooms to supply power to electric bicycles.
4. **Prior to the issuance of the first Certificate of Occupancy for the Project**, the Applicant shall incorporate into the parking garage design the ability to remove a portion of the garage demising wall as knock out panels (“**Knock Out Panels**”) connecting the adjacent property at 1331 5<sup>th</sup> Street, NE (Parcel 129/112) (the “**Neighboring Property**”) to its garage ramp and a related curb cut on 6th Street, N.E. as shown on sheet [x] of the Final Plans. The Applicant shall work cooperatively with the Neighboring Property owner and/or developer to enter into an agreement on terms reasonably acceptable to the Applicant to provide the Neighboring Property with the Knock Out Panels of no less than a 22 feet of width which will provide vehicular access to the Neighboring Property’s garage through the Project’s garage, and the Applicant shall use reasonable efforts to obtain a letter from the owner of the Neighboring Property acknowledging its notice of this condition; provided, however, that such vehicular access to the Neighboring Property’s garage shall be only a secondary entrance to the Neighboring Property, and such Neighboring Property garage shall have a primary entrance elsewhere, and it being understood that the Applicant shall have the right to insist that as part of any such agreement terms providing for, without limitation, commercially reasonable insurance, indemnity, and cost-sharing obligations from the owner or developer of the Neighboring Property.

**Transportation Mitigation Measures – Transportation Demand Management**

5. **For the life of the Project**, the Applicant shall implement the following with respect to the Project’s transportation demand:
  - a. The Applicant shall identify a “TDM Leader” (for planning, construction, and operations), who shall distribute and market to the residents and tenants of the building various transportation alternatives and options in existence from time to time, which materials shall include TDM materials to new residents and tenants in a welcome package;
  - b. The Applicant shall provide the TDM Leader’s contact information to DDOT and report TDM efforts and amenities to goDCgo staff once per year;
  - c. The TDM Leader shall receive TDM training from goDCgo to learn about and implement the TDM conditions for this Project;
  - d. The Applicant shall post all TDM commitments online, publicize the availability of the same, and allow the public to see what commitments have been promised;
  - e. The Applicant shall provide website links to [CommuterConnections.com](http://CommuterConnections.com) and [goDCgo.com](http://goDCgo.com) on Project-related websites;

- f. The Applicant shall offer for lease, at market rates and on market terms, at least two (2) parking spaces in the Project to a car-sharing service in the Project’s underground parking garage
- g. The Applicant shall unbundle the fee it charges for parking from the base rent under a lease or the purchase price of a residential unit and shall set the minimum parking fee at the average market rate, where the market rate is determined by the average price in garages within 0.25 miles of the Project;
- h. The Applicant shall install a “Transportation Information Center Display” on an electronic screen within the residential lobby of the Project, which Display shall contain information related to local transportation alternatives;
- i. The Applicant shall meet or exceed the Zoning Regulations’ requirements for bicycle parking, including the requirement to provide secure interior bicycle parking and short-term exterior bicycle parking around the perimeter of the Property, and long-term bicycle storage rooms pursuant to the Final Plans; and
- j. The Applicant shall provide all new tenants with a car share or bike share membership up to the maximum value of \$40,000 cumulative for the Project.

The Applicant looks forward to the Commission’s action on this matter. Please feel free to contact the undersigned with any questions.

Respectfully submitted,

/s/ Jeffrey C. Utz

/s/ David A. Lewis

Enclosures

CC: Maximilian L.S. Tondro (*via e-mail only: maximilian.tondro@dc.gov*)  
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## Certificate of Service

I certify that on or before December 16, 2019, I delivered a copy of the foregoing document and attachments via e-mail, hand delivery, or first-class mail to the addresses listed below.

/s/ David A. Lewis

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