

PLANNED UNIT DEVELOPMENT COVENANT

Z.C. CASE NO. 15-20C

TBSC Owner I LLC

**(Modification to First-Stage Planned Unit Development and
Approval of Second-Stage Planned Unit Development @
Square 620, Lots 252, 253, 254, 255, 904, and 905)**

THIS PLANNED UNIT DEVELOPMENT (“PUD”) COVENANT (this “Covenant”), is made by **TBSC OWNER I LLC**, a Delaware limited liability company (the “Owner”), for the benefit of the **DISTRICT OF COLUMBIA**, a municipal corporation (the “District”), effective as of the date of last signature executing this Covenant.

W I T N E S S E T H:

WHEREAS, Owner owns in fee simple title to that certain real property in the District of Columbia known as Lots 252, 255, 904 and 905 in Square 620 (together, the “**South Parcel**”), as well as Lots 253 and 254 in Square 620 (together with the South Parcel, the “**Overall PUD Site**”) as reflected on the building plat attached as **Exhibit A**.

WHEREAS, pursuant to Chapter 3 of Subtitle X of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “**Zoning Regulations**,” to which all references herein are made unless otherwise specified), the Zoning Commission for the District of Columbia (the “**Commission**”) granted approval for a first-stage PUD (the “**First-Stage PUD**”), with a related Zoning Map amendment for the Overall PUD Site, by Z.C. Order No. 15-20, dated May 9, 2016, that became final and effective on June 17, 2016; which was subsequently extended pursuant to Z.C. Order No. 15-20A, dated May 8, 2017, that became final and effective on June 30, 2017; and modified by Z.C. Order No. 15-20B, dated July 30, 2018, that became final and effective September 14, 2018.

WHEREAS, the Commission approved (i) a modification of the First-Stage PUD and (ii) second-stage PUD approval for the South Parcel (collectively, the "**Approved PUD**") by Zoning Commission Order No. 15-20C (the "**15-20C Order**"), dated October 21, 2019, which became final and effective on March 13, 2020.

WHEREAS, Subtitles X § 311.3 and Z § 702.10 require that Owner enter into this Covenant with the District binding the Owner, and its successors and assigns in title, to construct on and use the South Parcel in accordance with the 15-20C Order, including all modifications, alterations, or amendments thereto approved by the Commission.

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 Commission's approval of the Approved PUD for the South Parcel in the 15-20C Order, as the same may be amended and/or modified from time to time by the Commission, are incorporated herein by reference and made a part hereof as **Exhibit B** and shall be considered a part of this Covenant. The South Parcel shall be constructed on and used in accordance with the plans approved by the 15-20C Order and its conditions and restrictions, subject to such changes as the Zoning Administrator of the District of Columbia may authorize pursuant to Subtitle A § 304.5, or the Commission may authorize pursuant to Subtitle Z §§ 703 or 704. Owner covenants that it shall use the South Parcel only in accordance with the terms of the 15-20C Order, as the same may be further amended and/or modified from time to time by the Commission, subject to the terms and conditions contained herein and the provisions of Subtitle X, Chapter 3.

2. Additional Time to Construct Approved PUD. The Commission may consider, in accordance with and subject to the limitations of Subtitle Z § 705, an application filed by Owner

demonstrating good cause to extend the validity period of the 15-20C Order, and the time period requirements for filing a building permit application and for commencing construction.

3. Default. In the event that Owner fails to file for a building permit for and/or to commence construction of the approved South Parcel within the time specified in Subtitle Z §§ 702.2 and 702.3 and the 15-20C Order, as modified by any extension of time granted by the Commission for good cause shown pursuant to Subtitle Z § 705, the benefits granted by the 15-20C Order shall terminate pursuant to Subtitle Z § 702.6 and this Covenant shall be deemed null and void.

4. Future Conveyance. Owner covenants that if any conveyance of all or any part of the South Parcel takes place, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns, to develop and use the South Parcel in accordance with the terms and conditions of this Covenant and the grantee, and 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 Owner, and its successors and assigns, and shall inure to the benefit of Owner, its successors and assigns, and of the District. Such covenants are not binding upon any party who no longer has a property interest in the South Parcel. In the event that all or part of the South Parcel is sold or otherwise conveyed by the Owner, the purchaser or transferee and its successors and assigns shall be considered the Owner hereunder, and the District shall continue to be deemed the beneficiary of the Covenant for the purposes of enforcing all covenants, conditions and restrictions contained herein applicable to the South Parcel and/or the Owner.

6. Recordation. Owner shall record this Covenant against the South Parcel, as fully executed by the parties hereto, among the Land Records of the District of Columbia (the “**Land Records**”) and shall file a certified copy of this Covenant with the Zoning Administrator and the 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 Commission modifies or amends the 15-20C Order, 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 prior written consent of the District and, if determined by the Office of the Attorney General to be necessary, without the prior approval of the Zoning Commission.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Toll Apartments GP, LLC, has caused this Covenant to be executed by John McCullough, its duly authorized Sr. Vice President/Managing Director, on behalf of said Toll Apartments GP, LLC, as General Partner of Toll Apartments, LP, as the Manager of TBSC Venture LLC, as a Member of TBSC Holding LLC, as a Member of TBSC Owner I LLC, a Delaware limited liability company, the Owner herein, all as of the 29th day of May, 2020.

OWNER:


TBSC OWNER I LLC,
a Delaware limited liability company,

By: **TBSC HOLDING LLC,**
a Delaware limited liability company, its Member

By: **TBSC Venture LLC,**
a Delaware limited liability company, its Member

By: **Toll Apartments, LP,**
a Delaware limited partnership, a Manager

By: **Toll Apartments GP, LLC,**
a Delaware limited liability company,
its General Partner

By: 
Name: John McCullough
Title: Sr. Vice President/Managing Director

STATE OF Texas

CITY/COUNTY OF Denton, to-wit:

The foregoing instrument was acknowledged before me, the undersigned Notary Public, in the jurisdiction aforesaid, this 29 day of May, 2020, by John McCullough, Sr. Vice President/Managing Director of Toll Apartments GP, LLC, the General Partner of Toll Apartments, LP, the Manager of TBSC Venture LLC, a Member of TBSC Holding LLC, a Member of TBSC Owner I LLC, a Delaware limited liability company.


Notary Public
(NOTARIAL SEAL)

My Commission Expires: 05/08/2022



#74768168 v5

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Notarized online using audio-video communication

Electronic Notary Public

APPROVED:

Matthew Le Grant

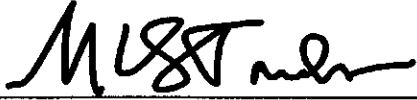
Matthew LeGrant, Zoning Administrator
Department of Consumer and Regulatory Affairs

8-5-2020

Date

(PUD Covenant pursuant to Subtitles X § 311.3 and Z § 702.10 for Lots 252, 255, 904 and 905 in Square 620 (the "South Parcel") for a Second-Stage PUD approved by Z.C. Order No. 15-20C)

APPROVED AS TO LEGAL SUFFICIENCY:



Maximilian L.S. Tondro,
Assistant Attorney General
Office of the Attorney General
for the District of Columbia

August 5, 2020

Date

(PUD Covenant pursuant to Subtitles X § 311.3 and Z § 702.10 for Lots 252, 255, 904 and 905 in Square 620 (the "South Parcel") for a Second-Stage PUD approved by Z.C. Order No. 15-20C)

EXHIBIT A
BUILDING PLAT FOR PUD SITE

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., March 30, 2020

Plan for Building Permit of: SQUARE 620 Lots 252-255 & 904 - 905

Scale: 1 inch = 60 feet

Recorded in Book 216 Page 72 (Lots 252 - 255)
Book A & T Page 3877 - H (Lots 904 - 905)

Receipt No. 20-03533 Drawn by: A.S.

Furnished to: KAYLA SHATTUCK

"I hereby certify that the dimensions and configuration of the lot(s) hereon depicted are consistent with the records of the Office of the Surveyor unless otherwise noted, but may not reflect actual field measurements. The dimensions and configuration of A&T lots are provided by the Office of Tax and Revenue and may not necessarily agree with the deed description(s)."

Bob Myers

FOR Surveyor, D.C.

I hereby certify that on this plan on which the Office of the Surveyor has drawn the dimensions of this lot, I have accurately and completely depicted and labeled the following:

- 1) all existing buildings and improvements - including parking spaces, covered porches, decks and retaining walls over four feet above grade, and any existing face-on-line or party wall labeled as such, with all projections and improvements in public space - with complete and accurate dimensions;
 - 2) all proposed demolitions or parts of existing buildings duly labeled as such; all proposed buildings and improvements - including parking spaces, covered porches, decks and retaining walls over four feet above grade, any existing face-on-line or party wall labeled as such, as well as projections and improvements in public space and the improvements used to satisfy previous surface or green area ratio requirements - with complete and accurate dimensions, in conformity with the plans submitted with building permit application B1908831 and
 - 3) any existing chimney or vent on an adjacent property that is located within 10 feet of this lot.
- I also hereby certify that:
- 1) my depiction on this plan, as detailed above, is accurate and complete as of the date of my signature hereon;
 - 2) there is no elevation change exceeding ten feet measured between lot lines; or if so, this elevation change is depicted on a site plan submitted with the plans for this permit application;
 - 3) I have ~~not~~ circled one filed a subdivision application with the Office of the Surveyor;
 - 4) I have ~~not~~ circled one filed a subdivision application with the Office of Tax & Revenue; and
 - 5) if there are changes to the lot and its boundaries as shown on this plan, or to the proposed construction and plans as shown on this plan, that I shall obtain an updated plan from the Office of the Surveyor on which I will depict all existing and proposed construction and which I will then submit to the Office of the Zoning Administration for review and approval prior to permit issuance.

The Office of the Zoning Administrator will only accept a Building Plan issued by the Office of the Surveyor within the two years prior to the date DCRA accepts a Building Permit Application as complete. I acknowledge that any inaccuracy or errors in my depiction on this plan will subject any permit or certificate of occupancy issued in reliance on this plan to enforcement, including revocation under Sections 104 (f) and 110 (2) of the District Code (Title 42A of the DCMR) as well as prosecution and penalties under Section 204 of Title 22, Chapter 64 (D.C. Official Code §22-2405).

Signature: *Michael J. O'Hara, Jr.* Date: 05/12/2020

Printed Name: MICHAEL J. O'HARA, JR. Relationship to Lot Owner: AGENT

If a registered design professional, provide license number: PE901803 and include stamp below.



M STREET, N.W.

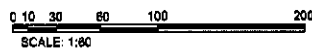
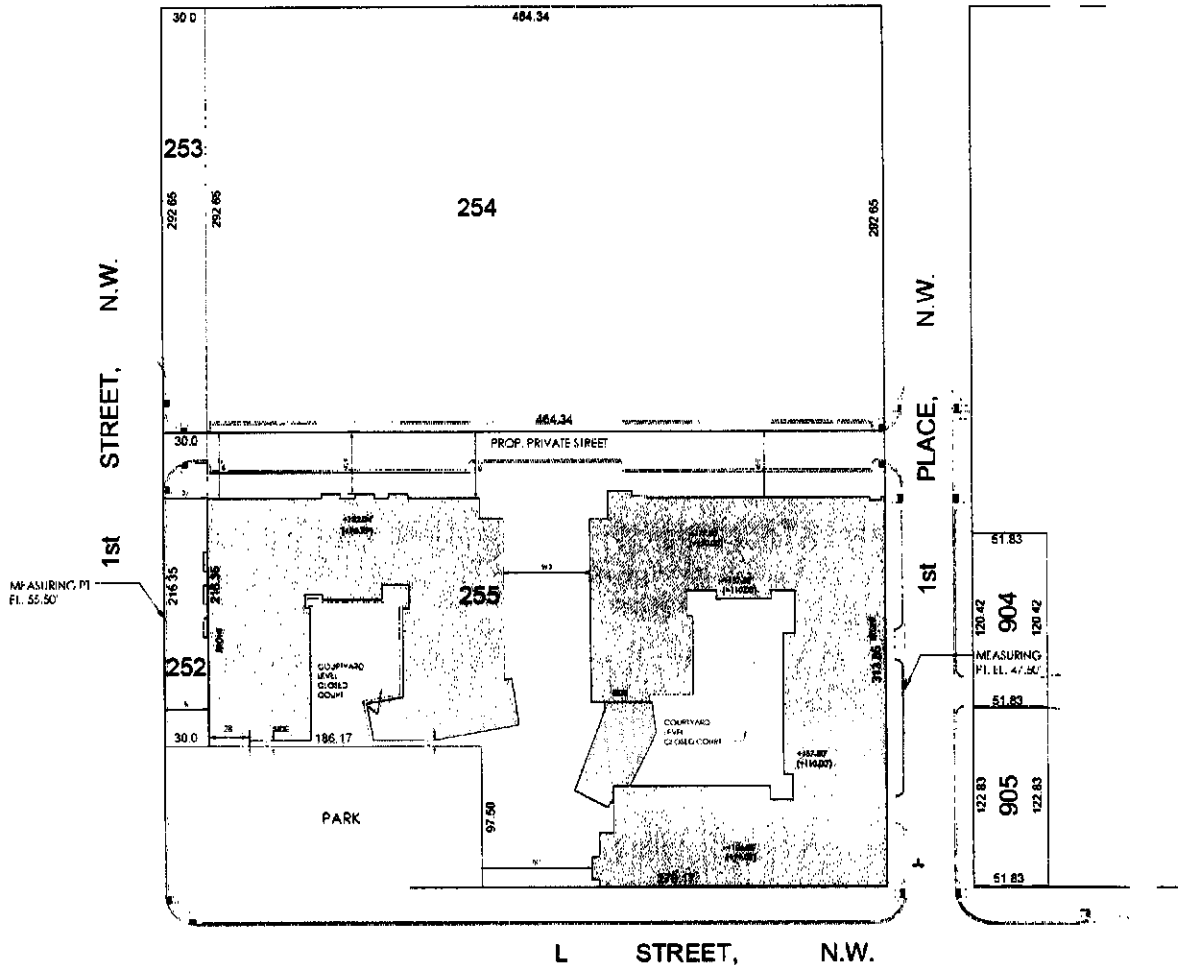


EXHIBIT A-1
LEGAL DESCRIPTIONS

ALL THOSE CERTAIN LOTS OR PARCELS OF LAND SITUATE, LYING AND BEING IN THE DISTRICT OF COLUMBIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOTS NUMBERED TWO HUNDRED FIFTY TWO (252), TWO HUNDRED FIFTY THREE (253), TWO HUNDRED FIFTY FOUR (254) AND TWO HUNDRED FIFTY FIVE (255) IN THE SUBDIVISION MADE BY TBSC OWNER LLC, AS PER PLAT RECORDED IN THE OFFICE OF THE SURVEYOR FOR THE DISTRICT OF COLUMBIA IN SUBDIVISION PLAT RECORDED AS LIBER 216 AT PAGE 72.

ALSO

ALL THAT CERTAIN LOT OR PARCEL OF REAL PROPERTY, TOGETHER WITH IMPROVEMENTS THEREON AND APPURTENANCES THEREUNTO BELONGING, LYING, AND BEING SITUATED IN THE DISTRICT OF COLUMBIA AND BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

PART OF LOT 249, SQUARE 620 IN A SUBDIVISION MADE BY D.C. REDEVELOPMENT LAND AGENCY AS PER PLAT RECORDED IN THE OFFICE OF THE SURVEYOR OF THE DISTRICT OF COLUMBIA IN BOOK 152 PAGE 187 AND CLOSED 1ST PLACE, N.W. AS PER PLAT OF STREET CLOSING AND STREET DEDICATION, SQUARE 620 RECORDED IN THE OFFICE OF THE SURVEYOR OF THE DISTRICT OF COLUMBIA IN BOOK 211 PAGE 173, AND BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 251, SQUARE 620, AS PER PLAT RECORDED IN THE OFFICE OF THE SURVEYOR OF THE DISTRICT OF COLUMBIA IN BOOK 155 PAGE 60, SAID SOUTHWEST CORNER BEING THE INTERSECTION OF THE DIVISION LINE BETWEEN CLOSED FIRST PLACE, N.W. (BOOK 211 PAGE 173) ON THE WEST, AND SAID LOT 251 ON THE EAST, WITH THE NORTHERLY LINE OF L STREET, N.W., WITH, THENCE WITH SAID NORTHERLY LINE;

A. DUE WEST, 71.83 FEET TO THE INTERSECTION OF SAID NORTHERLY LINE, WITH THE EASTERLY LINE OF FIRST PLACE, N.W., THENCE WITH SAID EASTERLY LINE;

B. DUE NORTH, 122.83 FEET TO THE PLACE OF BEGINNING OF THE HEREIN DESCRIBED LOT 904, THENCE CONTINUING WITH SAID EASTERLY LINE;

1. DUE NORTH, 120.42 FEET THENCE DEPARTING SAID EASTERLY LINE AND WITH A LINE THROUGH SAID CLOSED FIRST PLACE, N.W., THE FOLLOWING TWO COURSES AND DISTANCES;

2. DUE EAST, 51.83 FEET, THENCE CONTINUING WITH SAID LINE THROUGH CLOSED FIRST PLACE, N.W.;

3. DUE SOUTH, 120.42 FEET, THENCE CONTINUING WITH SAID THROUGH LINE AND FURTHER CONTINUING WITH A LINE THROUGH SAID LOT 249;

4. DUE WEST, 51.83 FEET TO THE PLACE OF BEGINNING.

CONTAINING 6,242 SQUARE FEET

NOTE: SAID PROPERTY BEING NOW KNOWN FOR THE PURPOSES OF ASSESSMENT AND TAXATION AS LOT NUMBERED NINE HUNDRED FOUR (904) IN SQUARE NUMBERED SIX HUNDRED TWENTY (620).

ALSO

ALL THAT CERTAIN LOT OR PARCEL OF REAL PROPERTY, TOGETHER WITH IMPROVEMENTS THEREON AND APPURTENANCES THEREUNTO BELONGING, LYING, AND BEING SITUATED IN THE DISTRICT OF COLUMBIA AND BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

PART OF LOT 249, SQUARE 620 IN A SUBDIVISION MADE BY D.C. REDEVELOPMENT LAND AGENCY AS PER PLAT RECORDED IN THE OFFICE OF THE SURVEYOR OF THE DISTRICT OF COLUMBIA IN BOOK 152 PAGE 187 AND CLOSED 1ST PLACE, N.W. AS PER PLAT OF STREET CLOSING AND STREET DEDICATION, SQUARE 620 RECORDED IN THE OFFICE OF THE SURVEYOR OF THE DISTRICT OF COLUMBIA IN BOOK 211 PAGE 173, AND BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 251, SQUARE 620, AS PER PLAT RECORDED IN THE OFFICE OF THE SURVEYOR OF THE DISTRICT OF COLUMBIA IN BOOK 155 PAGE 60, SAID SOUTHWEST CORNER BEING THE INTERSECTION OF THE DIVISION LINE BETWEEN CLOSED FIRST PLACE, N.W. (BOOK 211 PAGE 173) ON THE WEST, AND SAID LOT 251 ON THE EAST, WITH THE NORTHERLY LINE OF L STREET, N.W., WITH, THENCE WITH SAID NORTHERLY LINE;

A. DUE WEST, 20.00 FEET TO THE PLACE OF BEGINNING OF THE HEREIN DESCRIBED LOT 905, THENCE CONTINUING WITH SAID NORTHERLY LINE;

1. DUE WEST, 51.83 FEET TO THE INTERSECTION OF SAID NORTHERLY LINE, WITH THE EASTERLY LINE OF FIRST PLACE, N.W., THENCE WITH SAID EASTERLY LINE;

2. DUE NORTH, 122.83 FEET, THENCE DEPARTING SAID EASTERLY LINE AND WITH A LINE THROUGH SAID LOT 249 AND FURTHER CONTINUING THROUGH SAID CLOSED FIRST PLACE, N.W.;

3. DUE EAST, 51.83 FEET, THENCE CONTINUING WITH SAID LINE THROUGH CLOSED FIRST PLACE, N.W.;

4. DUE SOUTH, 122.83 FEET TO THE PLACE OF BEGINNING.

CONTAINING 6,366 SQUARE FEET

NOTE: SAID PROPERTY BEING NOW KNOWN FOR THE PURPOSES OF ASSESSMENT AND TAXATION AS LOT NUMBERED NINE HUNDRED FIVE (905) IN SQUARE NUMBERED SIX HUNDRED TWENTY (620).

EXHIBIT B

ZONING COMMISSION ORDER NO. 15-20C

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-20C
Z.C. Case No. 15-20C
TBSC Owner I, LLC
(Modification to First-Stage PUD and Approval of Second-Stage PUD)
@ Square 620, Lots 252, 253, 254, 255, 904, and 905)¹
October 21, 2019

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on September 26, 2019, to consider an application filed by TBSC Owner I, LLC (the “Applicant”) for a modification of the first-stage planned unit development (“PUD”) and second-stage approval (collectively, the “Application”) for the South Parcel of the PUD (Lots 252 and 255 in Square 620, the “South Parcel”) approved pursuant to Z.C. Order No. 15-20 (the “Original Order”) for Lots 252, 253, 254, 255, 904, and 905 (the “PUD Site”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of the Zoning Regulations (Title 11 of the DCMR) to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

Notice

1. By letter dated September 12, 2018, as subsequently amended and resent on October 1, 2018, the Applicant notified Advisory Neighborhood Commission (“ANC”) 6E, the “affected” ANC pursuant to Subtitle Z § 101.8, and all property owners within 200 feet of the Property, of its intent to file the Application. (Exhibit [“Ex.”] 2N.)

2. On July 30, 2019, the Office of Zoning (“OZ”) sent notice of the public hearing to:
 - ANC 6E;
 - The affected ANC Single Member District (“SMD”) 6E06;
 - The Office of Planning (“OP”);
 - The District Department of Transportation (“DDOT”);
 - The Department of Energy and Environment (“DOEE”);
 - The District of Columbia Housing Authority (“DCHA”);
 - The Council of the District of Columbia (“D.C. Council”); and

¹ In the application, the lots that comprised the Property were identified as Lots 250, 893, 894, 895, 898, 900, 904, and 905 in Square 620. However, the Property, except Lots 904 and 905, was subdivided into new record lots as shown on the plat marked as Exhibits 53A.

- Property owners within 200 feet of the Property.

(Ex. 32.)

3. A description of the proposed development and the notice of the public hearing in this matter were published in the *D.C. Register* on August 2, 2019. (Ex. 31.)

Parties

4. The only parties to the case were the Applicant and ANC 6E.

The PUD Site

5. The PUD Site consists of approximately 6.7 acres in the northwest quadrant of the city and is generally bounded by M Street, N.W. on the north, First Place, N.W. on the east, L Street, N.W. on the south, and First Street, N.W. on the west.
6. The majority of the PUD Site was formerly the site of the Sursum Corda Cooperative, a 199-unit townhouse community. The PUD Site was also improved with a 14-unit, four-story apartment building at 76 M Street, and included two adjoining vacant parcels. All of the structures have been demolished.
7. The Original Order divided the PUD Site into the North Block (Theoretical Lots 2A/2B and 2C/2D, the “North Parcel”) and the South Block (Theoretical Lots 1A and 1B, the “South Parcel”) separated by the private Pierce Street, N.W. The Original Order also included Theoretical Lots 3A and 3B as Green Space.
8. The Comprehensive Plan’s (“CP”) Generalized Policy Map (“GPM”) designates the site as a Land Use Change Area and the Future Land Use Map (“FLUM”) designates the site for Moderate Density Residential and Parks, Recreation, and Open Space. In addition, the Mid-City Small Area Plan identifies high-density residential and medium-density commercial uses as appropriate for the Property. (CP §104.8.)

First-Stage PUD Approval

9. Pursuant to the Original Order, the Commission approved a PUD (the “Approved First-Stage PUD”) for the PUD Site having concluded that the requested first-stage PUD and related zoning map amendment to change the zoning of the PUD Site from the R-4 Zone District the C-3-C Zone District were not inconsistent with the CP and would result in a better than matter-of-right development and meaningful public benefits.
10. In the Original Order, the Commission also granted flexibility from:
 - a. The loading requirements (§ 2201.1 of the 1958 Zoning Regulations²);
 - b. The side yard width requirements (§ 775.5 of the 1958 Zoning Regulations); and

² The first-stage PUD was approved pursuant to the Zoning Regulations of 1958 and is so vested under these rules. (Subtitle A § 102.3(a).). However, the 2016 Zoning Regulations apply to the Application and any modifications to the approved first-stage buildings and the second-stage PUD. (Subtitle A § 102.4.)

- c. The requirements for the number of buildings on a single record lot (§ 2516 of the 1958 Zoning Regulations).
11. The Original Order approved the Approved First-Stage PUD with:
- a. Approximately 1,269,165 square feet of residential use (approximately 1,131 units);
 - b. Approximately 49,240 square feet of non-residential uses;
 - c. An overall density of 4.02 floor area ratio (“FAR”), including the area for Pierce Street, and a density of 5.42 FAR excluding the area for Pierce Street; and
 - d. Building heights in a range from 62.5 feet to 110 feet.
12. The Original Order required the PUD Site to be developed as follows:
- a. South Parcel (Phase I – the subject of this Application)
 - i. Theoretical Lot/Building 1A: 184,775 square feet of gross floor area yielding 176 dwelling units; maximum of 8 stories; maximum building height of 72.45 feet; and a lot density of 4.13 FAR;
 - ii. Theoretical Lot/Building 1B: 194,900 square feet of gross floor area yielding 182 dwelling units; maximum of 8 stories; maximum building height of 78 feet; and a lot density of 4.92 FAR; and
 - iii. Theoretical Lot/Building 1C: 101,225 square feet of gross floor area yielding 63 dwelling units, maximum of 6 stories; maximum building height of 65.76 feet; and a lot density of 3.73 FAR.
 - b. North Parcel (Phase II)
 - i. Theoretical Lot/Building 2A/2B: 425,225 square feet of gross floor area yielding 348 dwelling units; a range of 6 to 11 stories; building heights ranging from 62.5 feet to 110 feet; and a lot density of 6.50 FAR; and
 - ii. Theoretical Lot/Building 2C/2D: 439,460 square feet of gross floor area yielding 362 dwelling units; a range of 6 to 10 stories; building heights ranging from 68.93 feet to 106.93 feet; and a lot density of 7.06 FAR.
 - c. Green Space
 - i. Theoretical Lot 3A: lot area of 6,241 square feet to be maintained as green/open space; and
 - ii. Theoretical Lot 3B: lot area of 6,367 square feet to be maintained as green/open space.

15. The Original Order also granted design flexibility from requirements to construct the PUD in accordance with the plans approved by the Original Order in the following areas:
 - a. To provide a range in the number of residential units of plus or minus 10% from the 1,131 proposed for the development;
 - b. To vary the number, location, and arrangement of parking spaces, provided that the maximum number of parking spaces for the PUD does not exceed 746 parking spaces and the minimum number of parking spaces is not reduced below the number required under the Zoning Regulations; and
 - c. To vary the sustainable design features of the building, provided the project meets a minimum of LEED-Silver certification.
16. Under the Original Order, the first-stage PUD approval was valid until June 30, 2023, provided that a second-stage PUD application for the South Parcel was filed by June 30, 2017.
17. Pursuant to Z.C. Order No. 15-20A, the Commission granted a two-year extension of the PUD approval, extending the deadline to file a second-stage PUD application for the South Parcel to June 30, 2019.
18. Pursuant to ZC Order No. 15-20B, the Commission approved modifications to the conditions of the Original Order as follows:
 - a. Condition No. B.2.a., requiring the Applicant to certify to DCRA the list of Sursum Corda Households; and
 - b. Condition No. B.2.e.i, requiring notice by the Applicant to Sursum Corda Households within 10 days of applying for a raze permit.
19. Pursuant to Decision No. A.3 of the Original Order, the Commission also granted a waiver from compliance with the Inclusionary Zoning (“IZ”) Regulations set forth in Chapter 26 of the 1958 Zoning Regulations because the Affordable Units will remain affordable for the life of the project. (Original Order Finding of Fact [“FF”] I.48.e.)

Application

20. The Applicant filed the Application on November 19, 2018 for review of modifications to the first-stage PUD approved pursuant to the Original Order and approval of the second-stage PUD for the South Parcel (Phase 1) as described below.
21. The Application divides the PUD Site as follows:
 - a. The North Parcel consisting of approximately 124,628 square feet of land area, excluding the area to be dedicated for the First Street, N.W. right-of-way and the area to be used as a sidewalk for Pierce Street, N.W.; and

- b. The South Parcel including the following elements:
- i. Theoretical Lots 1A and 1B, situated between First Street, N.W. and First Place, N.W., and consisting of approximately 2.4 acres, excluding the area to be dedicated for the First Street, N.W. right-of-way;
 - ii. The rectangular parcel of land to the east of First Place, N.W. (Theoretical Lots 3A and 3B), which consists of 12,608 square feet of land area;
 - iii. The private Pierce Street, N.W., except for the parallel parking on the north side of the street, which consists of approximately 34,604 square feet of land area; and
 - iv. The dedication of the southern portion of the First Street N.W. right-of-way, as depicted on Sheet 13a of the plans, which consists of approximately 5,118 square feet of land area.

Modification of Approved First-Stage PUD

22. As finally proposed based on the Applicant’s multiple submissions as described below, the Application proposed to modify the Approved First-Stage PUD as follows:
- a. Reflect the dedication of the First Street, N.W. right-of-way on the plans for the North and South Parcels;
 - b. To construct two buildings on the South Parcel instead of three – Building 1A (the “Southwest Building”) and Building 1B (the “Southeast Building”);
 - c. To include the Green Space located at Theoretical Lots 3A and 3B in the second-stage PUD/South Parcel;
 - d. Change the building heights proposed for the South Parcel from eight stories to a range of eight to ten stories within maximum heights approved by the Original Order (maximum 78 feet to 110 feet);
 - e. Reallocate the density and units from the North to South Parcel, while not changing the overall Approved First-Stage PUD density as follows: (Ex. 39A1 – 39A10.)

	Approved First Stage PUD	Initial Application (Ex. 2G1-2G14)	Final Application (Ex. 39A1-39A10)	Change from Approved First-Stage PUD
Southwest Building	<ul style="list-style-type: none"> • 472,585 sf residential GFA • 8,315 sf non-residential GFA • 421 dwelling units • 6-8 stories (65 - 78 feet) 	<ul style="list-style-type: none"> • 167,047 sf residential GFA • 160 dwelling units • Max 7 stories - 79.54 feet high • 4.22 FAR 	<ul style="list-style-type: none"> • 239,348 sf residential GFA • 0 sf non-residential GFA • 216 dwelling units • Max 9 stories - 95.7 feet high 	<ul style="list-style-type: none"> • + 159,079 sf residential GFA • - 8,315 sf of non-residential GFA • + 141 dwelling units • + 2-4 stories

	Approved First Stage PUD	Initial Application (Ex. 39A1-39A14)	Final Application (Ex. 39A1-39A10)	Change from Approved First Stage PUD
Southeast Building	<ul style="list-style-type: none"> • 4.31 combined FAR (3 bldgs) 	<ul style="list-style-type: none"> • 388,096 sf GFA • 365 dwelling units • 8-10 stories - 88.67-110 feet high • 5.82 FAR 	<ul style="list-style-type: none"> • 6.04 FAR • 392,316 sf GFA • 0 sf non-residential GFA • 0 sf non-residential GFA • 346 dwelling units • 8-10 stories - 84.5-110 feet high • 5.88 FAR 	<ul style="list-style-type: none"> • + 1.6 FAR (5.9 combined FAR)
Northwest Building	<ul style="list-style-type: none"> • 823,580 sf residential GFA • 41,105 sf non-residential GFA • 710 dwelling units 	<ul style="list-style-type: none"> • 388,715 sf residential GFA • 298 dwelling units • 6-11 stories - 62.5 -110 feet high • 6.24 FAR 	<ul style="list-style-type: none"> • 315,061 sf residential GFA • 19,100 sf non-residential GFA • 280 dwelling units • 5-10 stories - 62.5-110 feet high • 5.63 FAR 	<ul style="list-style-type: none"> • - 160,851 sf residential GFA • - 22,005 sf non-residential GFA
Northeast Building	<ul style="list-style-type: none"> • 6-11 stories (110 ft) • 6.77 FAR 	<ul style="list-style-type: none"> • 401,727 sf GFA • 308 dwelling units • 6-10 stories - 68.93-106.93 feet high • 6.45 FAR 	<ul style="list-style-type: none"> • 347,668 sf residential GFA • 0 sf non-residential GFA • 289 dwelling units • 6-10 stories - 68.93-106.93 feet high • 5.82 FAR 	<ul style="list-style-type: none"> • - 141 dwelling units • - 1.05 FAR

- f. Request new development incentives in the form of zoning flexibility from the MU-9 Zone regulations for court and side yards in order to permit the court and side yard condition along the southern theoretical lot line for the Southwest Building as reflected on the South Parcel Court and Yard Diagram on Sheet A-02 of the plans for the second-stage PUD approval at Ex. 39AA2 of the record; (September 26, 2019 Public Hearing Transcript [“9/26/19 Tr.”] at 20.)
- g. The Application also proposed to add the following new public benefits as conditions of the Order:
- i. Dedication of First Street, N.W. Right-of-Way. The Applicant shall dedicate Lot 252 in Square 620 for the southern segment of the First Street, N.W. right-of-way (“ROW”); and (Sheet A.13a, Ex. 39A.2.)

- ii. Minimum Two- and Three-Bedroom Units for South Parcel. The South Parcel shall have a minimum of 52 two-bedroom units and 27 three-bedroom units. Each two-bedroom unit that is not a Reserved Unit shall have a minimum floor area of 850 square feet, and each three-bedroom unit that is not a Reserved Unit shall have a minimum floor area of 1,000 square feet. This will allow the Applicant to maintain the number of family-sized units despite reducing the number of Reserved Units as described below;
- h. Modify the following public benefits as stated in the conditions of the Original Order:
 - i. Condition B.1 to clarify that
 1. The South Parcel will provide at least 100 Affordable Units of the required 199 Affordable Units required for the Overall PUD, with the North Parcel providing the remainder (the size, mix, and location of the North Parcel's Affordable Units shall be consistent with the Inclusionary Zoning ("IZ") requirements in effect at the time of the second-stage PUD application for the North Parcel);
 2. The 199 Affordable Units required for the Overall PUD shall be available to households with incomes not exceeding 80% of MFI, so long as the blended affordability level does not exceed 60% of MFI for the life of the Project; and
 3. The 199 Affordable Units required for the Overall PUD may include the units reserved for Sursum Corda Households (the "Reserved Units") with incomes not exceeding 80% MFI³. Reserved Units for Sursum Corda Households with incomes exceeding 80% MFI shall not be counted towards the 199 Affordable Units; and
 - ii. Condition B.2.a. to reduce the number of residential units on the South Parcel reserved for Sursum Corda households, regardless of income, from 136 to 122 based on an updated list of the Sursum Corda Households provided by Lonnie Duren, chair of the board for the Sursum Corda Housing Cooperative Association ("SCHCA") indicating that fewer households intended to return. The Application proposed the following revised unit mix:

³ The Application also proposed a minor change to clarify that affordability levels would be determined by Median Family Income ("MFI") as opposed to Area Median Income ("AMI") used in the Original Order.

Reserved Sursum Corda Units			
No. of Units	Change from Original Order	No. of Bedrooms	Approximate Unit Size
0	(-15)	Studio	545 s.f.
39	(+8)	1 bdrm	715 s.f.
48	(-5)	2 bdrm	1,100 s.f.
26	(-1)	3 bdrm	1,390 s.f.
9	(-1)	4 bdrm	1,580 s.f.

- iii. Condition B.2.c. to grant the Applicant flexibility to further change the number and location of Reserved Units based on an updated list of the Sursum Corda Households intending to return, certified by the SCHCA at the time of building permit;
- iv. Condition B.2.g. to allow the conversion of Reserved Units to either market rate or non-reserved affordable units in the event a Sursum Corda Household elects not to return or fails to enter into an occupancy agreement in a timely manner. The revised condition also notes that the South Parcel shall have a minimum of 100 Affordable Units, including Reserved Units, and that the blended affordability level for the Affordable Units was not to exceed 60% MFI for the life of the Project; and
- v. Condition B.7.b. to allow for the installation of playground equipment on Lot 904 (Theoretical Lot 3A) prior to the issuance of certificate of occupancy instead of prior to the issuance of a building permit.

Second-Stage PUD Approval for the South Parcel

- 23. As part of the second-stage PUD, the Application requested to relocate the loading access from L Street, N.W. to First Place, N.W. for the South Parcel;
- 24. The second-stage PUD included a request for the following areas of design flexibility from the plans approved by this Order for the South Parcel:
 - a. Loading - Flexibility to have a 30-foot loading space along Pierce Street, N.W. with a width of 8 feet where a width of 12 feet is required and a 20-foot service/delivery service space with a width of 8 feet where a width of 10 feet is required;
 - b. Solar Panels - Flexibility to change the actual location, number and configuration of the solar panels so long as the overall layout of the roof plan, including, but not limited to the location of the penthouses, substantially complies with the plans for the Second-Stage PUD approval, and all of the requirements/standards for the rooftop penthouses and equipment have been met;

- c. Retail/Commercial Option in Southwest Building - Flexibility to have approximately 1,850 square feet of retail/commercial use in lieu of residential amenity space as depicted on Sheet A05-b of the Second-Stage Plans;
- d. Number of Units - To provide a range in the number of residential units for the Southwest Building of plus or minus 10% from the 216 units proposed for that building; and to provide a range in the number of residential units for the Southeast Building of plus or minus 10% from the 346 units proposed for that building;
- e. Parking Layout - To vary the number, location, and arrangement of parking spaces, provided that the maximum number of parking spaces for the South Parcel does not exceed 304 parking spaces⁴, and minimum number is not reduced below the number required for the South Parcel under the Zoning Regulations;
- f. Interior Components - To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, and mechanical rooms, provided that the variations do not change the exterior configuration of the building as shown on the plans approved by the order;
- g. Exterior Materials – Color - To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges shown on the plans approved by the order;
- h. Exterior Details – Location and Dimension - To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the building or design shown on the plans approved by the order. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
- i. Streetscape Design - To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division;
- j. Signage - To vary the font, message, logo, and color of the approved signage, provided that the maximum overall dimensions and signage materials are consistent with the signage on the plans approved by the order and are compliant with the D.C. signage regulations; and
- k. Sustainable Features - To vary the approved sustainable features of the project, provided the total number of LEED points achievable for the project does not decrease below the minimum required for LEED-NC Silver Certification, and to revise the GAR checklist for the project so long as the project meets the minimum GAR requirement of 0.2.

⁴ In the DDOT Response filed on July 11, 2019, the Applicant agreed to reduce the number of parking spaces from 364. (FF 28F; Ex. 23-23F.)

Applicant's Submissions

25. The Applicant submitted a total of nine submissions to the record in support of the Application:
- a. A pre-hearing statement dated May 15, 2019 (the "Pre-hearing Statement"); (Ex. 15-15BK.)
 - b. Comprehensive Transportation Review, as required pursuant to Subtitle Z § 401.8, dated June 10, 2019 (the "CTR"); (Ex. 20-20A.)
 - c. A supplemental pre-hearing statement dated July 5, 2019 (the "Supplemental Statement"); (Ex. 21-22E.)
 - d. A response to the issues raised in the DDOT Report dated July 11, 2019 (the "Response to DDOT"); (Ex. 23-23F.)
 - e. A response to MPD's comments dated, September 4, 2019, (the "Response to MPD"); (Ex. 37.)
 - f. A response to the OP Hearing Report, dated September 6, 2019, (the "Response to the OP Hearing Report"); (Ex. 39-39C.)
 - g. A Memorandum of Agreement between the Applicant and MRP Realty, dated September 16, 2019 (the "MRP Realty Agreement"); (Ex. 42-42A.)
 - h. A supplemental response to the OP Supplemental Hearing Report, dated September 26, 2019 ("Supplemental OP Response"); and (Ex 48-48A.)
 - i. A post-hearing statement dated October 10, 2019 (the "Post-hearing Statement"). (Ex. 53-53F.)

The Pre-hearing Statement

26. The Pre-hearing Statement addressed the comments raised by the OP Setdown Report (FF 40) and the Commission at setdown, specifically by providing:
- a. Details about the uses proposed in the amenity space;
 - b. Confirmation of the relocation of the transformers from First Street, N.W. to Pierce Street, N.W.;
 - c. Discussion of the incorporation of balconies in the building design;
 - d. An updated list of the Sursum Corda Households and confirmation of the affordable units for the PUD; and

- c. A discussion the LEED-Silver certification and the sustainable design elements for the project.

The CTR

27. The CTR analyzed the impacts of the second-stage approval for the South Parcel and concluded that it would not result in a detrimental impact to the surrounding transportation network if all planned site design elements and mitigation measures were implemented.
28. The CTR noted the Property's proximity to existing public transit, as well as the improvements to the pedestrian and vehicular facilities proposed as part of the Project. The CTR also concluded that the proposed TDM and Loading Management Plans would adequately mitigate the Project's impacts.

The Supplemental Statement

29. The Supplemental Statement provided a further response to the questions raised by the Commission and OP at setdown including:
 - a. Revised plans; (Ex. 21A1-22B18.)
 - b. A signage plan for the South Parcel; (Ex. 22C.)
 - c. The First-Source Agreement for the Original Order; and (Ex. 22D.)
 - d. A draft of the current First-Source Agreement. (Ex. 22E.)
30. In addition, the Supplemental Statement also proposed the following changes to the Application:
 - a. A request for flexibility to provide a retail/commercial use option in the Southwest Building (see Sheet A-05b);
 - b. A request for flexibility to locate one 30-foot loading space with a width of eight feet (12 feet required) and one 20-foot service space with a width of eight feet (10 feet required) on Pierce Street;
 - c. A request for flexibility to change the actual location, number and configuration of the proposed solar panels so long as the overall layout of the roof plan substantially complies with the approved plans for the second-stage PUD; and
 - d. An agreement to install a plaque, artwork, or mural on an interior courtyard, or similar element that celebrates the history of Sursum Corda.

Response to DDOT

31. The Response to DDOT provided the following documents responding to the issues raised in the DDOT Report: (FF 53.)

- a. A revised building layout relocating the loading area to First Place, N.W., and the truck maneuvers for same, and the truck maneuvers for loading on the North Parcel; (Ex. 23A)
- b. A Pierce Street, N.W. Street; (Ex. 23B)
- c. A revised conceptual design for L Street, N.W., showing the center line for L Street, N.W. and the curb line in front of the Mount Airy Baptist Church as a post development condition; (Ex. 23C.)
- d. Updated public space plans with the L Street, N.W. Street corresponding to the updated civil drawings; (Ex. 23D)
- e. An updated loading management plan, detailing the trash operations for the project; and (Ex. 23E.)
- f. A revised parking plan, eliminating the 26 tandem spaces resulting in:
 - i. A reduction in the number of vehicle parking spaces from 330 spaces to 304 spaces; and
 - ii. An increase in the number long-term bicycle parking spaces from 188 to 198.

Response to MPD

32. On September 4, 2019, the Applicant filed a letter in response to the MPD Report (FF 58) addressing all three of MPD’s comments as follows:
- a. The townhomes and apartment complex to the east and south of the PUD site are both owned and controlled by DCHA and these buildings are currently scheduled for demolition and disposition of the underlying property;
 - b. Theoretical Lot 3A is owned by Mt. Airy Baptist Church and will improved as a green space and playground pursuant to the proposed modification of Condition No. B.7.b. The park land at the intersection of First and L Streets, N.W. is currently owned by the National Park Service and is currently pending transfer of jurisdiction to the District; and
 - c. The Applicant is proposing a security plan including the use of a closed-circuit television system. The Applicant also noted that the Property will be well lit and offer clear sight lines to enhance public safety.

Response to the OP Hearing Report

33. The Response to the OP Hearing Report addressed several of the issues raised in the OP Hearing Report, including: (FF 41-44.)

- a. Revised architectural plans, specifically with changes to the architectural facades of the South Parcel Buildings and landscape plans;
- b. An updated comprehensive signage plan;
- c. Additional information, including tables, regarding the unit mix and size of both the Reserved and Affordable units; and
- d. A documented commitment to provide a minimum square footage and number of affordable units in South Parcel buildings.

The MRP Realty Agreement

34. The MRP Agreement concerned the responsibility for design and improvement of L Street, N.W. In the Memorandum, the Applicant and MRP Realty agreed on two alternatives for the construction of the segment of L Street, N.W., between North Capitol Street, N.W. and the private drive proposed for the Northwest One Development contingent on which project is constructed first.
35. The parties also agreed to enter into an agreement to modify the traffic signal at North Capitol Street, N.W. and L Street, N.W., including striping and crosswalk improvements and sharing.

Response to Supplemental OP Report

36. On September 26, 2019, in response to the Supplemental OP Report, the Applicant filed an exhibit outlining the activation/programming of the amenity spaces for the building in Phase 1 of the PUD. (FF 45-46.)

Post-Hearing Statement

37. The Post-hearing Statement provided the additional information requested by the Commission at the public hearing as follows:
 - a. Comprehensive Plan - The Applicant analyzed the PUD's consistency with the Comprehensive Plan;
 - b. Building Design - The Applicant provided the following:
 - i. Floor plans showing the balconies, including the Reserved Units with balconies;
 - ii. For the Southeast Building, a different building material and a darker color;
 - iii. A delineation between the Southwest Building and the public proposed at First and L Streets;
 - iv. Elevations of the courtyard areas;

- v. A ramp instead of a lift in the loading/service area; and
 - vi. Additional solar panels on the roof of the buildings.
- c. **First Source Agreement** - The Applicant confirmed that it is not seeking a modification to this condition of the Order, and the Applicant committed to making a good faith effort to ensure that 51% of all new hires are District residents;
- d. The Post-hearing Statement also included the subdivision plat for the PUD Site, which was recorded on September 27, 2019, in Book 216, Page 72;
- e. The Post-hearing Statement included memoranda from Gorove/Slade, dated October 10, 2019 and September 16, 2019. (Ex. 53D, 53E.) The memoranda respond to the issues listed in the Second Supplemental DDOT Report and set forth a revised set of mitigations for the Project as follows: (FF 54-56.)
- i. Finalize the negotiated settlement for the removal of the heritage trees and transmit the payment to DDOT prior to the Certificate of Occupancy for the first building on the site;
 - ii. Commit to the I. Street, N.W. commitments outlined in Ex. 42 of the record in conjunction with the adjacent Northwest One development;
 - iii. Commit to pedestrian improvements at the following locations:
 - 1. **North side of L Street N.W.** - The reconfigured L Street, N.W. with Northwest One developing first enables the creation of a standard sidewalk width on the north side of L Street, N.W. between First Street, N.W. and North Capitol Street, N.W. in the ultimate buildout. If Sursum Corda redevelops first, the Applicant should commit to striping or another treatment to be determined in front of Mt. Airy Baptist Church;
 - 2. **First Street** - commit to the creation of a standard sidewalk section between L Street, N.W. and M Street, N.W. facilitated by the re-establishment of the historic First Street ROW along the site's frontage; and
 - 3. **Missing or substandard sidewalks along the perimeter** - All missing or substandard curb ramps and crosswalks along the perimeter of Phase 1 will be required to be upgraded to DDOT standards as part of the public space permitting process. This includes upgrading the receiving curb ramps on the opposite side of the street as the development;
 - iv. Implement the loading management plan as outlined in Ex. 23E of the record;

- v. Supplement the TDM plan to include the elements identified in the DDOT report, including:
 1. Designate a TDM Coordinator;
 2. Establish a TDM marketing plan;
 3. Unbundle all parking costs from the cost of lease and set the cost at no less than the charges of the lowest fee garage located within a quarter-mile of the site;
 4. Dedicate two (2) parking spaces in each garage for car sharing services to use with the right of first refusal;
 5. Install electronic displays in each building's residential lobby; and
 6. Install a SO-foot (19-dock) Capital Bikeshare station within the site as part of the Phase 1 development and include one year's operating expenses; and
- vi. Revise the Pierce Street, N.W. plans to show a minimum of six (6) bicycle racks.

Applicant's Public Hearing Testimony

38. At the September 26, 2019 public hearing (the "Public Hearing"), the following persons testified on behalf of the Applicant: Paige Hackler, Director of Development for Toll Brothers; Robert Keane of WDG Architects; and Dan VanPelt of Gorove Slade Associates. Mr. Keane testified as an expert in the area of architecture and Mr. VanPelt testified as an expert in the area of transportation planning.

Responses to the Application

OP Reports

39. OP submitted a total of four reports on the following dates:
 - a. A report dated February 15, 2019, recommending that the Commission setdown the Application for a public hearing (the "OP Setdown Report"); (Ex. 11.)
 - b. A pre-hearing report dated July 15, 2019 (the "OP Hearing Report"); (Ex. 27.)
 - c. A supplemental pre-hearing report dated September 6, 2019 (the "Supplemental OP Hearing Report"; and (Ex. 43.)
 - d. A post-hearing report dated October 16, 2019, responding to questions raised by the Commission during the Public Hearing (the "OP Post Hearing Report"). (Ex. 54.)

The OP Setdown Report

40. The OP Setdown Report analyzed the Application's compliance with the CP and concluded that the Application was consistent with a number of CP policies approved by the Original Order and would not result in any substantive changes to the CP analysis of the Commission in the Approved First-Stage PUD.

The OP Hearing Report

41. The OP Hearing Report recommended approval of the Application subject to the Applicant addressing several conditions.
42. The OP Hearing Report did note that potential adverse impacts of the Application included:
 - a. Increases in vehicular traffic;
 - b. Demand on public utilities; and
 - c. That not all current Sursum Corda residents would qualify or choose to return, but the OP Hearing Report ultimately concluded that:

While the development has these impacts on city services, the impacts would be significantly mitigated, and other quality benefits would accrue from the new development including new and improved greenspace and play areas, and new market rate and affordable housing." (Ex. 27 at 13.)

43. The OP Hearing Report also encouraged the Applicant to integrate additional environmental and sustainable measures that would be consistent with and supportive of The Clean Energy DC Plan.
44. The Applicant responded to the OP Hearing Report comments in its response to the OP Hearing Report. (FF 33.)

The Supplemental OP Hearing Report

45. The Supplemental OP Hearing Report analyzed the Applicant's response to the OP Hearing Report, including: (FF 33.)
 - a. Building signage details;
 - b. The unit/bedroom mix for the project;
 - c. Unit sizes;
 - d. Number of affordable units for the South Parcel; and
 - e. Revisions to the building design.

46. However, the Supplemental OP Report noted that the Applicant did not address OP's prior comments regarding the First Source Agreement or the programming of the amenity spaces.
47. The Applicant subsequently addressed these issues in its Response to the Supplemental OP Hearing Report and its Post-Hearing Statement. (FF 36, 37.)

The OP Post Hearing Report

48. The OP Post Hearing Report responded to questions raised by the Commission as follows:
 - a. Response to the Applicant's post-hearing submission;
 - b. An update on the agreement to allow the Applicant to upgrade and maintain the public park at the intersection of L Street, N.W., and First Street, N.W.;
 - c. A further analysis of the Project's Comprehensive Plan compliance;
 - d. Confirmation that DMPED and the Applicant are still working to develop a development and maintenance agreement for the park and a recommendation that this Order contains a condition requiring the Applicant to obtain approval for the construction and maintenance of the park;
 - e. Updates on OP's opinion of the impacts and potential adverse effects of the Project in light of the changes to the Project since it issued the OP Report.
49. In response to a request of the Commission, OP responded to the Applicant's post-hearing statement and addressed any impacts on the Comprehensive Plan's GPM, FLUM, elements or public policies that may result due to the Project.
50. The OP Post Hearing Report concluded that:
 - a. "The additional density gained by the development would be commensurate with the benefits and amenities provided. The buildings would be at a scale that is reflective of the wider neighborhood...";
 - b. That the Applicant was proposing a sufficient number of both on-site amenities and community contributions as public benefits; and
 - c. That potential adverse impacts from the Project were being suitably mitigated by the Applicant's various mitigation measures and proposals.

The DDOT Reports

51. DDOT filed a total of four reports on the following dates:
 - a. July 11, 2019 (the "DDOT Report"); (Ex. 25.)
 - b. September 16, 2019 (the "Supplemental DDOT Report"); (Ex. 44.)

- c. September 23, 2019 (the “Second Supplemental DDOT Report”); and (Ex. 47.)
- d. October 16, 2019 (the “Final DDOT Report”). (Ex. 55.)

The DDOT Report

52. The DDOT Report stated that DDOT was unable to make a determination on the Application because of several unresolved issues that further response from the Applicant.

The Supplemental DDOT Report

53. The Supplemental DDOT Report stated that DDOT was still unable to provide a full assessment of the Application because there had been no progress to resolve the heritage tree conflicts.

The Second Supplemental DDOT Report

54. The Second Supplemental DDOT Report stated that DDOT had no objection to the Second-Stage PUD, provided the following the Applicant agreed to several additional mitigations to mitigate the following potential adverse impacts:

- a. The destruction of eight Heritage Trees that are rare and uniquely valuable;
- b. The Project is expected to “negatively impact operations at North Capitol Street, L Street, First Street, and M Street”; and
- c. “The combination of the size of the Project and the location of the southwest building’s loading facilities has the potential to cause loading impacts.”

55. The Second Supplemental DDOT Report also stated that the Applicant is expected to continue to work with DDOT on several items related to the public streets, mitigations, transportation improvements, and elements in the public realm.

56. The Applicant responded to DDOT’s comments in its Post-hearing Statement. (FF 37.)

The Final DDOT Report

57. The Final DDOT Report stated that DDOT had reviewed the Applicant’s post-hearing statement and found that “the Applicant has satisfactorily addressed the requested conditions identified in DDOT’s [prior] report.” (Ex. 55.)

MPD Report

58. In its report filed on July 11, 2019 (the “MPD Report”), MPD raised three concerns regarding the second-stage PUD. (Ex. 24.)

59. The Applicant addressed these concerns in its response to MPD. (FF 37.)

60. MPD did not respond to the Applicant’s response.

ANC 6E Report

61. ANC 6E submitted a report stating that at its regularly scheduled and duly noticed public meeting on February 5, 2019, the ANC voted to support the Application for the modifications to the first-stage PUD approval and the second-stage PUD approval for the South Parcel (the “ANC Report”). (Ex. 14.) The ANC Report did not express any issues or concerns about the Application and urged the Commission’s approval.

Other Responses to the Application

62. Mr. Lonnie Duren, Chair of the Board of the Sursum Corda Cooperative Association, Inc., testified in support of the Application at the Public Hearing. Ms. LaFeasa Hill and Ms. Claudette Morton, members of the Sursum Corda Cooperative Association, Inc., also testified in support of the application.
63. No persons testified in opposition to the Application.

CONCLUSIONS OF LAW

1. The Applicant requested approval, pursuant to Subtitle X, Chapter 3 and Subtitle Z, Chapter 7, of a second-stage PUD and related Approved First-Stage PUD modifications. The Commission is authorized under the Zoning Act to approve a second-stage PUD and PUD modifications consistent with the requirements set forth in Subtitle X §§ 302, 304 and 309 and Subtitle Z § 704.
2. *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.*

(Subtitle X § 300.1.)
3. In evaluating a PUD, the Commission shall find that the proposed development:
 - a. *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
 - b. *Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and*

- c. *Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*

(Subtitle X § 304.4.)

First-Stage PUD Modifications

4. Pursuant to Subtitle X § 302.2:
 - (a) The first-stage application involves general review of the site's suitability as a PUD and any related map amendment; the appropriateness, character, scale, height, mixture of uses, and design of the uses proposed; and the compatibility of the proposed development with the Comprehensive Plan, and city-wide, ward, and area plans of the District of Columbia, and the other goals of the project; and (emphasis added)
5. *"The scope of the hearing conducted pursuant to this section shall limited to the impact of the modification on the subject of the original application, and shall not permit the Commission to revisit its original decision."* (Subtitle Z § 704.4.)
6. The Commission finds that the modifications sought through this Application:
 - a. Do not result in any consequential changes to the Commission's prior decision that the first-stage PUD is not inconsistent with the Comprehensive Plan and other adopted public policies and active programs because the density and heights for the PUD Site remain consistent; (FF 22(d), (e).)
 - b. Will have the primary effect of shifting density within the PUD Site with no change to the overall density approved by the Original Order; (FF 22(e).)
 - c. Will revise the requested development incentives by requesting relief from the court and side yard requirements; (FF 22(f).)
 - d. Will balance the minimal additional development incentives requested by providing the additional public benefits of the dedication a portion of the First Street N.W. ROW of way and maintaining the number of family-sized units on the South Parcel regardless of the final number of Reserved Units; and (FF 22(g).)
 - e. Will make some additional minor, non-substantive changes to the benefits package to reflect the reduction in the number of Sursum Corda Households that will be returning. (FF 22(h).)

The Commission therefore concludes that the Application only proposes minor changes that do not alter the Original Order's PUD balancing test and decision.

Potential Adverse Impacts - How Mitigated or Outweighed (Subtitle X §§ 304.3 & 304.4(b).)

7. The OP Hearing Report identified two potential adverse impacts stemming from the modifications to the Approved First-Stage PUD which the Applicant has addressed as follows:

- a. **Utility Demand** – The OP Hearing Report stated that the Project would increase demand on public utilities such as water, sewer, and public stormwater management systems.

The Commission concludes that there is no change in this potential impact from the Approved First-Stage PUD and therefore does not require further analysis by the Commission. (Ex. 27.)

- b. **Resident Displacement:** The OP Hearing Report noted that some residents may not qualify to return or choose not to return to the Property. (Ex. 27.)

Mitigation: The Applicant provided a detailed Tenant Relocation and Replacement Plan (the “Tenant Relocation Plan”) that addresses the unique characteristics of the cooperative ownership of Sursum Corda. The Tenant Relocation Plan provides 122 Reserved Units for former Sursum Corda Residents that have been set aside within the new buildings. The Tenant Relocation Plan also stipulates that those returning residents would be accommodated in the Phase 1 redevelopment. The Sursum Corda Cooperative Association will monitor the development and maintain a list and location of former residents who want to return once the Project is complete. The members of the Cooperative will be kept up to date on the progress of the development including mandated notifications. On return, the residents will be provided unit sizes and rental rates that are similar to those of the original buildings.

The Commission notes that the only change to the Tenant Relocation Plan is the reduction in the number of Reserved Units, based on a reduction in the number of residents who wish to return. As such, the Commission believes that the Tenant Relocation Plan this will adequately mitigate this issue and has included conditions in this Order to ensure that the Applicant adheres to its commitments. The Commission believes that given these protections it is unlikely that any current residents may not qualify or choose to return, but that it is still possible. The Commission believes this risk is acceptable given the quality of the public benefits of the Project. In reaching this conclusion the Commission credits the public hearing testimony in support from members of the Sursum Corda Cooperative Association. (FF 22(h), 63.)

Requested Flexibility Balanced by Public Benefits (Subtitle X § 304.3)

7. The Commission considered all of the public benefits and project amenities, the degree of development incentives, and any potential adverse effects of the Project as it has been amended through this Application and concludes it warrants approval. The Commission notes that the Application is seeking only a minor increase in development incentives, and

that this is balanced by a significant increase in the public benefits. Therefore, the Commission concludes that there is no change to the PUD balancing test of the Original Order.

Second-Stage PUD Approval

8. *“The second-stage application is a detailed site plan review to determine transportation management and mitigation, final building and landscape materials and compliance with the intent and purposes of the first-stage approval, and this title”* (Subtitle X § 302.2.)
9. *“If the Zoning Commission finds the application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval, the Zoning Commission shall grant approval to the second-stage application, including any guidelines, conditions, and standards that are necessary to carry out the Zoning Commission's decision.”* (Subtitle X § 309.2.)

In Accordance with the First-Stage Approval

10. Based on the Application, the OP and DDOT Reports, and the testimony provided at the Public Hearing, the Commission finds that the Application is in accordance with the intent and purpose of the Zoning Regulations, and CP Elements applicable to the PUD Site as analyzed in the Original Order. Therefore, the Commission concludes that the Second-Stage PUD is consistent with the First-Stage approval.

Potential Adverse Impacts of the Second Stage PUD - How Mitigated or Outweighed (Subtitle X §§ 304.3 & 304.4(b))

11. The Commission concludes that the only change from the First-Stage Approval is to the potential adverse impacts of the South Parcel. However, the Commission concludes that the Second Stage PUD will not result in any unacceptable project impacts because the potential adverse impacts are localized to the South Parcel and capable of being mitigated, or acceptable given the quality of the public benefits of the overall Project as follows:
12. **Heritage Trees** – The DDOT Report noted that the Project will result in the destruction of eight Heritage Trees, which are considered rare and uniquely valuable, as well as being protected by the Tree Canopy Protection Amendment Act of 2016. The Commission concurs with the assessment of DDOT that the loss of the Heritage Trees would be an adverse impact.

Mitigation: The Commission concludes that the “negotiated settlement” reach between the Applicant and DDOT is an adequate mitigation of the issue. The settlement requires the Applicant to make a payment to DDOT in the amount of \$270,354 to be used to plant new trees to strengthen the District’s tree canopy and permits the removal of the Heritage Trees on the Property. (Ex. 47.) Per the suggestion of DDOT, the Commission will include a condition in the Order requiring the Applicant to finalize the agreement and make this payment prior to the issuance of a Certificate of Occupancy for the Project.

13. **Traffic Issues** – The OP Report noted that the Project will cause “an increase in traffic as a result of its size” and the DDOT Report also noted that the Project is expected to “negatively impact operations at North Capitol Street, L Street, First Street, and M Street.” (Ex. 27, 47.) The Commission concurs in these assessments and finds that the Project will increase traffic and congestion, and this will have consequential and adverse effects on the District transportation network.

Mitigation: The Commission concludes that the extensive package of transportation mitigations, agreed to by the Applicant and included as conditions in the Order are adequate mitigations of the issues. The Commission notes that DDOT has evaluated the proposed mitigation measures and believes that they are adequate. (Ex. 55.) As such, the Commission considers this to be an adequate mitigation of the issue.

14. **Loading Issues**: The DDOT Report stated that “[t]he combination of the size of the Project and the location of the Southwest Building’s loading facilities has the potential to cause loading impacts.” The Commission concurs in this assessment and finds that it is a potential project impact and/or adverse effect of the Project.

Mitigation: The Commission concludes that the Loading Management Plan, agreed to by the Applicant and included as a condition in the Order, will not completely mitigate the issue because it concurs with DDOT’s assessment that the plan will result in additional trash trips to the site compared to a better designed and located loading facility. (Ex. 47.) However, the Commission believes that these adverse impacts are ultimately acceptable given the quality of the public benefits of the Project.

“Great Weight” to the Recommendations of OP

15. Pursuant to § 13(d) 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)) and Subtitle Z § 405.8, the Commission must give “great weight” to the recommendations of OP. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
16. The Commission notes OP’s thorough analysis of the Application, including analysis of its consistency with the Comprehensive Plan and finds persuasive OP’s recommendation that the Commission approve the Application and therefore concurs in that judgment.

“Great Weight” to the Written Report of the ANC

17. The Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 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) (2012 Repl.); see Subtitle Z § 406.2.) To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and

concerns” to “encompass only legally relevant issues and concerns.”(*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

18. The Commission notes that the ANC Report did not raise any specific issues or concerns regarding the Application. Nevertheless, the Commission considered the ANC’s support of the Application and recommendation of Approval and concurs in that judgement.

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 following subject to the guidelines, conditions, and standards set forth below, which replace those stated in Z.C. Order No. 15-20, as modified by Z.C. Order No. 15-20B:

- The modification to the first-stage PUD approval granted under ZC Order No. 15-20; and
- The second-stage PUD approval for the South Parcel as defined herein,

A. Modified First-Stage PUD and Second-Stage PUD Approval for the South Parcel (Phase I)

First-Stage Approval

1. The PUD (the “Project”) shall be developed in accordance with the plans titled “Sursum Corda PUD/Modification to First-Stage PUD Approval in Z.C. Order No. 15-20C,” prepared by WDG Architecture, PLLC, dated September 5, 2019 (the “First-Stage Plans”) as modified by the South Parcel Plans and subject to the other conditions of this Order. (Ex. 39A1-39A10.)
2. In accordance with the Zoning Tabulations provided on Sheet A.12 and A.12a of the First-Stage Plans, the Project shall:
 - a. Provide 1,131 dwelling units;
 - b. Have an overall density of 4.62 FAR, if Pierce Street, N.W., and the First Street, N.W. dedications are included in the calculations, and 5.52 FAR, if Pierce Street, N.W. and the right-of-way dedications for First Street are excluded; and
 - c. Have building heights ranging from 62.5 feet to 110 feet.
3. The Applicant shall have design flexibility from the First-Stage Plans in the following areas:
 - a. To be able to provide a range in the number of residential units of plus or minus 10% from the 1,131 proposed for the development;

- b. To vary the number, location, and arrangement of parking spaces, provided that the maximum number of parking spaces for the PUD does not exceed 746 parking spaces and the minimum number of parking spaces is not reduced below the number required under the Zoning Regulations; and
 - c. To vary the sustainable design features of the building, provided the project meets a minimum of LEED-Silver certification.
4. The Overall PUD shall be divided into two phases:
- a. The South Parcel (Phase I) includes the following elements:
 - i. The South Parcel (Lots 1A and 1B), which is situated between First Street and First Place, and consists of approximately 2.4 acres, excluding the area to be dedicated for the First Street ROW;
 - ii. The rectangular parcel of land to the east of First Place (Theoretical Lots 3A and 3B), which consists of 12,608 square feet of land area;
 - iii. The private Pierce Street, except for the parallel parking on the north side of the street, which consists of approximately 34,604 square feet of land area; and
 - iv. The dedication of the southern portion of the First Street ROW, as depicted in the South Parcel Plans (defined below), which consists of approximately 5,118 square feet of land area. (Ex. 39A2, Sheet 13a.)
 - b. North Parcel (Phase II) contains the Northwest Building and the Northeast Building which shall be constructed as follows:
 - i. The Northwest Building:
 - 1. A gross floor area of 351,106 square feet yielding approximately 280 units;
 - 2. A range of 5 to 10 stories, and heights ranging from 62.5 feet to 110 feet; and
 - 3. A density of 5.63 FAR (on Theoretical Lot 2A/2B);
 - ii. The Northeast Building:
 - 1. A gross floor area of 362,815 square feet yielding approximately 289 units;
 - 2. A range of 6 to 10 stories, and heights ranging from 68.93 feet to 106.93 feet; and

3. A density of 5.82 FAR (on Theoretical Lot 2C/2D).

Second-Stage Approval – South Parcel

5. The South Parcel of the Project (Phase 1) shall be developed in accordance with the plans titled “Sursum Corda PUD/Second-Stage PUD Application for Phase 1,” prepared by WDG Architecture, PLLC, dated September 5, 2019, and marked as Exhibits 39AA1 – 39AA8, except as modified by:
- a. The Revised Building Elevations – Southeast, dated October 10, 2019; (Ex. 53B2.)
 - b. The Supplemental Landscape Drawings Related to Park, dated October 10, 2019; (Ex. 53B4.)
 - c. The Supplemental Courtyard Elevations, dated October 10, 2019; (Ex. 53B5.)
 - d. The Revised Plans – P1 and Main Roof; (Ex. 53B6.)
 - e. The Supplemental Renderings Package, dated September 5, 2019; (Ex. 39B.)
 - f. The Supplemental Unit Matrix, dated September 5, 2019; (Ex. 41A.)
 - g. The Revised Supplemental Amenity Package, dated October 10, 2019; (Ex. 53B3.)
 - h. The Supplemental Balconies & Terraces Plan, dated October 10, 2019; and (Ex. 53B1.)
 - i. The Comprehensive Signage Plan dated October 10, 2019; (Ex. 53C1-53C2.)

Said plans are collectively referred to as the “South Parcel Plans” and subject to the conditions below.

6. The Southwest Building will be constructed to the following standards:
- a. A gross floor area of 239,348 square feet yielding approximately 216 residential units;
 - b. A maximum of nine stories and a maximum building height of 95.79 feet; and
 - c. A density of 6.04 FAR (on Theoretical Lot 1A).
7. The Southeast Building will be constructed to the following standards:

- a. A gross floor area of 392,316 square feet yielding approximately 346 residential units;
 - b. A maximum of 10 stories with a maximum building height of 110 feet. That portion of the Southeast Building fronting on L Street will be limited to eight stories and a maximum building height of 84.5 feet; and
 - c. A density of 5.88 FAR (on Theoretical Lot 1B).
8. The South Parcel shall have 304 parking spaces, inclusive of tandem parking spaces; 199 long-term bicycle parking spaces; and 29 short-term bicycle parking spaces.
9. The South Parcel also includes Theoretical Lot 3A (record Lot 904), which consists of 6,241 square feet, and Theoretical Lot 3B (record Lot 905), which consists of 6,347 square feet, both of which will be maintained as green/open space except for the playground to be provided pursuant to Condition No. B.7.b below.
10. The Applicant shall have design flexibility from the South Parcel Plans in the following areas:
- a. Court / Side Yard. Flexibility from the court and side yard requirements to permit the court and side yard conditions along the southern theoretical lot line for the Southwest Building as reflected on the South Parcel Court and Yard Diagram on Sheet A-02 of the South Parcel Plans at Ex. 39AA2 of the record;
 - b. Solar Panels. Flexibility to change the actual location, and configuration of the solar panels so long as the overall layout of the roof plan, including, but not limited to, the location of the penthouses and number of solar panels, complies with the plans for the second-stage PUD approval, and all of the requirements/standards for the rooftop penthouses and equipment have been met;
 - c. Retail/Commercial Option in Southwest Building. Flexibility to have approximately 1,850 square feet of retail/commercial use in lieu of residential amenity space as depicted on Sheet A05-b of the South Parcel Plans at Ex. 39AA3 of the record;
 - d. Number of Units. To provide a range in the number of residential units for Building 1A of plus or minus 10% from the 216 units proposed for that building; and to provide a range in the number of residential units for Building 1B of plus or minus 10% from the 346 units proposed for that building;
 - e. Parking Layout. To vary the number, location, and arrangement of parking spaces, provided that the maximum number of parking spaces for the South

Parcel does not exceed 304 parking spaces, and the minimum number is not reduced below the number required for the South Parcel under the Zoning Regulations;

- f. Interior Components. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, and mechanical rooms, provided that the variations do not change the exterior configuration of the building as shown on the plans approved by the order;
- g. Exterior Materials – Color. To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges shown on the plans approved by the order;
- h. Exterior Details – Location and Dimension. To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the building or design shown on the plans approved by the order. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
- i. Streetscape Design. To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division;
- j. Signage. To vary the font, message, logo, and color of the approved signage, provided that the maximum overall dimensions and signage materials are consistent with the signage on the plans approved by the order and are compliant with the DC signage regulations; and
- k. Sustainable Features. To vary the approved sustainable features of the project, provided the total number of LEED points achievable for the project does not decrease below the minimum required for LEED-NC Silver Certification and the number of solar panels is not reduced, and to revise the GAR checklist for the project so long as the project meets the minimum GAR requirement of 0.2 and the number of solar panels is not decreased.

B. Amended and Restated Public Benefits

The Applicant shall comply with all of the PUD Public Benefits in Z.C. Order No. 15-20, as amended and restated below.

1. Affordable Units

For the life of the Project, the Overall PUD shall include 199 affordable housing units on-site (the “Affordable Units”). The Affordable Units shall be reserved for and available to households with incomes not exceeding 80% MFI, provided that

the overall blended affordability limits for the Affordable Units within the PUD shall not exceed 60% of the median family income (“MFI”).

- a. Minimum Affordable Units for South Parcel. **For the life of the Project**, the South Parcel shall have a minimum of 100 Affordable Units, which shall be available to households with incomes not exceeding 80% of MFI; and
- b. Affordable Units for North Parcel. **For the life of the Project**, the number of affordable units required for the North Parcel shall be the difference between the 199 affordable units required for the PUD and the number of affordable units constructed on the South Parcel as determined by the Zoning Administrator at the time of building permit issuance for the South Parcel. The size, mix, and location of the affordable units shall be consistent with the Inclusionary Zoning (“IZ”) Regulations in effect at the time of the second-stage PUD application for the North Parcel.

2. Reserved Units for Sursum Corda Households

Prior the issuance of a Certificate of Occupancy for the South Parcel, the Applicant shall provide evidence to the Zoning Administrator that it has completed the following:

- a. Reserved Units. The Applicant shall reserve 122 residential units on the South Parcel for Sursum Corda households (“Sursum Corda Households”), regardless of household MFI (the “Reserved Units”);
- b. Reserved Units Exceeding 80% MFI. **For the life of the Project**, the Reserved Units for Sursum Corda Households exceeding 80% MFI shall not be counted toward the 199 Affordable Units required for the PUD;
- c. Affordability Level. The Reserved Units shall be made available to Sursum Corda Households at their respective income eligibility levels. For those households who qualify for Section 8 vouchers, the household’s contribution to the rent shall be based on the household income and/or changes resulting from the annual income recertification process with the U.S. Department of Housing and Urban Development (“HUD”) and/or the D.C. Housing Authority;
- d. The Reserved Unit Mix. The Reserved Units shall be dispersed throughout the South Parcel and shall include the following unit mix:

Reserved Sursum Corda Units		
No. of Units	No. of Bedrooms	Approximate Unit Size
0	Studio	545 s.f.
39	1 bdrm	715 s.f.
48	2 bdrm	1,100 s.f.

Reserved Sursum Corda Units		
No. of Units	No. of Bedrooms	Approximate Unit Size
26	3 bdrm	1,390 s.f.
9	4 bdrm	1,580 s.f.

The number of Reserved Units, the unit mix, and location of Reserved Units may be adjusted to reflect the actual number of Sursum Corda Households, changes in the composition of the Sursum Corda Households, the number of households that elect not to occupy a reserved unit, and/or HUD standards relating to the number of bedrooms required for each household, based upon an updated list of the Sursum Corda Households certified by the Sursum Corda Cooperative at the time of building permit in accordance with Condition B.2. of the Order;

- e. Communication Plan. The Applicant shall implement the communication plan in Exhibit 48B of the record for ZC Case No. 15-20;
- f. Notice for Sursum Corda Households. **During construction of the South Parcel**, the Applicant, or its representative, shall maintain updated contact information for each Sursum Corda Household and shall provide notice, via certified mail or hand delivery, to each household as follows:
 - i. Demolition of Existing Structures. Within 10 days of applying for a raze permit for any structure on the Property, the Applicant shall notify the Sursum Corda Households of the raze permit application. Upon application of a raze permit for any of the existing structures on the Property, the Applicant shall certify to the DCRA the list of Sursum Corda Households and their contact information. Violations of this condition shall not result in the denial of a raze permit, building permit, or certificate of occupancy for the PUD. **Certification of said notice, including a copy of same, shall be furnished to DCRA prior to the issuance of a raze permit for any structure of the Property;**
 - ii. Issuance of a Building Permit. Within seven days of the issuance of the first building permit for the above grade construction (the "Building Permit"), the Applicant shall notify the Sursum Corda Households that the Building Permit has been issued and the date it was issued. **Certification of said notice, include a copy of same, shall be submitted to DCRA within 14 days of the issuance of the Building Permit;**
 - iii. Assignment of Units. No more than 12 months from the issuance of the Building Permit, the Applicant shall notify Sursum Corda Households of the estimated completion date of the South Parcel and the unit that has been assigned to their individual household

(including number of bedrooms and unit size). Said notice shall include renderings and floor plans for the unit. Each head of household, or designated household member, shall have 90 days from the date of receiving notice of their assigned unit to inform the Applicant of its intention to occupy the Reserved Unit. **Certification of said notice, including copies of same, shall be furnished to DCRA no later than 14 months from the issuance of the Building Permit;** and

iv. **Occupancy Date.** After issuance of the Building Permit, the Applicant shall notify those Sursum Corda Households that elect to return to the Property of the occupancy date for their Reserved Unit (the "Occupancy Date Notice"). Each Sursum Corda Household shall have at least one year from the date of the Occupancy Date Notice to: (i) walk through a model unit; and (ii) enter into an agreement for the occupancy of their Reserved Unit. **Certification of the Occupancy Date Notice, including copies of same, shall be furnished to DCRA prior to the issuance of a certificate of occupancy for each building within the South Parcel;**

g. **Report to DCRA.**

i. **Prior to the issuance of a raze permit for any structure of the Property,** certification of the notice required by Condition No. B.2.e.i., including a copy of same, shall be furnished to DCRA; and

ii. **Prior to the issuance of certificates of occupancy for each building in the South Parcel,** the Applicant shall submit to DCRA:

(1) a list of the Sursum Corda Households that elected to occupy a Reserved Unit, including:

(a) The type/size of unit;

(b) Unit number; and

(c) The affordability level for said household; and

(2) Evidence of compliance with the notice requirements specified in Condition No. B.2.e.; and

h. **Conversion of Reserved Units.** In the event that a Sursum Corda Household: (i) elects not to return to the Property to occupy a Reserved Unit or (ii) fails to timely enter into an agreement for the occupancy of its Reserved Unit that is also an affordable unit, said unit may be converted to a market rate unit (or units), or occupied as an affordable unit (or units), not

restricted to a Sursum Corda Household provided that the number of Affordable Units remains in compliance with Condition No. B.1.

3. Minimum Unit Size

Minimum Two- and Three-Bedroom Units for South Parcel. The South Parcel shall have a minimum of 52 two-bedroom units and 27 three-bedroom units. Each two-bedroom unit that is not a Reserved Unit shall have a minimum floor area of 850 square feet, and each three-bedroom unit that is not a Reserved Unit shall have a minimum floor area of 1000 square feet.

4. Landscape and Open Space Improvements

Prior to the issuance of the first certificate of occupancy for the South Parcel, the Applicant shall seek approvals from the National Park Service, its designee, or the agency with jurisdiction over Lots 896 and 901 in Square 620, for the construction and long-term maintenance of park space at the corner of First and L Streets, as depicted on Sheets A-16, A-17, L-6, and L-7 of the Plans, and if approved, shall construct the park space.

5. Employment and Training Opportunities

Prior to the issuance of the first building permit for the South Parcel, the Applicant shall enter into a First Source Agreement with the Department of Employment Services.

6. Environmental Benefits

a. Prior to the issuance of the first certificate of occupancy for the South Parcel, the Applicant shall:

- i. Furnish a copy of its LEED certification application to the Green Building Certification Institute. The South Parcel shall fulfill or exceed LEED-Silver Certification;
- ii. Install two parking spaces reserved for a car-sharing service;
- iii. Install two electric car charging stations in the parking garage; and
- iv. Install outlets for charging e-bicycles in Phase 1 of the PUD; and

b. Prior to the issuance of the first certificate of occupancy for the North Parcel, the Applicant shall furnish a copy of its LEED certification application to the Green Building Certification Institute. The North Parcel shall fulfill or exceed LEED-Silver Certification;

7. Support of Neighborhood Uses and Organizations

a. Prior to the issuance of the first building permit for the Overall PUD, the Applicant shall:

- i. Contribute \$222,000 to the Boys and Girls Club #2 to support the operation of its programs;
- ii. Contribute to \$60,000 to the Perry School Community Services Center, Inc. to support the operation of its programs;
- iii. Contribute \$25,000 to the Walker-Jones Parent Teacher Association to assist with funding for school activities and the purchase of classroom equipment;
- iv. Contribute \$15,000 to the Girls in Action at the Sursum Corda Youth Center, 1175 First Terrace, NW, to support the operation of its programs;
- v. Contribute \$25,000 to the Dunbar High School Parent Teacher Association to assist with funding for school activities and the purchase of classroom equipment;
- vi. Donate equipment and uniforms valued at approximately \$10,000 to support programming at the RH Terrell Recreation Center; and
- vii. Donate \$15,000 to support programming at the Northwest One Library; and

b. Prior to the issuance of the first certificate of occupancy for the South Parcel, the Applicant shall install playground equipment valued at \$28,000 on Lot 904:

Playground on Lot 904 / Theoretical Lot 3 - For the playground equipment required above, the Applicant shall install equipment of the type and level of activity depicted on Sheet L-04d of the Second-Stage Plans. Also, the playground shall include a seating area.

8. Historic Preservation

a. Prior to the issuance of the first certificate of occupancy for the South Parcel, the Applicant shall install the commemorative element - a plaque, artwork, mural on an interior courtyard, or similar element that celebrates the history of Sursum Corda – in coordination with Cultural Tourism DC.

C. **Transportation Public Benefits and Mitigations**

1. **Prior to the issuance of a Certificate of Occupancy for the South Parcel the Applicant shall:**
 - a. Create a new pedestrian promenade through the center of the site from M Street, N.W. to L Street, N.W. as shown on the South Parcel Plans., the Applicant shall construct the southern half of the promenade. The northern half of the promenade shall be constructed during the construction of the North Parcel;
 - b. Construct the extension of Pierce Street N.W., from First Street N.W. to First Place, N.W. **The Applicant shall be responsible for the maintenance of the road for the life of the project;**
 - c. Construct the extension of First Place, N.W. from M Street, N.W. to L Street, N.W.;
 - d. Improve the north side of L Street, N.W. in between First Street, N.W. and First Place, N.W. in order for it to function as a two-way drive;
 - e. Install a minimum of six bicycle racks on Pierce Street, N.W.; and
 - f. Cause the installation of a Capital Bikeshare station in proximity to the Property.
2. **First Street ROW Dedication - Prior to the issuance of a certificate occupancy for the South Parcel** of the PUD, the Applicant shall:
 - a. Dedicate Lot 252 in Square 620, for the southern segment of the First Street N.W. ROW, as depicted on Sheet A.13a of the First-Stage Plans at Ex. 39A2 of the record; and
 - b. Improve a 30-foot-wide strip of the Property frontage along First Street, N.W. in order to effectively modify the existing sidewalk from a variable six to eight feet in width to a sidewalk that is a minimum of six feet with landscaping and street trees.
3. **Prior to the issuance of a Certificate of Occupancy for the North Parcel,** the Applicant shall improve the segment of First Street, N.W. from Pierce Street, N.W. north. **The Applicant shall maintain said improvements for the life of the project.**
4. **L Street Improvements:** The Applicant agrees to construct or cause the construction of the L Street, N.W. improvements between North Capitol Street, N.W. and the private drive proposed for the Northwest One development, as reflected in the

Memorandum of Agreement between the Applicant and MRP Realty that is marked as Exhibit 42A of the record (the "Memorandum") as follows:

a. **Prior to the issuance of the first building permit for South Parcel**, the Applicant shall enter into an agreement with MRP Realty to modify the traffic signal at North Capitol Street, N.W. and L Street, N.W., including striping and crosswalk improvements and sharing; and

b. **Prior to the issuance of the first certificate of occupancy for the South Parcel**, Specifically, this segment of L Street, N.W. shall be constructed as follows:

i. **If the Northwest One Development is Constructed First:**

(1) 50' ROW dedication for L Street, N.W., from the Northwest One site, to re-establish the 90-foot ROW for L Street, from First Place, N.W. to North Capitol Street, N.W.; and

(2) L Street improved as a two-way street from North Capitol Street, N.W. to the proposed private drive; 10-foot travel lanes; 6-foot sidewalk, and eight feet of parking on the south side of L Street, N.W.; 10-foot parking lane on the north side of L Street N.W.; a striping line between the proposed private drive and the alley adjacent to the church; a sidewalk that is between 8 feet and 24.9 feet in front of the church. L Street, N.W. will function as a one-way street with 12-foot travel lane westbound from the proposed private drive to First Street, N.W.; and

(3) Striping along the north side of L Street, N.W. along the Sursum Corda PUD site from the alley adjacent to the church property to First Street, N.W.

ii. **If the Sursum Corda PUD is Constructed First:**

(1) L Street, N.W. will function as a one-way street with a 12-foot travel lane from First Place, N.W. eastbound to North Capitol Street, N.W., and as a one-way street with a 12-foot travel lane from First Place westbound to First Street, N.W.;

(2) 8' wide striped walkway on the north side of L Street, N.W. in front of Mt. Airy Baptist Church from the alley adjacent to the church to North Capitol Street N.W. The striped walkway will be used to accommodate parking for the church for religious services; and

- (3) Curb on the north side of L Street, N.W., from First Place, N.W. west to First Street, N.W. Curb on the north side of L Street, N.W., from First Place, N.W. to the proposed striping in front of the church.

5. **DDOT Conditions. Prior to the issuance of the first certificate of occupancy for the South Parcel**, As provided in the DDOT Report at Exhibit 47 of the record, the Applicant shall provide the following:
 - a. **Heritage Trees**. - the Applicant shall transmit payment to DDOT for the negotiated settlement of the Heritage Tree issue as described in the DDOT's Report dated September 23, 2019. (Ex. 47.)
 - b. **North side of L Street, N.W.** - The reconfigured L Street, N.W. with Northwest One developing first enables the creation of a standard sidewalk width on the north side of L Street, N.W. between First Street, N.W. and North Capitol Street, N.W. in the ultimate buildout.
 - c. **First Street** – the Applicant shall provide the dedication and improvements per Condition No. C.3 above.
 - d. **Missing or substandard sidewalks along the perimeter** - All missing or substandard curb ramps and crosswalks along the perimeter of the South Parcel shall be upgraded to DDOT standards as part of the public space permitting process. This includes upgrading the receiving curb ramps on the opposite side of the street as the development.
6. **For the life of the Project**, the Applicant shall implement the Loading Management Plan at Exhibit 23E of the record.
7. **For the life of the Project**, the Applicant shall implement the following Transportation Demand Management (“TDM”) Plan:
 - a. Designate a TDM Coordinator;
 - b. Establish a TDM marketing plan;
 - c. Provide Transportation Coordinators' contact information to goDCgo, conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year;
 - d. Transportation Coordinators will develop, distribute, and market various transportation alternatives and options to the residents, including promoting transportation events (i.e. Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications;

- e. **Transportation Coordinators will receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan;**
- f. **Provide welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map. Brochures can be ordered from DDOT's goDCgo program by emailing info@godcgo.com;**
- g. **Install electronic displays in each building's residential lobby;**
- h. **Provide residents who wish to carpool with detailed carpooling information and refer them to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOC) or other comparable service if MWCOC does not offer this in the future; and**
- i. **Transportation Coordinator will subscribe to goDCgo's residential newsletter;**
 - i. **Post all TDM commitments on website, publicize availability, and allow the public to see what commitments have been promised;**
 - ii. **Install a 50-foot (19-dock) Capital Bikeshare station within the site as part of the Phase 1 development and include one year's operating expenses;**
 - iii. **Provide an annual Capital Bikeshare membership to each affordable dwelling unit resident for five years after the building opens;**
 - iv. **Provide a complimentary Capital Bikeshare coupon good for one ride to each market-rate dwelling unit at initial occupancy (annual memberships will be provided to each Affordable Unit and each Reserved Unit resident for a period of five years);**
 - v. **Provide a free SmarTrip card to each dwelling unit at initial occupancy;**
 - vi. **Long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo, tandem, and kids' bikes;**
 - vii. **Provide a bicycle repair station in each long-term bicycle parking storage room;**
 - viii. **Provide electric outlets in the long-term bicycle parking storage rooms for charging electric bikes;**

- ix. Provide a bicycle lounge with amenities for cyclists;
- x. Unbundle all parking costs from the cost of lease and set the cost at no less than the charges of the lowest fee garage located within a quarter-mile of the site;
- xi. Dedicate two parking spaces in each garage for car sharing services to use with the right of first refusal;
- xii. Unused residential parking spaces will not be leased to anyone aside from tenants of Phase 1 or Phase 2 of the project, visitors of tenants, or visitors to Mt. Airy Church (e.g. will not lease to other nearby office employees, single family home residents, or sporting events);
- xiii. Provide one collapsible shopping cart (utility cart) for every 50 residential units, for a total of 11 to encourage residents to walk to grocery shopping and run errands; and
- xiv. Hold a transportation event for residents, employees, and members of the community once per year for a total of five years. Examples include resident social, walking tour of local transportation options, goDCgo lobby event, transportation fair, WABA Everyday Bicycling seminar, bicycle safety/information class, bicycle repair event, etc.)

D. Miscellaneous

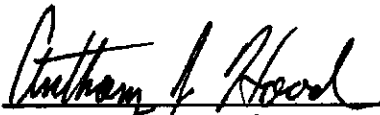
1. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the 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 first-stage approval is now vested by the timely filing of an Application for a Second-Stage PUD within the time period set by the Original Order, as extended by Condition No. D1 of Z.C. Order No. 15-20B. The second-stage PUD approved by the Commission shall be valid for a period of two years from the effective date of this Order. Within such time, the Applicant shall file a building permit for the construction of the development, and shall commence construction within three years of the effective date of this Order.

VOTE (Oct. 21, 2019): 5-0-0 (Chairman Anthony J. Hood, Vice Chairman Robert E. Miller, Peter A. Shapiro, Peter G. May (via absentee ballot), and Michael G. Turnbull (via absentee ballot) to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, this Order No. 15-20C shall become final and effective upon publication in the *D.C. Register*; that is on March 13, 2020.

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. BARDIN
DIRECTOR
OFFICE OF ZONING

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 WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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IDA WILLIAMS
RECORDER OF DEEDS
WASH DC RECORDER OF DEEDS
RECORDING FEES \$25.00
SURCHARGE \$6.50
TOTAL: \$31.50