

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 15-15**  
**Z.C. Case No. 15-15**  
**JBG/Boundary 1500 Harry Thomas Way, LLC and**  
**JBG/Boundary Eckington Place, LLC**  
**(Consolidated PUD & Related Map Amendment**  
**@ Square 3576, Lot 814 and Square 3576, Lots 2001-2008)**  
**August 8, 2016**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on May 12, 2016 to consider an application from JBG/Boundary 1500 Harry Thomas Way, LLC and JBG/Boundary Eckington Place, LLC (collectively, “Applicant”) for review and approval of a consolidated planned unit development (“PUD”) for 1500 Harry Thomas Way, N.E. (Square 3576, Lot 814) and 1611-1625 Eckington Place, N.E. (Square 3576, Lots 2001-2008) (“Property”) and a related Zoning Map amendment to rezone the Property from the M Zone District to the CR Zone District. The application proposes a mixed-use development incorporating retail and residential uses (“Project”). The Commission considered the application pursuant to Chapters 24 and 30 and § 102 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”)¹. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application with conditions.

**FINDINGS OF FACT**

**Application, Parties, Hearing, and Post-Hearing Submissions**

1. The Property consists of 1500 Harry Thomas Way, N.E. (Square 3576, Lot 814) (“West Parcel”) and 1611-1625 Eckington Place, N.E. (Square 3576, Lots 2001-2008) (“East Parcel”).
2. On June 17, 2015, the Applicant submitted an application to the Commission for the review and approval of a consolidated PUD and a related Zoning Map Amendment to rezone the Property from the M Zone District to the CR Zone District. The application submission proposed a mixed-use building with residential, commercial/retail, and parking uses. (Exhibits [“Ex.”] 2-3A5.) On November 13, 2015, the Office of Planning (“OP”) submitted a setback report. (Ex. 10.)

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¹ Chapter 24 and all other provisions of Title 11 DCMR were repealed on September 6, 2016, and replaced with Chapter 3 of Title 11-X DCMR.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

3. At a public meeting on November 23, 2015, the Commission voted to set the application down for a public hearing and made several information or modification requests of the Applicant relating to the Project proposal.
4. On February 29, 2016, the Applicant filed pre-hearing submissions responding to issues raised by the Commission and OP at setdown. The Applicant responded with additional plans, diagrams, and information regarding:
  - (a) Simplification of multiple buildings' façade treatments and materials;
  - (b) Refining the Northwest Structure, including the elimination of eight feet (equating to one floor);
  - (c) Modifications to the Northeast Structure including greater upper-story setbacks adjacent to existing rowhouses on R Street, N.E. and widening the alley to the north of the Northeast Structure;
  - (d) Addition of habitable roof structures;
  - (e) Updates to the Project's loading and parking plans (particularly as it relates to sharing such facilities with The Gale);
  - (f) Addition of potential mezzanine space for commercial areas;
  - (g) Removal of below-grade self-storage use;
  - (h) Dedication of all affordable housing units to households earning 60% of the area median income (AMI), rather than the previously proposed mix of approximately six percent at 80% of AMI for the Washington, DC Metropolitan Statistical Area (adjusted for household size ("AMI") and two percent at 50% AMI; and
  - (i) Additions to and clarifications of the community benefits and amenities proposals.

(Ex. 11-1118.)
5. Notice of the public hearing was published in the *D.C. Register* on April 1, 2016 and was mailed to Advisory Neighborhood Commission ("ANC") 5E and to owners of property within 200 feet of the Property. (Ex. 15.)
6. On March 30, 2016, the Applicant posted notice of the public hearing scheduled for May 12, 2016. (Ex. 16.)
7. The Applicant submitted a 20-day pre-hearing submission on April 22, 2016 with additional information and diagrams in response to the Commission and OP, including: enhanced drawings and views of the Project, information relating to changes made to the Project in response to community requests (such as setbacks to the Northeast Structure);

additional information relating to the Project's public benefits and amenities, including affordable housing; the Applicant's traffic impact study; and further information regarding events in and usage of the Promenade and maker space use guidelines. (Ex. 23-23C.)

8. Several individuals and neighbors and the Eckington Citizens Association submitted letters of support into the record, as discussed more fully in Findings of Fact 80-83 below.
9. A public hearing was conducted on May 12, 2016. The Commission accepted Eric Colbert as an expert in the field of architecture, Dan Van Pelt as an expert in the field of traffic engineering, Gabriela Canamar as an expert in the field of landscape architecture, and Elizabeth Floyd as an expert in the field of LEED/sustainability consulting. The Applicant presented testimony from the experts as well as Bryan Moll, Heather Howard, and John Wilkinson on behalf of the Applicant and submitted additional plans and exhibits in support of the application. (Ex. 39A1-39A5, 50.)
10. In addition to the Applicant, ANC 5E was automatically a party in the proceeding and submitted a report in unanimous support of the application. (Ex. 37.)
11. The Commission received reports from OP, DDOT, and the District Department of Energy and the Environment ("DOEE"). (Ex. 26, 27, 28.) At the hearing, the Commission heard testimony from OP, DDOT, and DOEE.
12. At the conclusion of the hearing, the Commission closed the record except for the Applicant's post-hearing submission and proposed order as well as responses to the Applicant's post-hearing submission from OP, DDOT, DDOE, ANC 5E, and Jennifer Nieratko, whose requested party status in support of the application was denied. In the post-hearing submission, the Commission requested that the Applicant provide information regarding the following: further plans and information regarding the eastern façade of the Project and both the design and operations of the promenade; further plans and information regarding the Project's roof structures, including modifications to certain elements of the roof structures and justification for the request for flexibility from the uniform height requirement for the roof structure at the northeast of the Project; further information regarding the PUD's LEED commitment and sustainability approaches; further information regarding the location of the PUD's affordable housing component within the Project; additional detail regarding the Project's public benefits and project amenities; and further information regarding the commercial tenants to be located at the Property. The Applicant submitted these materials to the Commission in its post-hearing submission dated June 2, 2016. (Ex. 45E.) The Applicant also submitted the requested draft findings of fact and conclusions of law to the Commission on June 2, 2016. (Ex. 43, 44.)
13. The Commission received additional reports from OP and DOEE on June 9, 2016. (Ex. 46, 47.) OP requested additional information on certain benefits and amenities of the project, clarifications regarding the Applicant's affordable housing, and confirmed that it

had no objection to the Applicant's requested flexibility to convert certain elements of the project's residential space to commercial space (provided that the amount of affordable housing provided remain constant). (Ex 46.) DOEE requested additional focus on the project's sustainable design. (Ex. 47.)

14. On June 13, 2016, the Commission voted to take proposed action to approve the application. The Commission expressed concern over the Applicant's request for a full waiver of the requirements of the Inclusionary Zoning ("IZ") regulations in order to reserve eight percent of the project's residential gross floor area to households earning equal to or less than 60% of Washington DC's AMI so that the project could reserve that same amount of gross floor area to household earning equal to or less than 60% of the AMI. The Applicant claimed that the waiver was needed because the Department of Housing and Community Development's ("DHCD") only administered IZ units at the 80% and 50% AMI levels. The Commission debated whether the deeper affordability proffered was worth the absence of the administrative oversight detailed in the IZ administrative regulations found at Chapter 14 of Title 22 DCMR. The Commission therefore requested that the Applicant provide greater details as to how the affordable units would be administered.
15. The Commission also requested additional information from the Applicant concerning the Project's sustainable design and proposed LEED certification and to respond to OP's concern pertaining to the definition of "maker uses" on site (as related to the proffer of subsidized tenant space for such uses), and the Department of Housing and Community Development's ("DHCD") view as to whether it could administer the proposed affordable housing proffer. The Commission also requested that the Applicant further refine the sizes of the mezzanines proposed for the roof structure within the Northwest Structure of the Project.
16. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") as required by the District of Columbia Home Rule Act on June 14, 2016. In a letter dated July 12, 2016, the NCPC Executive Director advised the Commission that through a delegated action he found that the proposed PUD would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.
17. The Office of Zoning scheduled the case for final action at the Commission's July 25, 2016 public meeting.
18. On June 20, 2016, the Applicant submitted its list of final proffered public benefits of the PUD and draft conditions, pursuant to 11 DCMR §§ 2403.16-2403.18.
19. On June 20, 2016 and July 5, 2016, the Applicant submitted its initial and revised lists of benefits and amenities. (Ex. 49, 51.) The Applicant's July 5, 2016 filing also addressed items requested by the Commission regarding employment obligations, and requested updates to plans and diagrams. (Ex. 51.) As to affordable housing, the Applicant noted its parent company's prior experience in administering affordable housing within its

- developments and also agreed to sign the DHCD affordable housing covenant. The letter indicated that an example of such a covenant was attached, but in fact none was provided.
20. On July 20, 2016, OP filed a request to reopen the record along with a supplemental report requesting clarifications regarding the Applicant's definition of "maker" uses. (Ex. 53.)
  21. On July 22, 2016, DHCD filed a request to reopen the record along with a supplemental letter stating that "the Applicant's requested waiver will not serve the District's interests and will diminish the efficacy of the IZ program" because of the difficulty and inefficiencies that would result from its having to administrator affordable housing at multiple income levels and because the grant of such a waiver will encourage other developers to seek similar waivers in the hopes of avoiding IZ administrative oversight. (Ex. 54, 55.)
  22. At its July 25, 2016 public meeting the Commission deferred taking final action on the case to July 28, 2016. As to the maker space issue, it appeared that OP and the Applicant had reached agreement on refining the language, but the Commission was reluctant to take final action without having the text before it. On the IZ waiver issue, the Commission indicated that it wished to receive further information from DHCD and continued its deliberations until July 28, 2016. The Secretary to the Commission identified the specific information sought through an email to DHCD dated July 26, 2016. (Ex. 56.)
  23. Through a letter dated July 28, 2016, DHCD responded to the Commission's request. (Ex. 57.) In addition to providing the information requested, DHCD noted that it had requested the Applicant to consider revising its proffer to reserve four percent of the residential gross floor area at the 80% AMI level and four percent at the 50% level, which would both allow for deeper affordability while keeping the project subject to the IZ administrative regulations. The letter indicated that the Applicant declined the proposal.
  24. The Applicant submitted a letter clarifying the "maker" use definition on July 28, 2016. (Ex. 58.)
  25. At a special public meeting held July 28, 2016, the Commission expressed satisfaction with the revised definition of maker space, but deferred its consideration of the application until August 8, 2016, when Commissioner May would be present.
  26. On August 5, 2016, the Applicant submitted a letter identifying two housing options. The first option was its existing proposals, while the second option would provide the 80%/50% split described in finding of fact no. 23. This option would eliminate the need for an IZ waiver. The Applicant also indicated that it had never declined this second option, but was unable to formally commit to it by July 25, 2016.

27. The Applicant responded to the Commission's request with a letter dated August 5, 2016 offering alternative housing options. (Ex. 59.)
28. At its special public meeting on August 8, 2016, the Commission permitted the DHCD Director to speak, at which time she expressed her support for the second option. The Commission thereafter voted to take final action to approve the application subject to the conditions enumerated in this Order including a condition that requires the second affordable housing option.

## **THE MERITS OF THE APPLICATION**

### **Description of Property and Surrounding Areas**

29. The Property consists of approximately 135,099 square feet of land area. The Property is located in the Northeast quadrant of the District of Columbia bounded by rowhouses, a vacant lot, and a self-storage facility to the north, Eckington Place to the west, the multi-family property that is the subject of Z.C. Order No. 05-23A ("The Gale") to the south, and Harry Thomas Way to the east. (Ex. 2.)
30. The entrance to the NoMA/Gallaudet Metrorail station is located approximately one-quarter mile to the southwest of the Property. (Ex. 2.)
31. The Property is in Single Member District 5E03 of ANC 5E in Ward 5. The main portion of the Eckington neighborhood is to the north and west, with the railroad/Metro right-of-way and the Union Market district to the east, and NoMA to the south. (Ex. 2.)
32. The site is currently improved with parking lots and a single-story commercial structure operated as an insurance office on the west side and a two-story commercial structure operating as the "Washington Flower Market" on the east side. (Ex. 2.)
33. The Future Land Use Map designates the Property in the mixed-use Medium-Density Residential/Production, Distribution, and Repair Land Use categories. The Property is identified as a Land Use Change Area on the Generalized Policy Map. (Ex. 2.)

### **The Project**

34. The Applicant proposes to construct a mixed-use building comprised of four connected structures containing residential units, ground-floor commercial uses, and underground parking. Three of the structures will be constructed to a height of approximately 75 feet and one of the structures will be constructed to a height of up to approximately 102 feet. Exclusive of penthouse space, the project will contain up to approximately 703,362 gross square feet ("GSF"), which is equivalent to a density of up to approximately 5.2 floor area ratio ("FAR"). Specifically, the Project will provide up to approximately 695 residential units, and up to approximately 77,184 GSF of commercial, retail, and service uses. The building will occupy approximately 80% of the lot. The underground parking area will accommodate up to approximately 331 parking spaces when fully constructed. (Ex. 2, 51A.)



35. The Project is designed as four connected structures including one structure of approximately 102 feet (nine stories) at the northwest quadrant of the Property and three structures of 75 feet (seven stories) on the remaining three quadrants of the Property. The 102-foot structure and one 75-foot structure will front on Eckington Place. The two remaining 75-foot structures will front on Harry Thomas Way. The four masses will be connected by a variety of bridges and structural elements, including those spanning the “alley” and plaza area bisecting the site. The PUD will consist of four above-grade structures connected through a series of improvements and structures. Therefore, the Project will be one building for zoning purposes. (Ex. 2.)
36. The Project’s four connected components are described further as:
- (a) “Northwest Structure” – The structure at the northwest of the Project will be constructed to a maximum height of approximately 102 feet. It will contain up to approximately 181,254 square feet of residential space (approximately 176 residential units) over up to approximately 23,379 square feet of ground-floor commercial/retail use with up to approximately 14,676 square feet of commercial/retail use in an optional mezzanine space. Approximately 171 of the residential units in the Northwest Structure will be in the “main” structure while approximately five of the residential units (comprising approximately 5,440 square feet) will be in the penthouse structure;
  - (b) “Southwest Structure” – The structure at the southwest of the Project will be constructed to a maximum height of approximately 75 feet. It will contain approximately 222,199 square feet of residential space (approximately 292 residential units) over up to approximately 28,089 square feet of commercial/retail use with up to approximately 11,040 square feet of commercial/retail use in an optional mezzanine space. Together with the Northwest Structure, it comprises the “West Phase” of the Project and will provide approximately 187 parking spaces (102 compact);
  - (c) “Northeast Structure” – The structure at the northeast of the Project will be constructed to a maximum height of approximately 75 feet. It will contain approximately 175,050 square feet of residential space (approximately 182 residential units); and
  - (d) “Southeast Structure” – The structure at the southeast of the Project will be constructed to a maximum height of approximately 75 feet. It will contain approximately 61,780 square feet of residential space (approximately 45 residential units). Together with the Northeast Structure, it comprises the “East Phase” of the Project and will provide approximately 144 parking spaces (54 compact).

(Ex. 2, 51A.)

37. The Applicant proposes amenities such as enhanced affordable housing, significant public space and streetscape upgrades intended to stimulate and enhance pedestrian activity, reduced rent for maker spaces, the provision of a publicly available promenade and plaza connecting Eckington Place and Harry Thomas Way, contributions to local initiatives and programs, the furtherance of neighborhood connectivity to the Metropolitan Branch Trail and Metro, exemplary architecture, and other amenities. (Ex. 2, 49, 51, 59.)
38. Aesthetically, the Project's façades strive to capture the feeling of the industrial architecture that was present on the site and is still visible along the nearby railroad tracks in order to convey the neighborhood's authentic industrial characteristics. The Applicant intends to employ façade elements that are a modern abstracted version of the warehouse and production aesthetic. Due to the façade lengths of the Project, the Applicant's project architect created a variety of façade expressions which strive to break down the scale of the building and create hierarchy. The Applicant reduced the amount of materials and expression taking place on the Project's façades, particularly the Eckington Place façade, based on requests from the Commission and OP. The result is a façade that adds visual interest and "breaks up" the extent of the street frontages but does not overcomplicate the visual expression of the site. (Ex. 2, 32A, 45A, 51A.)
39. A further design goal of the project is to maximize the Project's interaction with the public and allow for light and a feeling of openness over a long site, east to west. As such, each component of the Project will read as a separate building, further breaking down the large site. (Ex. 2.)
40. The Applicant proposed high-ceiling commercial/retail space along Eckington Place and the Project's promenade, which will create high-quality commercial opportunities. (Ex. 2, 51A.)
41. A central design element of the Project is the creation of the promenade and plaza through the center of the site ("Promenade"). The Promenade is essentially the extension of Quincy Place through the Property and will operate as a pedestrian-oriented focal point for the Project that also allows vehicular circulation. The "alley" has a width of approximately 30 feet for the western portion of the site and a width of 20 feet for the eastern portion. The plaza created at the middle of the site is approximately 80 feet by approximately 79.5 feet – for a total area of approximately 6,360 square feet. The total length of the Promenade from east to west is approximately 638 feet. The Promenade is intended to function hand-in-hand with the more active "maker" and innovative retail uses flanking the space on the Project's ground floor. (Ex. 2, 45A, 51A)
42. The Project will include a significant percentage of larger units, including two- and three bedroom units and larger, two-story dwellings to encourage occupancy by families. (Ex. 2, 45A, 51A.)
43. Consistent with the requirement of the IZ regulations, the residential component will set aside approximately eight percent of its gross floor area (approximately 56 units) as IZ



Units. However, the Applicant is offering this housing with deeper affordability than IZ requires, as is more specifically described in finding of fact no. 56(e).

44. The Project will have significant landscaped and hardscaped areas throughout the structures – particularly focusing on outdoor recreational and communal activities on the roof terraces of the building. The Project will deliver a wide, interesting variety of differentiated areas including spaces as a sun deck, an airwalk, a skypark, and multiple courtyards. (Ex. 2, 45A, 51A.)
45. While the original application requested the location of self-storage in the Project, that use component has been removed. (Ex. 2, 11.)
46. The Applicant will include approximately 271 long-term bicycle parking spaces in the Project and will work with DDOT to locate approximately 58 short-term bicycle parking in the form of no less than approximately 29 U-racks within and along the perimeter of the site, subject to the public space permitting process. (Ex. 2, 45A, 51A.)
47. The Project’s loading will occur in four places: through the existing 20-foot-wide public alley at the northeast of the Property (for the Northeast Structure loading), through the central private “alley” (for the majority of the commercial loading on the Property and the entirety of the Northwest Structure), from a curb cut on Eckington Place in The Gale property and from a curb cut on Harry Thomas Way in The Gale property. Such loading facilities will allow space for the types of trucks, delivery vans, and service vehicles anticipated to service the Project. (Ex. 2, 39A, 45A, 51A.)
48. The Applicant aims to incorporate a high degree of sustainable elements into the Project. The Project will be designed and constructed to Silver certification under the LEED-NC v. 2009 rating system. The Northwest and Southwest Structures will act as one building for LEED-NC review purposes and the Northeast and Southeast Structures will act as another building for LEED-NC review purposes. In its post-hearing submission, the Applicant further agreed to achieve a minimum of five-six additional points beyond the Silver level for each structure under the LEED-NC 2009 system. In addition, the Applicant made enhancements to the Project’s sustainability, including introducing a minimum of 10,000 square feet of solar panels on the Project roof. (Ex. 2, 32A, 45A, 51A.)

### **Zoning Map Amendment**

49. The Property is located in the M Zone District. Surrounding property is also located in the M Zone District. The M Zone District permits “heavy industrial sites” with a maximum density of 6.0 FAR, maximum height of 90 feet, and no lot occupancy limit. New residential uses are not permitted in the M Zone District. (11 DCMR §§ 820.1, 820.2, 840.1, 841.1.)
50. The Applicant requested a PUD-related Zoning Map amendment to the CR Zone District for the Property to permit the proposed residential use and to permit the Northwest

Structure to reach the requested height. The maximum permitted height in the CR Zone District, with PUD flexibility, is 110 feet and the maximum permitted density is 8.0 FAR. (Ex. 2.)

51. Pursuant to the same Future Land Use Map designation, the Commission previously approved another PUD and related rezoning from the M Zone District to the C-3-C Zone District for the parcel located immediately south of the Property in Z.C. Order No. 05-23 (2006) (“The Gale PUD”).

### **Zoning Flexibility Requested**

52. The Applicant requested flexibility: (a) under § 610 to allow for light industrial use in the Project’s commercial structure; (b) under § 411.11 relating to the Northwest Structure’s roof structure not having a uniform height for the habitable space as required under § 411.8; (c) under § 411.11 relating to the Northeast Structure’s roof structure being comprised of more than one enclosure where only a single enclosure is permitted under § 411.6; (d) from §§ 2201, 2203, and 2204 from the loading requirements of the Project for the number, dimensions, and location of loading facilities; (e) from the minimum closed court dimensions of § 638.2(a); and (f) from § 2115.2 regarding the maximum allowable percentage of compact spaces provided in the parking garage. The flexibility was requested in order to accommodate the design of the Project. (Ex. 2, 11, 23, 45.) As noted, the request for a waiver from IZ was withdrawn as no longer being unnecessary given that the 80% and 50% income levels can be administered by DHCD under the IZ administrative regulations.

### **Development flexibility requested**

53. The Applicant requested flexibility to phase the construction of the PUD to allow for the construction of the West Phase or the East Phase of the Project first, as further set forth in the conditions of approval. (Ex. 2, 11.)
54. The Applicant requested flexibility to modify the interior and exterior design of the PUD as set forth in the conditions of approval and shown on the approved plans, including the flexibility to design the commercial facades in accordance with tenant and market requirements, including lighting, materials, and the introduction of signage. (Ex. 2, 11, 11F, 45, 51A.)
55. The Applicant requested flexibility to construct commercial space in lieu of residential for portions of the B-1 level of the Southwest Structure and the portion of the Northeast Structure facing the Promenade and Harry Thomas Way. (Ex. 45.) OP had no objection to this flexibility provided the total square footage of affordable housing provided by the Project would be based on such converted space as though it remained residential. (Ex. 45A, 46, 51A.)

## **Project Amenities and Public Benefits**

56. As detailed in the Applicant's testimony and written submissions, the proposed PUD will provide the following project amenities and public benefits:
- (a) Exemplary Urban Design, Architecture, and Open Spaces – The Applicant will provide such items through the use of high quality materials and design that will enhance and celebrate the industrial characteristics of the Eckington neighborhood, increase the porosity of the neighborhood, and commit to sustainable design features;
  - (b) Site Planning and Efficient Land Utilization – The Applicant will provide such items through the replacement of low-scale structures and surface parking lots with a mixed-use, transit-oriented development that enhances the urban street grid, provides multi-modal transportation connections, strengthens the emerging Eckington neighborhood, and fulfills many of the planning goals and policies of the Comprehensive Plan;
  - (c) Provision of the Promenade – The Applicant will enhance the connectivity and porosity of the neighborhood patterns through the design, construction, and maintenance of the Promenade;
  - (d) Street-Engaging Maker, Innovative Retail and Commercial Offerings – The Applicant will provide up to approximately 77,184 total square feet of maker, innovative retail, and commercial space to create an inviting destination, activate the public realm around the site and stimulate other development in the vicinity. Most of this space will be double height space. For the purposes of this Order, a “maker” space or “maker” use is defined as: production, sale, distribution, and/or consumption of food and beverages; small-scale production and repair of goods and related sales; media/communications production and distribution; arts and entertainment; traditional crafts and trades; recreation uses; engineering and design; and technology design and production;
  - (e) Affordable Housing – The affordable housing component of the PUD will be approximately 50,541 square feet of the residential gross floor area of the PUD, which equals eight percent of its residential gross floor area including the habitable penthouse space, all of which will be subject to the Inclusionary Zoning regulations. Of this amount, the IZ regulations require that 446 square feet of gross floor area be set aside for a unit for households earning no more than 50% AMI because of the construction of penthouse habitable space. The remaining 50,094 square feet of gross floor area (approximately 55 units) must be set aside for households earning no more than 80% of the AMI (“80% Units”). Instead, the Applicant will set-aside half of the 80% Units at the 50% AMI level, thereby exceeding the requirements of Inclusionary Zoning;

- (f) Repaving of Northeast Alley – The Applicant will repave the alley to the northeast of the Property, subject to approval by DDOT, and has designed such alley to be able to utilize a two-foot setback for the first two levels of the Project abutting such alley;
- (g) Community Meeting Space – The Applicant will provide, at no cost and for the life of the Project, ANC 5E and the Eckington Citizens Association access to a community meeting room comprising a total of approximately 1,200 square feet of gross floor area. Such organizations will reserve the meeting space with building management on an ongoing basis;
- (h) Adopt-A-Block Program – The Applicant will participate in the District’s Adopt-A-Block Program for the two city blocks defined as the north side of Seaton Place, N.E. at the north, the east side of 3<sup>rd</sup> Street, N.E. at the east, the south side of Randolph Street, N.E. at the south, and the west side of 2<sup>nd</sup> Street, N.E. on the west for a period of six years (three terms of two years each);
- (i) Contribution for Eckington Banners – The Applicant will contribute up to \$20,000 to the vendor(s) responsible for work relating to the design and installation of banners denoting the Eckington neighborhood on streetlights and/or lampposts surrounding the Property. Any excess from such \$20,000 allocation will be donated in equal proportion to the three nonprofit organizations identified in paragraph (p) below for the purposes stated in that paragraph;
- (j) Public Art – The Applicant will purchase and install a piece of public art in the public space at the entrance of the promenade along Eckington Place, subject to approval by DDOT. The Applicant will determine the ideal type and configuration for such art, subject to the review and approval of such proposal through the public space permitting process. The approximate location for such art is shown on Page L1.02 on Exhibit 51A;
- (k) Employment Agreement – The Applicant will enter into a First Source Employment Agreement with the Department of Employment Services (“DOES”) in the form submitted into the record to achieve the goal of utilizing District of Columbia residents for at least 51% of the new construction jobs created by the Project (Ex. 11E);
- (l) Community Garden – The Applicant will provide a minimum of approximately 1,200 square feet for a community garden to the surrounding community within the ANC 5E03 boundaries for a minimum of a six-year term. ANC 5E (or similar community organization) will manage and operate such garden including such functions as processing applications for plots, distributing plots to interested individuals, enforcing garden guidelines, and other similar functions;
- (m) Metropolitan Branch Trail Security Enhancements – The Applicant will contribute \$25,000 to DDOT (or the NoMA Business Improvement District) to

improve safety measures along the Metropolitan Branch Trail, with a preference on the areas of the portion of the trail north of R Street, N.E. most directly affecting the Eckington community. Examples of such safety measures include but are not limited to cameras, lighting, and call boxes;

- (n) NOMA Park Enhancements – The Applicant will contribute \$25,000 to the NoMA Business Improvement District (or similar organization) for the design and implementation of the NoMA Park on Harry Thomas Way, N.E.;
- (o) Maker Space Financial Assistance – The Applicant will subsidize or provide a reduction in rent (or otherwise financially assist) equivalent to \$10.00 per square foot (below then-current market rents) for innovative retail or “maker” uses the commercial areas on the first floor (and related optional mezzanine) for initial lease up of such space, for a minimum of 10,000 gross square feet;
- (p) Contribution to Community Non-Profit – The Applicant will contribute \$5,000 each for a total of \$15,000 contribution to the Coalition for Homeless, Inc. to operate its Emery Work Bed Program, So Others Might Eat to operate the Shalom House, and Pathways to Housing DC to assist with the Housing First Program;
- (q) 3<sup>rd</sup> and Rhode Island Signal (Mitigation Related) – The Applicant will contribute \$115,000 to DDOT towards the traffic signal design and installation project for the signal at 3<sup>rd</sup> Street and Rhode Island Avenue, N.E. Excess funds from such contribution will be allocated to the Mid-City Livability Study design and installations implementing such designs on the east side of Eckington Place adjacent to the Project;
- (r) Car Share Spaces (Mitigation Related) – The Applicant will dedicate two spaces in the residential garage or elsewhere on the surface of the Project for car sharing services to use with right of first refusal, if the demand exists from car share companies. These spaces will be convenient to the garage entrance, available to members of the car-sharing service 24 hours a day, seven days a week, without restrictions; and
- (s) Bike Share Station and Operating Costs (Mitigation Related) – The Applicant will fund the installation of a Capital Bikeshare station, including the first year of operation of the new station, at the perimeter of the NoMA Green Park (total cost currently \$88,000) or other nearby area subject to DDOT/public space and, if necessary, BID approval. (Ex. 2, 11, 45C.)

### **Compliance with PUD Standards**

57. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects.” (11 D.C.M.R. § 2403.8.) The Commission finds that the development incentives for the residential use capability,

flexibility, and related rezoning to CR are appropriate and fully justified by the additional public benefits and project amenities proffered by the Applicant. The Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations regarding the requested flexibility from the Zoning Regulations and satisfaction of the PUD standards and guidelines set forth in the Applicant's statement and the OP report.

58. The Commission credits the testimony of the Applicant and its experts as well as OP and DDOT and finds that the superior design, site planning, streetscape and transportation network improvements, housing and affordable housing, uses of special value, transportation demand, Promenade and loading management plans, and employment opportunities of the PUD all constitute acceptable project amenities and public benefits.
59. The Commission finds that the PUD as a whole is acceptable in all proffered categories of public benefits and project amenities, and is superior in public benefits and project amenities relating to urban design, landscaping, and open space, housing and affordable housing, effective and safe transportation access, and uses of special value to the neighborhood and the District as a whole. The Commission credits the testimony of the Applicant and OP and the many letters from ANC 5E and community members and neighbors that the PUD provides significant and sufficient public benefits and project amenities, including elements of substantial value to the community and the District commensurate with the additional density and height sought through the PUD. Further, the Commission credits OP and DDOT's testimony that the impact of the PUD on the level of services will not be unacceptable.
60. The Commission finds that the character, scale, mix of uses, and design of the PUD are appropriate, and finds that the site plan is consistent with the intent and purposes of the PUD process to encourage high quality developments that provide public benefits. Specifically, the Commission credits the testimony of the Applicant and the Applicant's architectural and transportation planning experts that the PUD represents an efficient and economical redevelopment of a strategic and transit-oriented parcel one-quarter mile from a Metrorail station entrance.
61. The Commission credits the testimony of the Applicant's traffic consultant, who submitted a detailed transportation impact analysis that concluded that the PUD would not generate an adverse traffic impact on the surrounding roadway network due to traffic or parking impacts. (Ex. 29.) The Applicant's traffic expert also concluded that the number of parking and loading spaces and the location of access to parking and loading spaces from the alley would not generate adverse impacts on neighboring property. In addition, the Commission credits the Applicant's traffic consultant to conclude that the use of the shared loading facilities at the adjacent parcel (The Gale) would not create adverse conditions, and in fact would create a more desirable plan for the Eckington neighborhood. The Commission credits the Applicant's transportation expert and DDOT and finds that the traffic, parking, and other transportation impacts of the PUD on the surrounding area are capable of being mitigated through the measures proposed by the Applicant and are acceptable given the quality of the public benefits of the PUD.



## **Compliance with the Comprehensive Plan**

62. The Commission credits the testimony of OP and the Applicant regarding the Property's designation as Medium-Density Residential and Production, Distribution, and Repair on the Future Land Use Map of the District of Columbia. The proposed rezoning to the CR Zone District as well as the height and density of the Project is consistent with this designation, and the rezoning is necessary to permit the mix of uses, height, and density of the PUD, including residential use. In addition, the application is in accordance with the Comprehensive Plan's Generalized Policy Map which includes the Property in the "Land Use Change Area" category. Further, the rezoning is part of a PUD application, which allows the Commission to review the design, site planning, and provision of public benefits and amenities against the requested zoning flexibility.
63. The Commission credits the testimony of the Applicant and OP regarding the compliance of the PUD with the District of Columbia Comprehensive Plan. The development is fully consistent with and furthers the goals and policies in the map, citywide, and area elements of the plan as follows:
  - (a) The Commission finds that the proposed PUD is not inconsistent with the written elements of the Comprehensive Plan and, in particular, promotes the policies of its Land Use, Transportation, Housing, Urban Design, and Economic Development Citywide Elements and its Mid-City Area Element;
  - (b) The Project implements Land Use Element policies that designate the area around the New York Avenue-Florida Avenue-Gallaudet University Metrorail station for future growth and encourage infill development near Metrorail stations with mixed-use projects that will encourage transit usage. The PUD and map amendment bring growth and revitalization to the Eckington neighborhood. In addition, the Project will allow for the redevelopment of outmoded and obsolete industrial sites with a vibrant catalyst for the area. The Project is replacing a more suburban form of buildings with a concept that emphasizes and capitalizes on its location. The Project proposes to locate the parking beneath the building to maximize the productive use and interaction on the ground floor;
  - (c) The Project implements Transportation Element policies that promote transit-oriented development and urban design improvements. The PUD brings new housing and commercial uses within walking distance of the Metrorail station and, through its Transportation Demand Management Plan, provides effective incentives to discourage motor vehicle use;
  - (d) The Project implements Housing Element policies that encourage expansion of the city's supply of high-quality market-rate and affordable housing, including affordable housing units that exceed the requirements of Inclusionary Zoning. The Project will produce housing on an underutilized commercial site and will stimulate the development of additional housing in the area. The Project will also furnish a significant amount of its Inclusionary Zoning requirement – four percent

of the residential component (excluding penthouse habitable space) for households 50% or less of the AMI where IZ would have only required this same square footage be set aside at the 80% AMI level. Perhaps most importantly, the Project will provide unique unit types in the District – both three-bedroom units and multilevel units – that will be attractive to families wishing to either move into or stay in the District. This is particularly noteworthy at this close of a proximity to mass transit;

- (e) The Project implements Urban Design Element policies that call for enhancing the aesthetic appeal and visual character of areas around major thoroughfares. The PUD significantly improves the appearance of a key site in the Eckington neighborhood and will catalyze additional investments in the neighborhood. At the same time, the Project will be of a scale, height, and density appropriate for a site at the crossroads between the Eckington neighborhood and the NoMA district. The Project will maximize the storefront design and architectural details at the pedestrian level, further encouraging pedestrians to interact with the Project along its entire extensive frontage – including the substantial frontage it will offer in the Promenade itself. The result will be an improved and attractive street environment that will foster pedestrian activity and neighborhood vitality. In addition, the Project will enhance the pedestrian environment by improving public space walkways (by incorporating such items as street furniture and lighting) and bringing them into compliance with the Mid-City East Plan;
  - (f) The Project implements the Economic Development Element policies that call for expanding the retail sector, creating additional neighborhood shopping commercial districts, attracting new businesses, and improving the mix of goods and services available to residents through appropriately scaled infill development on vacant and underutilized sites. This will help create the critical mass necessary to implement the Ward 5 Works Study and the neighborhood’s vision for the area; and
  - (g) The Project implements the Mid-City Area Element policies stating that new businesses that provide local services are to be encouraged, particularly on the east side of the Mid-City Area, that new affordable housing units should be constructed in the area, and that the neighborhood should be “greened”. This Element also states that redevelopment of infill sites is to be encouraged when compatible in scale and character with adjacent uses, as is the case here. Further, in accordance with the Element, the Project will deliver a high degree of affordable housing on a site where housing is currently not permitted as a matter-of-right, at levels beyond what would be required by Inclusionary Zoning, if it were to be applied to the site.
64. The Commission credits the testimony of the Applicant, OP, and ANC 5E that the PUD is consistent with and furthers the goals of the Ward 5 Industrial Land Transformation Study.

## **Agency Reports**

65. By report dated May 2, 2016, and by testimony at the public hearing, OP recommended approval of the application. OP supported the PUD-related rezoning to the CR Zone District, which would support the written elements of the Comprehensive Plan and would not be inconsistent with the Future Land Use and Generalized Policy maps of the Comprehensive Plan. In OP's final report:
- (a) OP noted that the maximum height of 102 feet for the Northwest Structure would be within the upper range of the Medium-Density Residential category and that such height would be limited to the western end of the Project, adjacent to a self-storage building. Further, OP noted that such massing would result in the Project being significantly lower towards the east, where it is adjacent to townhouses to the north and The Gale apartments to the south;
  - (b) OP stated that the Project would be not inconsistent with written elements of the Comprehensive Plan noting the Project's consistency with the Land Use, Transportation, Housing, Urban Design and Economic Development Elements in particular;
  - (c) OP stated that the level of benefits, amenities, and proffers appears to be commensurate with the additional height and density the PUD is requesting through the related map amendment. The greater depth of affordability being proffered would be of significant benefit;
  - (d) OP noted that it supported the Applicant's requests for flexibility but did not support the Applicant's request for flexibility from § 411.9's requirement to construct habitable space in the Northwest Structure's penthouse to two heights. The Applicant submitted a post-hearing submission on June 2, 2016 addressing such reservation; and
  - (e) OP noted that it still required additional information regarding whether DDOT determined that the traffic mitigation, TDMP, and loading and vehicular entrance approaches were acceptable; a comparison of alternative loading proposals and their impacts on both the Project and The Gale; further study of the affordable housing in light of DHCD's administrative guidelines; submission of floor plans showing the location and unit type of the IZ units; a list of project amenities to which the IZ units will have access without an additional fee and those which will require an additional fee; the distance between the north side of The Gale and the south side of the Project and the impact on the north-facing windows of The Gale; further information relating to the Project's public benefits and amenities; further study of the historicist elements on the Eckington Place façade and the overall coherence of the architecture; clarification of routes and distances between loading platforms and retail/maker spaces; further information regarding the management and programming of the pedestrian promenade and plaza; further information about additional safety measures to enhance the Promenade; and the

relationship of the proposed retail and maker uses to similar offerings proposed for nearby developments.

66. During the Hearing, OP noted that most of its information requests had been satisfied but requested further information regarding the justification for having two habitable space heights in the Northwest Structure penthouse, whether the Applicant should request additional sections for its Inclusionary Zoning relief; further specificity regarding the Project's public benefits and amenities; further study of the Project's "historicist" treatment along Eckington Place; further detail regarding the Project's landscaping plans; further information regarding the viability and adaptability of non-residential uses along with differentiations between the Project and other similar endeavors in the vicinity; and further information regarding how the Promenade will be animated. (Ex. 26; May 12, 2016 Transcript ["Tr."].)
67. By a supplemental report on June 9, 2016, OP requested additional information on certain benefits and amenities of the project, clarifications regarding the Applicant's affordable housing, and confirmed that it had no objection to the Applicant's requested flexibility to convert certain elements of the project's residential space to commercial space (provided that the amount of affordable housing provided remain constant). (Ex. 46.) On July 20, 2016, OP filed a request to reopen the record along with a supplemental report requesting clarifications regarding the Applicant's definition of "maker" uses. (Ex. 53.)
68. During the Hearing and in its post-hearing submission, the Applicant responded to OP's issues and agreed to the requested clarifications to the "maker" definition along with amendments to its affordable housing set aside. (Tr. May 12, 2016; Ex. 45, 51, 58, 59.)
69. Based on the foregoing, the Commission concludes that the Applicant has addressed OP's requests and concerns.
70. By report dated May 2, 2016 and by testimony at the public hearing, DDOT noted that it did not object to the approval of the application subject to certain conditions:
  - (a) DDOT noted that the backing movements into public space for the shared loading at The Gale do not meet DDOT standards and requested additional studies of alternatives to such condition;
  - (b) DDOT stated that the Applicant utilized sound methodology to perform its traffic analysis and that the background growth, mode split, and trip generation assumptions proposed by the Applicant are reasonable if supported by an appropriate transportation network and TDM measures;
  - (c) DDOT stated that the proposed parking supply is appropriate for the proposed usage;
  - (d) DDOT requested a loading management plan and DDOT also requested that the Applicant:

- Conduct a signal warrant and, if warranted, design and install a signal at Rhode Island Avenue/3<sup>rd</sup> Street, N.E.;
  - Conduct a warrant analysis and, if warranted, install a four-way stop at Eckington Place/Harry Thomas Way, N.E.;
  - Design and construct traffic calming and pedestrian improvements in line with the Mid-City East Livability Study adjacent to the site;
  - Redesign the loading facilities to provide front in/front out movements on Eckington Place and Harry Thomas Way;
  - Provide a loading management plan for the Promenade;
  - Enhance to the Project's TDM measures to provide an \$85 credit to all new residents for the first five years;
  - Ensure that the definition for market rate parking is the average cost for parking within a quarter mile of the site; and
  - Modify the funding of the Bikeshare station to include the costs for the first year of operation; and
- (e) DDOT also indicated that DDOT would continue to review and approve components of the PUD within its jurisdiction for review and permitting, including design and construction of streetscape elements in public space.
71. During the Hearing, DDOT noted that the Applicant had addressed all of its above comments and conditions by agreeing to specific acceptable responses to each and that DDOT had no further comments or issues with the application. (Ex. 27; May 12, 2016 Tr.) The Applicant also submitted its responses to DDOT and its Transportation Demand Management Plan into the record on May 12, 2016. (Ex. 50.) Based on the foregoing, the Commission finds that the Applicant has addressed DDOT's conditions and issues.
72. Through its report dated May 3, 2016 and through testimony at the public hearing, a representative of DOEE testified regarding the sustainability elements of the PUD. The Commission waived its rules and accepted the DOEE report into the record late. The DOEE report noted that the Applicant should further study:
- (a) The Project's energy model and commit to increase energy efficiency;
  - (b) The DC PACE program to assist in financing improvements to energy efficiency and on-site generation;
  - (c) The installation of photovoltaic panels on the Project's roof;

(d) Opportunities to maximize capture of street runoff along with rainwater harvesting for water reuse in the building; and

(e) Opportunities for the Project to increase its LEED-NC level to Gold

(Ex. 28; May 5, 2016 Tr.) By a supplemental report filed on June 9, 2016, DOEE requested additional focus on the project's sustainable design. (Ex. 47.)

73. In its post-hearing submission, the Applicant responded to DDOE's recommendations and agreed to achieve additional credits beyond the LEED-NC Silver level, described the introduction of solar panels on the Project roof, and discussed elements of the Project's water reuse management strategy. (Ex. 45.) The Applicant further addressed the issues in its post-proposed action submission. (Ex. 51-51C.)
74. Based on the foregoing, the Commission finds that the Applicant has addressed DOEE's conditions and issues.
75. On July 26, 2016, DHCD filed a request to reopen the record along with a supplemental letter stating its opposition to granting flexibility from IZ regulations for the reasons discussed earlier in this Order. (Ex. 54, 55.) On July 28, 2016, DHCD filed a supplemental letter that responded to the Commission's information request. The DHCD response in part requested that all of the project remain subject to IZ, but with half of the IZ set-aside not attributable to the penthouse habitable space be reserved for households earning 40% or less of the AMI. (Ex. 57.) The Applicant responded to the Commission's request with a letter dated August 5, 2016 offering an alternative housing consistent with the DHCD recommendation, which the Commission accepted at its August 8, 2016 special meeting. (Ex. 59.) Based on the foregoing, the Commission finds that the Applicant has addressed DHCD's conditions and issues and in fact the Commission agreed to the alternative proposal.

#### **Advisory Neighborhood Commission 5E Report**

76. ANC 5E submitted a letter in support of the application indicating that at a duly noticed and regularly scheduled monthly meeting on April 19, 2016, with a quorum present, ANC 5E unanimously voted to support the PUD and Zoning Map amendment. The ANC noted that the Applicant had been active in the community regarding the Project for a long period of time and had incorporated updates to the Project based on community feedback. The ANC stated that it supported the coordination between the Project and The Gale property, specifically noting the benefits of the combined curb cuts/loading. The ANC further stated that it is supportive of the Applicant's proposed benefits and amenities package, noting that the specific public benefits were tailored to satisfy requests and needs of the community. (Ex. 37.)



### **Parties in Support or Opposition**

77. No parties appeared in opposition to the application.
78. The Commission received a letter in support of the application along with a party status request from Jennifer Nieratko. (Ex. 25.) The Commission discussed whether to grant Ms. Nieratko party status and ultimately decided that it was not warranted given her support for the Project. The Commission kept the record open for Ms. Nieratko to submit any additional information.

### **Persons and Organizations in Support or Opposition**

79. No persons or organizations appeared in opposition to the application.
80. The Commission received a letter in support from the Eckington Citizens Association. (Ex. 38.)
81. The Commission also received a letter in support from the neighboring property owner at 151 Q Street, N.E. (The Gale). (Ex. 20.)
82. The Commission also received letters in support of the application from Michael Aiello and Quinta Martin, Sarah Moxley, Christopher Cafiero, Amy and Jay Hariani, and Matt Miller, all nearby residents. (Ex. 22, 24, 34, 35, 36.)
83. Daniel Agold also testified in support of the application at the hearing and submitted comments into the record. (Ex. 40.)

### **CONCLUSIONS OF LAW**

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, welfare, and convenience.” (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider the applicant as a consolidated PUD or a two-stage PUD. The Commission may impose development guidelines, conditions, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts.
3. The Property meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

4. Proper notice of the proposed PUD and related rezoning was provided in accordance with the requirements of the Zoning Regulations and as approved by the Commission.
5. The development of the PUD will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right standards. Here, the height, character, scale, mix of uses, and design of the proposed PUD are appropriate. The proposed redevelopment of the Property, with a mix of residential and commercial uses, capitalizes on the Property's strategy and transit-oriented location and is compatible with citywide and area plans of the District of Columbia.
6. The Applicant seeks a PUD-related zoning map amendment to the CR Zone District as well as flexibility relating to the closed court, roof structure, compact parking percentage, and loading requirements as well as the constraints on light industrial uses in the CR Zone District. The Commission has judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects, and concludes approval is warranted for the reasons detailed below.
7. The PUD complies with the applicable height and bulk standards of the Zoning Regulations and will not cause a significant adverse effect on any nearby properties. The residential and commercial uses for this PUD are appropriate for the Property's location. The PUD's height, bulk, and uses are consistent with the District's planning goals for the surrounding neighborhood.
8. The PUD provides superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the urban design, site planning, efficient and safe transportation features and measures, housing and affordable housing, ground-floor retail uses, and uses of special value are all significant public benefits. The impact of the PUD is acceptable given the quality of the public benefits of the PUD.
9. The impact of the PUD on the surrounding area and the operation of city services is not unacceptable. The Commission agrees with the conclusions of the Applicant's traffic expert and DDOT that the proposed PUD will not create adverse traffic, parking, or pedestrian impacts on the surrounding community. The application will be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
10. Approval of the PUD and rezoning is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP and finds that the proposed PUD is consistent with the Property's Medium-Density Residential and Production, Distribution, and Repair designation on the Future Land Use Map and furthers numerous goals and policies of the written elements of the Comprehensive Plan as well as other District planning goals for the immediate area.

11. The Commission concludes that the proposed PUD-related Zoning Map Amendment for the Property from the M to the CR Zone District is not inconsistent with the Comprehensive Plan, including the Property's land use designation on the Future Land Use map, and is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives. The PUD-related rezoning of the PUD Site to CR is consistent with the purposes and objectives of zoning as set forth in the Zoning Act of 1938, approved June 20, 1938.
12. The PUD will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
13. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to the recommendations of OP in all zoning cases. The Commission carefully considered the OP reports and found OP's reasoning persuasive in recommending approval of the application.
14. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give "great weight" to the issues and concerns raised in the written report of the affected ANC. The Commission carefully considered the ANC 5E position supporting approval of the application and concurred in its recommendation of approval. The Commission was not required to give such "great weight" to the recommendations of other community members and associations submitting materials or testimony into the record. Nevertheless, the Commission carefully considered the issues raised by such persons and associations in its approval of the Project.
15. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for the review and approval of a consolidated planned unit development and a related Zoning Map amendment from M to CR for the Property subject to the following conditions:

#### **A. PROJECT DEVELOPMENT**

1. The Project shall be developed in accordance with the architectural plans and drawings submitted on July 5, 2016 (Exhibit 51A), and as modified by the guidelines, conditions, and standards herein (collectively, the "Plans").

2. The Project shall include a mixed use building composed of four connected structures containing up to approximately 703,362 gross square feet (“GSF”), which is equivalent to a density of up to approximately 5.2 FAR. Such GSF will be composed of up to approximately 77,184 GSF of commercial, retail, and service uses and approximately 695 residential units. The Project will contain a parking garage containing up to approximately 331 parking spaces for both commercial and residential parking. Three of the structures will be constructed to a height of up to approximately 75 feet and one of the structures will be constructed to a height of up to approximately 102 feet.
3. The Property shall be rezoned from the M Zone District to the CR Zone District. Pursuant to 11-X DCMR § 311.3, the change of zoning shall be effective upon the recordation of the covenant discussed in Condition No. D.2.
4. The Applicant shall have flexibility relating to the closed court, roof structure, compact parking percentage, and loading requirements as well as the constraints on light industrial uses in the CR Zone District as shown on the Plans and described in the record.
5. The Applicant shall construct a Promenade as shown on Pages A4.01, A4.02, A4.05, A4.06, L1.01, L1.02, and L1.04 of the Plans.
6. The Project’s LEED and solar panel requirements shall be as follows:
  - (a) **Prior to the issuance of the first Certificate of Occupancy for the structures on the West Parcel**, the Applicant shall demonstrate that it has designed the structures on the West Parcel to the Silver level or higher under the LEED-NC v. 2009 rating system and a minimum of 56 LEED points;
  - (b) **Prior to the issuance of the first Certificate of Occupancy for the structures on the East Parcel**, the Applicant shall demonstrate that it has designed the structures on the East Parcel to Silver level or higher under the LEED-NC v. 2009 rating system and a minimum of 57 LEED points; and
  - (c) **Prior to the issuance of the first Certificate of Occupancy for the structures on the second phase of the Project**, the Applicant shall demonstrate that it has designed and constructed a minimum of approximately 10,000 square feet of solar panels on the entirety of the Project.

**B. PUBLIC BENEFITS**

1. The affordable housing component of the PUD shall be eight percent of the residential gross floor area of the Project or approximately 50,541 square feet of

gross floor area (approximately 56 units) all of which shall be subject to the Inclusionary Zoning Implementation Amendment Act of 2006, effective Mar. 14, 2007 (D.C. Law 16-275; 54 DCR 880), Chapter 26 of Title 11 DCMR, and Chapter 14 of Title 14 DCMR. All such units shall hereinafter be referred to as IZ Units. Of these IZ Units, approximately 55 units with a combined gross floor area of approximately 50,095 square feet shall be governed by paragraphs (a) through (e) below and one unit with approximately 446 square feet of gross floor area shall be governed by paragraph (f) below:

- (a) If construction of the Project does not proceed in phases, **prior to the issuance of the first Certificate of Occupancy for the Project, and for the life of the Project**, the Applicant shall demonstrate that it has set aside a minimum of eight percent of the residential gross floor area of the building (excluding the penthouse habitable space in the Northwest Structure) for IZ Units and subject to the last phrase of Conditions D(1)(f)) and D(1)(g));
- (b) If construction of the Project does proceed in phases:
  - (i) **Prior to the issuance of the first Certificate of Occupancy for the structures on the West Parcel, and for the life of the Project**, the Applicant shall demonstrate that it has set aside a minimum of eight percent of the residential gross floor area (excluding penthouse habitable space of the Northwest Structure) for IZ Units, subject to the last phrase of Condition D(1)(f)); and
  - (ii) **Prior to the issuance of the first Certificate of Occupancy for the structures on the East Parcel, and for the life of the Project**, the Applicant shall demonstrate that it has set aside a minimum of eight percent of the residential gross floor area of the East Parcel structures for IZ Units, subject to the last phrase of Condition D(1)(g));
- (c) Half of the IZ Units shall be set aside for households with an annual income of no more than 50% of the AMI (adjusted for household size) and half of the IZ Units shall be set-aside for households with an annual income of no more than 80% of the AMI (adjusted for household size). The first IZ Unit and each additional odd number unit shall be set aside at the 80% AMI level;
- (d) The mix of IZ Unit types shall be proportional to the mix of market-rate unit types. The size of the IZ Units shall be of a size substantially similar to the market-rate units;

- (e) The IZ Units shall be distributed throughout the building on all floors except that the Applicant shall not be required to locate any IZ Unit on the top two floors of the structures as shown on Pages A1.21-A1.23 of the Plans or within any roof structure as shown on Exhibit 51A1. Furthermore, within each floor, IZ Units shall not be concentrated in any one tier or section of the building. The distribution of the IZ Units shall be consistent with the potential affordable housing locations shown on Sheets A1.21–A1.23 of the architectural drawings dated July 5, 2016 in Exhibit 51A2;
  - (f) In addition to the IZ Units required by paragraphs (a) or (b) above **prior to the issuance of the first Certificate of Occupancy for any portion of the building that includes the Northwest Structure habitable penthouse space (if constructed in phases) and in either case for the life of the Project**, the Applicant shall demonstrate that it has set aside a minimum of eight percent of the residential gross floor of the penthouse habitable space of the Northwest Structure, approximately 446 square feet of gross floor area as an IZ Unit reserved for households with an annual income of no more than 50% of the AMI as adjusted for household size. This IZ Unit may be located in any of the structures that comprise the building.
2. **Prior to the issuance of a Certificate of Occupancy for the Northeast Structure**, the Applicant shall demonstrate that it has repaved the alley to the northeast of the Property, subject to approval by DDOT, and has designed such alley to be able to utilize a two-foot setback for the first two levels of the Project abutting such alley. After the Northeast Structure has been constructed and prior to the Applicant repaving such alley, DDOT may inspect such alley to determine whether damage occurred to the alley as the result of the Project construction that would otherwise require the Applicant to repave the alley. If DDOT determines that the alley was damaged by the construction of the Project, this public benefit will be replaced by Applicant contributing \$35,000 to DDOT (or as otherwise directed by DDOT) for the Mid-City Livability Study design and installations implementing such designs on the east side of Eckington Place adjacent to the Project.
3. **Upon issuance of the Certificate of Occupancy for the portion of the Project covering such space and for the life of the Project**, the Applicant shall provide evidence of its provision of, at no cost and for the life of the Project, ANC 5E (and the Eckington committee or Single Member District constituency meeting thereof) access to use a community meeting room comprising a total of approximately 1,200 gross square feet. The Eckington Citizens Association (and committees thereof) shall have the right to such space no less than 12 times per year and ANC 5E (or a committee or Single Member District constituency meeting thereof) shall have the right to such space no less than six times per year. Such organizations shall have the right to utilize such space more than these



minimum amounts subject to availability on a first-come, first-served basis. Such organizations will reserve the meeting space with building management on an ongoing basis and shall be provided with current building management contact information at all times.

4. **Prior to the issuance of the first Certificate of Occupancy for the Project and for six years (three terms of two years each)**, the Applicant shall provide evidence of its participation in the District's Adopt-A-Block Program for the two city blocks defined as the north side of Seaton Place, N.E. at the north, the east side of 3<sup>rd</sup> Street, N.E. at the east, the south side of Randolph Street, N.E. at the south, and the west side of 2<sup>nd</sup> Street, N.E. on the west. As part of this program, the Applicant will regularly clean up trash, beautify, and remove graffiti in such areas.
5. **Prior to the issuance of the first Certificate of Occupancy for the Project**, the Applicant shall provide evidence that it has contributed \$20,000 to the vendor(s) responsible for work relating to the design and installation of banners denoting the Eckington neighborhood on streetlights and/or lampposts surrounding the Property (subject to approval by DDOT). Such evidence shall be in the form of a letter submitted to the Zoning Administrator of such contribution. The banners shall be designed in coordination with the Eckington Neighborhood Association and the effort shall produce a minimum of five and a maximum of 40 banners. Any excess from such \$20,000 allocation shall be donated in equal proportion to the three nonprofit organizations identified in Condition B12 for the purposes stated in that condition and the Applicant shall provide evidence of the use of those contributions as provided for in that condition.
6. **Prior to the issuance of the first Certificate of Occupancy for the structure on the Western Parcel**, the Applicant shall purchase and install a piece of public art in the public space at the entrance of the promenade along Eckington Place (subject to approval by DDOT). The Applicant will determine the ideal type and configuration for such art, subject to the review and approval of such proposal through the public space permitting process. The approximate location for such art is shown on Page L1.02 on Exhibit 51A.
7. **Prior to the issuance of the first above-grade building permit for the Project**, the Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services ("DOES") substantially in the form submitted into the record as Exhibit 51B to make good faith efforts to utilize District of Columbia residents for at least 51% of the new construction jobs created by the Project.
8. **Prior to the issuance of the first Certificate of Occupancy for the Project**, the Applicant shall provide evidence that it has provided a minimum of an approximately 1,200 square foot community garden to the surrounding

community within the ANC 5E03 boundaries for a minimum of a six-year term. ANC 5E (or similar community organization) shall manage and operate such garden, including such functions as processing applications for plots, distributing plots to interested individuals, enforcing garden guidelines, and other similar functions.

9. **Prior to the issuance of the first Certificate of Occupancy for the Project**, the Applicant shall provide evidence that it has contributed \$25,000 to DDOT (or the NoMA Business Improvement District) to improve safety measures along the Metropolitan Branch Trail, with a preference on the areas of the portion of the trail north of R Street, N.E. If such contribution is provided to the NoMA Business Improvement District, such evidence shall be in the form of a letter submitted to the Zoning Administrator stating that the safety measures have been funded by the Applicant's contribution and the amount of such contribution. Examples of such safety measures include but are not limited to cameras, lighting, and call boxes.
10. **Prior to the issuance of the first Certificate of Occupancy for the Project**, the Applicant shall provide evidence that it has contributed \$25,000 to the NoMA Business Improvement District (or similar organization) for the design and implementation of the NoMA Park on Harry Thomas Way, N.E. Such evidence shall be in the form of a letter submitted to the Zoning Administrator stating that the items or services related to the NoMA Park have been funded by the Applicant's measures a letter submitted to the Zoning Administrator.
11. **Prior to the issuance of the first commercial Certificate of Occupancy for the Western Parcel**, the Applicant shall provide evidence that it has subsidized or provided a reduction in rent (or otherwise financially assisted, or will so financially assist) equivalent to \$10.00 per square foot (below then-current market rents) for innovative retail or "maker" uses the commercial areas on the first floor (and related optional mezzanine) for initial lease up of such space, for a minimum of 10,000 gross square feet. Such evidence shall be in the form of a letter from the Applicant and/or the tenant submitted to the Zoning Administrator certifying to the current market rent for the commercial space in the Project, the amount of such reduction in rent, and that the reduction is for the initial lease up term of such space. "Maker" uses shall consist of a use within the following use list: production, sale, and/or distribution of food and beverages (provided that the on-site consumption of food and beverages shall be permitted only as an accessory use of such production, sale, and/or distribution user); small-scale production and repair of goods and related sales; media/communications production and distribution; arts and entertainment; traditional crafts and trades; specialty sports and recreation uses (not including traditional gyms or fitness clubs); engineering and design; and technology design and production.

12. **Prior to the issuance of the first Certificate of Occupancy for the Project**, the Applicant shall provide evidence that it has contributed a total of \$15,000 to the following local organizations and programs in the following amounts:
  - (a) \$5,000 to the Coalition for Homeless, Inc. at 1725 Lincoln Road, N.E. to operate its Emery Work Bed Program;
  - (b) \$5,000 to So Others Might Eat at 1876 4<sup>th</sup> Street, N.E. to operate the Shalom House; and
  - (c) \$5,000 to Pathways to Housing DC at 101 Q Street, N.E. to assist with the Housing First Program.

Such evidence shall be in the form of a letter (or letters) submitted to the Zoning Administrator stating that the above contribution (or contributions) have been made in the amount (or amounts) set forth above and have been utilized for the purpose (or purposes) set forth above.

#### **C. TRAFFIC MITIGATION**

1. **Prior to the issuance of the first Certificate of Occupancy for the Project**, the Applicant shall contribute \$115,000 to DDOT towards the traffic signal design and installation project for the signal at 3<sup>rd</sup> Street and Rhode Island Avenue, N.E. Excess funds from such amount shall be allocated to fund the Mid-City Livability Study design and installations implementing such designs on the east side of Eckington Place adjacent to the Project.
2. **For the life of the Project**, the Applicant shall provide the following transportation demand management (“TDM”) measures:
  - (a) The Applicant will identify TDM Leader(s) (for planning, construction, and operations);
  - (b) The TDM Leader(s) will work with goDCgo staff to create free customized marketing materials and a TDM outreach plan for resident and retail employees, including developing a site-specific transportation guide for residents and visitors;
  - (c) Building management will provide updated contact information for the TDM Leader(s) and report TDM efforts and amenities to goDCgo staff once per year;
  - (d) Building management will stock Metrorail, Metrobus, DC Circulator, Capital Bikeshare, Guaranteed Ride Home, DC Commuter Benefits Law, and other brochures;

- (e) The Applicant will unbundle all parking costs from the cost of the lease and set the cost at market rate, defined as the average cost for parking within a quarter-mile of the site on a weekday;
  - (f) The Applicant will exceed requirements and guidelines by providing no less than approximately 271 long-term bicycle parking spaces in the garages and no less than approximately 58 short-term bicycle parking spaces in the form of no less than approximately 29 U-racks within and along the perimeter of the site, upon the final built-out condition, subject to the approval by DDOT of any items to be installed in the public space;
  - (g) The Applicant will install a bicycle maintenance facility in the promenade, or other location on ground floor or first level of garage, upon the final built-out condition;
  - (h) The Applicant will install Transportation Information Center Displays (kiosks or screens) within the lobbies of the four residential component structures, containing information related to local transportation alternatives, as each such lobby is built out;
  - (i) The Applicant will dedicate two spaces in the residential garage or elsewhere on surface of the Property for car sharing services to use with right of first refusal, if the demand exists from car share companies. These spaces will be convenient to the garage entrance, available to members of the car sharing service 24 hours a day, seven days a week, without restrictions (the garage may be gated – members of the service would have access to the spaces via a key pad combination to a pass code system or other similar device);
  - (j) The Applicant will fund the installation of a Capital Bikeshare station, including the first year of operation of the new station, at the perimeter of the NoMA Green Park (total cost currently \$88,000) or other nearby area subject to DDOT/public space and, if necessary, BID approval; and
  - (k) The Applicant will provide to each new resident a one-time Bikeshare or carshare subsidy of \$85 (annual membership costs, plus an account credit if an annual membership costs are less than \$85) until the maximum value is obtained. The total amount of subsidies will have a maximum value of \$59,075 cumulative for the Project (equivalent to providing one subsidy for each dwelling unit). This benefit shall be codified in rental/condominium documents.
3. The Applicant shall provide loading facilities as shown on Pages A4.05 of the Plans and as described on Page A1.01 of the Plans. The Applicant shall undertake loading in accordance with the Promenade Management Plan submitted into the

record as Exhibit 45B and as described in the Unified Loading Management Plan submitted into the record as part of Exhibit 50.

**D. MISCELLANEOUS**

1. The Applicant shall have flexibility with the design of the PUD in the following areas:
  - (a) To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, signage, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
  - (b) To vary final selection of the exterior materials within the color ranges and materials types as proposed, based on availability at the time of construction;
  - (c) To make minor refinements to exterior details, dimensions, and locations, including belt courses, sills, bases, cornices, railings, balconies, trim, frames, mullions, spandrels, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or are needed to address the structural, mechanical, or operational needs of the building uses or systems;
  - (d) To vary the residential unit count of the Project by up to 10%;
  - (e) To vary the size, location and design features of the commercial component, including the size, location, and design of windows, doors, awnings, canopies, signage, and similar features, to accommodate the needs of specific retail tenants and storefront design subject to the commercial component tenant guidelines submitted as Exhibit 11F in the record;
  - (f) In the event that a retail tenant desires to lease the portions of the first and B-1 levels of the Southwest Structure shown on Pages A4.03 and 4.05A of the Plans, these levels may be modified as shown on the Plans and the portions of the Southwest Structure may be converted to commercial space, with the relevant portions of the façade modified accordingly; provided that the Applicant continue to provide its proposed affordable housing as though such converted space is remained in residential use;
  - (g) In the event that a retail tenant desires to lease the portion of the Northeast Structure shown on Pages A4.06A and A4.10A of the Plans, such portions of the Northeast Structure may be converted to commercial space, with the relevant portions of the façade modified accordingly, provided that the

Applicant continue to provide its proposed affordable housing as though such converted space remained in residential use;

- (h) To vary the number, type, and location of doors related to the rooftop uses to accommodate changes in building operation and function;
  - (i) To construct mezzanine space of up to approximately 25,716 above the first floor commercial space for use by such tenants or users;
  - (j) To vary the location and configuration of the green roof areas and solar panels on the roofs as specified in the Plans and to remove the water tower elements on the elevated courtyard; and
  - (k) To revise the design of the public space surrounding the Property and elements of the Property ground-floor landscaping and hardscaping to be consistent with the forthcoming Livability study for the public space adjacent to the Property.
2. No building permit shall be issued for this project until the Applicant has recorded a covenant among the land records of the District of Columbia between the owner and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct on or use the Property in accordance with this Order and any amendment thereof by the Commission.
3. If the Applicant elects not to construct the project in a phased manner, the consolidated PUD approval hereunder shall be valid for a period of two years from the effective date of this Order. Within such time, an application (or applications) must be filed for the building permit (or building permits) for the entire Project and construction must commence within three years of the effective date of this Order.
4. If the Applicant elects to construct the Project in a phased manner, the consolidated PUD approval hereunder shall be valid for a period of two years from the effective date of this Order. Within such time an application must be filed for the building permit for either the structure on the West Parcel or the structure on the East Parcel (or both) and construction under such permit must commence within three years after the effective date of this Order. The Applicant shall file an application for the building permit for the second selected phase of the Project within five years after the issuance of a certificate of occupancy for the first selected phase of the Project and construction must commence within two years thereafter.
5. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01, et seq. (“Act”)




and this Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, 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 also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

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

On June 13, 2016, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the application at the conclusion of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On August 8, 2016, upon the motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of § 3028.8 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register* on January 20, 2017.



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ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION



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SARA A. BARDIN  
DIRECTOR  
OFFICE OF ZONING