

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 16-29**

**Z.C. Case No. 16-29**

**Poplar Point RBBR, LLC (d/b/a Columbian Quarter Holdings)**  
**(First-Stage PUD and Related Map Amendment @ Square 5860, Lots 97, 1025-1031, 1036,**  
**and 1037 and a Portion of the Alley to be Closed, and Square 5861, Lot 91)**  
**April 12, 2018**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on December 4, 2017 to consider an application from Poplar Point RBBR, LLC (d/b/a Columbian Quarter Holdings) (“Applicant”) for review and approval of a first-stage planned unit development (“PUD”) and related amendment to the Zoning Map from the MU-14 zone to the MU-9 zone (together, “Application”). The Commission considered the Application pursuant to Title 11 of the District of Columbia Municipal Regulations (“Zoning Regulations”), Subtitles X and Z. The public hearing was conducted in accordance with the provisions of Chapter 4 of Subtitle Z of the Zoning Regulations. For the reasons stated below, the Commission hereby approves the Application.

**FINDINGS OF FACT**

**Application, Parties, and Hearing**

1. The property that is the subject of the Application consists of Lots 97, 1025-1031, 1036, and 1037 in Square 5860 and a portion of the alley to be closed, and Lot 91 in Square 5861 (“Property”) and is located on Howard Road, S.E. in Ward 8, within the jurisdiction of Advisory Neighborhood Commissions (“ANCs”) 8A and 8C. The Property is located on either side of Howard Road, S.E. and in between Interstate 295 and South Capitol Street, S.E. The Property is near the Anacostia River waterfront in Ward 8 and consists of approximately 271,219 square feet (including private streets), or approximately 6.23 acres, of land area. The Property is currently located in the MU-14 zone. (Exhibit [“Ex.”] 2.)
2. On September 21, 2016, the Applicant delivered a notice of its intent (“NOI”) to file the Application to all owners of property within 200 feet of the perimeter of the Property as well as to ANC 8A and ANC 8C, pursuant to § 300.7 of Subtitle Z of the Zoning Regulations. (Ex. 2C.)
3. On December 13, 2016, the Applicant filed the Application for approval of a first-stage PUD and related Zoning Map amendment from the MU-14 zone to the MU-9 zone (“Initial Application”). (Ex. 1-2I13.)

4. The Application was accepted as complete by the Office of Zoning (“OZ”) by letter dated December 21, 2016. (Ex. 4.) OZ referred the Application to ANC 8A, ANC 8C, the Councilmember for Ward 8, and the District of Columbia Office of Planning (“OP”) and notice of the filing of the Application was published in the *D.C. Register*. (Ex. 5-9.)
5. On February 17, 2017, OP delivered a report (“OP Setdown Report”) on the Application, recommending that the Commission set down the Application for public hearing, and requested additional information from the Applicant. (Ex. 10.)
6. During its public meeting on February 27, 2017, the Commission voted to set down the Application for a public hearing (“Setdown”). (See February 27, 2017 Transcript [“Tr. 1”] of the Commission’s Regular Public Meeting.)
7. On July 5, 2017, Applicant filed its initial pre-hearing statement and supporting exhibits (“PHS”), which included information in response to the requests from OP and the Commission, resumes of the Applicant’s proposed expert witnesses and outlines of testimony and paid the requisite hearing fees. The Applicant’s PHS included updates to the Application in response to OP and the Commission’s comments at Setdown, including information about interim uses at the site, additional setbacks to reduce overall massing, clarification of zoning data, more meaningful building connections, improved streetscape, removal of architectural embellishments on the roof, reduction of projecting balconies and bay windows, and refinements to public benefits and amenities. (Ex. 12-14.)
8. Notice of the public hearing to be held on October 26, 2017 was mailed to ANC 8A, ANC 8C, and to owners of property within 200 feet of the Property. (Ex. 18.) Notice of the public hearing was published in the *D.C. Register* on August 18, 2017, in Volume 64, Issue 3. (Ex. 15.)
9. On September 14, 2017, the Applicant caused notice of the Public Hearing to be posted at the Property, and on October 23, 2017, the Applicant filed an affidavit describing the maintenance of such posted notice. (Ex. 20, 27.)
10. On August 30, 2017, the Applicant filed a comprehensive transportation review “CTR”. (Ex. 17-17B.)
11. The Application was further updated by pre-hearing submissions filed on October 6, 2017, including additional information on public benefits and amenities; community outreach and engagement; and updated architectural plans, drawings, and renderings (“Initial 20-Day Statement”). (Ex. 21-21B.)
12. On October 16, 2017, OP, the District Department of Transportation (“DDOT”), and the District Department of Energy and Environment (“DOEE”) each submitted a report (respectively, the “Final OP Report,” the “DDOT Report,” and the “DOEE Report”). (Ex. 22-24.)

13. On October 18, 2017, ANC 8C filed a letter raising concerns with respect to the use of the name “Poplar Point.” (Ex. 25.)
14. On October 19, 2017, ANC 8A filed a letter requesting a postponement of the public hearing. (Ex. 26.)
15. On October 23, 2017, the Applicant filed a request for postponement of the public hearing until December 4, 2017, which request was approved, in response to the concerns of the ANCs. (Ex. 28.)
16. On November 14, 2017, the Applicant filed a supplemental pre-hearing statement (“Second 20 Day Statement”), addressing the concerns of ANC 8C with respect to the use of the name “Poplar Point” and the comments raised by OP, DDOT, and DOEE in their respective reports, an update on community outreach and engagement, and updated architectural plans, drawings, and renderings. (Ex. 38-38C.)
17. On December 4, 2017, the Washington Metropolitan Transit Authority (WMATA) filed a letter describing WMATA’s coordination with the Applicant on proposed improvements to the Anacostia Metro Station entrance (generally, “WMATA Improvements”). (Ex. 47.)
18. A public hearing was conducted on December 4, 2017 (“Public Hearing”). The Applicant provided testimony from Bill Hellmuth of HOK; Jami Milanovich of Wells + Associates; Thomas Skinner, Louis Dubin, and Stephan Rodiger of Redbrick LMD; and John Epting of Goulston & Storrs, PC. (December 4, 2017 Transcript [“Tr. 2”] of the Commission’s Public Hearing for Case No. 16-29). The Commission accepted Jami Milanovich and Bill Hellmuth, who have previously been accepted as experts before the Commission, as experts in this case. (Tr. 2 @ 11-12.)

Parties to the Proceeding and Request for Party Status

19. In addition to the Applicant, ANC 8A and ANC 8C were automatically parties in this proceeding and submitted reports in support of the Application. (Ex. 40, 43.)
20. On December 4, 2017, Current Area Residents EoTR (“CARE”) submitted a request for party status at 4:58 p.m. (Ex. 48; Tr. 2 @ 7.) The Commission denied the request because it was untimely and did not meet the standard for party status.
21. Pursuant to the Commission’s Rules of Practice and Procedure, unless an advance party status request is made, the Commission must “determine whether to grant or deny party status requests at the opening of the first public hearing on the application.” (11-Z DCMR § 404.3.) “A Request for Party Status that is to be considered at a public hearing must be filed with the Commission not less than fourteen (14) days prior to the public hearing.” (11-Z DCMR § 404.4.) The first public hearing was held on December 4, 2017. CARE’s request for party status was due November 20, 2017, and was therefore untimely, having been filed 14 days after the deadline.

22. Separately, the Commission found that even if the request had been timely, CARE did not clearly demonstrate that its interests or the interest of any of its members had met the party status standard, which is that it “would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public.” (11-Z DCMR § 404.14.) Instead the Commission found that CARE’s assertions in its party status applications, which were that (1) the approval of the building would further a non-race neutral DC Department of Housing and Community Development (“DHCD”) policy in an unconstitutional manner, and (2) the value of the public benefits of the Project did not outweigh its adverse impacts, were generalized grievances that would not significantly, distinctively, or uniquely affect CARE or its members. Therefore, CARE failed to meet the standard for party status. (See *Union Market Neighbors v. District of Columbia Zoning Comm’n.*, No. 16-AA-0705, slip op. at 2-3 (D.C. November 22, 2017).)
23. Although the Commission denied CARE’s party status application, the Commission nonetheless considered its arguments, including those made in its party status application, as it would consider the arguments of any group who chose to submit materials for the Commission’s consideration. The Commission’s consideration and disposition of these issues are discussed below in the “Contested Issues Raised by Persons in Opposition” portion of this Order.

#### Persons in Support and Opposition

24. Larry Greenhill of Savage Technical Services, Frederick Savage of Savage Technical Services, Jimmy Whitehead of Land Matters, LLC, Freddie Winston, and Thomas Brown of Training Grounds Inc. spoke in support of the Application. This testimony noted that Redbrick LMD is undertaking training and employment efforts not just in Ward 8, but in the wider District-Maryland-Virginia area (“DMV”). (Tr. 2 @ 104-111, 117-125.)
25. CARE, a non-party, stated objections in the attachment to its party status request that was denied by the Commission for the reasons stated above. (Ex. 48.) Paulette Matthews, a Barry Farm resident who signed party status application on behalf of CARE, testified in general opposition to change in the area, particularly the racial impact of the Project, but not specifically against the Project. (Tr. 2 @111-116).
26. Chris Otten of DC for Reasonable Development: Ward 8 Review Team (DC4RD: W8RT), Empower DC, and Barry Farms Tenants & Allies (BFTAA) spoke in opposition to the Application and filed comments into the record. (Tr. 2 @ 125-129; Ex. 49). Mr. Otten expressed concerns with impact of the Project on the community aesthetic, culture, and demographic of Ward 8 and Barry Farms, the surrounding recreational area and environment, infrastructure, flood plain, and traffic. Mr. Otten also expressed concerns with the status of any “contract” between the developers and the city with respect to job creation and benefits for Ward 8, the amount of affordable family-sized housing, conditions of job training associated with the Project for Ward 8 residents, and public benefits for the surrounding community, as well as the retail and commercial uses at the Project. Mr. Otten additionally mentioned in his written testimony that, “[t]he Project

completely blows out the DC Height Act as well as it relates to Howard Road, representing a canyon effect that is otherwise discouraged by all city planning documents.” (Ex. 49; Tr. 2 @ 125-129.)

Close of Public Hearing, Post-hearing Submissions, and Proposed Action

27. At the close of the Public Hearing, the Commission asked the Applicant to address certain aspects of stormwater management, solar panels, Inclusionary Zoning (“IZ”), phasing, recreational space, rooftop amenities, workforce training amenity, and a quantification of public benefits and amenities. (Tr. 2.) The Applicant addressed those issues in a post-hearing submission dated December 18, 2017, which included a list of proffered benefits and amenities and draft conditions (“Post-Hearing Submission”). (Ex. 51-51B.) The Commission also asked OP to submit an update on the status of planning for the Poplar Point site, adjacent to the Property.
28. On January 16, 2018, the Applicant submitted a cover letter and its draft findings of fact and conclusions of law. (Ex. 52, 52A.)
29. On January 19, 2018, OP submitted a post-hearing report on the status of planning for the Poplar Point site adjacent to the Property. (Ex. 54.)
30. On January 22, 2018, ANCs 8A and 8C submitted a joint report. (Ex. 55.)
31. On January 23, 2018, the Applicant submitted a response to the joint report of ANCs 8A and 8C. (Ex. 56.)
32. At its public meeting on January 29, 2018, the Commission voted to take proposed action to approve the Application. In addition to the proffers and conditions submissions required by the Zoning Regulations, the Commission asked the Applicant to provide a further explanation of the value of the Project’s public benefits, and explicitly authorized the ANCs to submit a response to this submission.
33. The proposed action was referred to the National Capital Planning Commission (“NCPC”) on February 1, 2018, pursuant to § 492 of the Home Rule Act. (Ex. 57.)
34. On February 5, 2018, the Applicant submitted its initial list of final proffers and proposed conditions. The list also included the Applicant’s estimated “Value/Cost” for each item. (Ex. 58.)
35. On March 1, 2018, NCPC submitted a report. The report stated that NCPC’s Executive Director, by delegated action dated February 22, 2018, found that the proposed PUD would not be inconsistent with the Comprehensive Plan for the National Capital. (Ex. 59.)
36. On March 2, 2018, the Applicant submitted a cover letter, its final list of final proffers and proposed conditions, and a motion to accept its late filing. (Ex. 60-60B.)

37. On March 9, ANCs 8A and 8C submitted a joint report. (Ex. 61.)
38. At a public meeting on March 12, 2018, the Commission granted the Applicant's motion to accept its late filing, considered the post-hearing submissions, and directed the Applicant to provide additional information and clarification on its listing of proffers and proposed conditions.
39. On March 26, 2018, the Applicant submitted its response to the Commissioners' comments made at the March 12, 2018 public meeting. (Ex. 62.)
40. On April 2, 2018, ANCs 8A and 8C submitted a document entitled "Community Benefits Agreement By and Between Redbrick LMD and Advisory Neighborhood Commissions 8A and 8C." (Ex. 63.)
41. On April 5, 2018, the Applicant filed a motion requesting that the Commission re-open the record to allow it to respond to ANCs 8A and 8C's April 2, 2018 submission. (Ex. 64.) The Commission Chairman denied the motion pursuant to 11-Z DCMR § 602.6.

### **Overview of the PUD Site**

42. The Property consists of approximately 271,219 square feet of land area (including private streets), or approximately 6.23 acres, located on either side of Howard Road, S.E. and in between Interstate 295 and South Capitol Street, S.E. in close proximity to the Anacostia Metrorail station. The site is bounded by National Park Service ("NPS") property to the north, the Anacostia Metrorail station to the east, and the Interstate 295 and South Capitol Street, S.E. interchanges to the south and west. (Ex. 2.)
43. The Property is largely unimproved with some small commercial buildings. The Property is located entirely in the MU-14 zone. The surrounding area features a variety of uses and zone categories. To the north is unzoned NPS property, to the east and southeast are residential and mixed-use communities, and Joint Base Anacostia-Bolling is located to the southwest. Property immediately to the south of the Property is in the PDR-1 zone, and the residential and mixed-use areas to the east and southeast are predominantly in the RA-1 zone. (Ex. 2.)
44. The Property is located within the Poplar Point area on the Anacostia River. The Anacostia, Historic Anacostia, and Barry Farms neighborhoods are located to the east and southeast of the Property. Across the Anacostia River are the Buzzard Point, National Ballpark, and Navy Yard areas. The site is adjacent to the Anacostia Metrorail station, which serves as a Green Line Metrorail station as well as a pick-up point for numerous bus lines. (Ex. 2.)
45. The Future Land Use Map of the Comprehensive Plan locates the Property in the Mixed-Use High-Density Residential/High-Density Commercial, as well as Institutional,

land use categories. The Property is also located within the Central Employment Area of the District. (Ex. 2.)

### **Project Description**

46. The Project will raze the existing improvements at the Property to develop a mixed-use project providing residential, retail, and office uses across five “buildings,” referred to as Buildings A-E (“Project”). (Ex. 2, 13, 21-21B, 38-38A2, 51-51B.)
47. Buildings A, D, and E are planned for office use; Buildings B and C will both be residential buildings. All buildings will have ground-floor retail uses and two levels of underground parking. The residential buildings will contain a mix of studio, one-bedroom, two- bedroom, and three-bedroom units. (Ex. 38-38A2.)
48. The Project will provide a meaningful connection between Buildings B and C as well as between buildings D and E. (Ex. 13, 21, 38-38A2.)
49. In total, the Project plans, excluding each building’s penthouse square footage, to construct approximately 52,120 gross square feet of retail use, approximately 691,590 gross square feet of residential use (approximately 700 residential units), and approximately 1,614,670 gross square feet of office space. (Ex. 38-38A2.)
50. The Applicant plans to construct the Project in three phases. Buildings A and D, both designed for office use with ground-floor retail, are expected to be Phase I. Building C, designed for residential use with ground-floor retail, is expected to be Phase II, and Building B, designed for residential use with ground-floor retail, and Building E, designed for office use with ground-floor retail, are expected to be Phase 3. (Ex. 38-38A2.)
51. Because the Property is largely undeveloped or underdeveloped, the Project presents a significant opportunity to improve the streetscape and surrounding area. As part of the Project, the Applicant will conduct major streetscape improvements, including creating a network of private streets intersecting the buildings to create a traditional grid network with a large private alley behind the northern buildings. (Ex. 38, 38A1, 38A2.)
52. The public and private street network will meet District standards and will have space for two-way traffic, parking, and bicycle lanes along Howard Road. The Project also includes significant pedestrian space, with a 14-foot and 16-foot pedestrian realm on the sides of Howard Road, S.E. (Ex. 38, 38A1, 38A2.)
53. The overall circulation plan of the Project not only provides effective circulation for the Project, but creates openings along the private streets and alleys for future development in the Poplar Point area. The Applicant has designed the Project to anticipate and foster future development to seamlessly connect to the Project’s three phases. The Applicant will also coordinate the development of bicycle lanes to connect to the Anacostia Riverwalk Trail and other bicycle networks in the District. (Ex. 2, 38, 38A1, 38A2.)

54. The Project will contain two levels of underground parking underneath all of the buildings. The Project will contain 983 vehicular parking spaces. The Applicant has requested flexibility to adjust the parking downwards if needed to meet market demand. The Applicant will provide the minimum number of bicycle parking spaces required by the Zoning Regulations, with approximately 90 short-term bicycle parking spaces, and 590 long-term bicycle parking spaces.
55. The Project will contain garage access from the private street between Buildings A and B and from the service drive Buildings D and E. Loading entrances for Buildings D and E will be provided from the service drive between the buildings, and loading entrances for Buildings A, B, and C will be provided from the alley to the north of the Project. (Ex. 38, 38A1, 38A2.)
56. The Applicant will devote 10% of the residential gross floor area plus eight percent of the total habitable penthouse space to affordable IZ units. The unit mix and income distribution of the IZ units will be as follows:

**Building B**

Residential Unit Type	GFA/Percentage of Total	Units	Reserved for household earning equal to or less than	Affordable Control Period	Tenure (rental or sale)	Notes
Total	419,590 sf of GFA (100%)	420	NA	NA	NA	
Market Rate	377,631 sf of GFA (90%)	378	Market Rate	NA	NA	
IZ	11,567 sf of GFA (2.5% + 8% of the total habitable penthouse space)	TBD in the 2 <sup>nd</sup> -stage PUD submission	50% MFI	Life of the project	Rental and/or sale	3 bedroom units
IZ	10,490 sf of GFA (2.5%)	TBD in the 2 <sup>nd</sup> -stage PUD submission	60% MFI	Life of the project	Rental and/or sale	3 bedroom units
IZ	20,980 sf of GFA (5%)	TBD in the 2 <sup>nd</sup> -stage PUD submission	60% MFI	Life of the project	Rental and/or sale	Unit size will be proportional to market rate unit sizes
Total Penthouse Habitable GFA	13,500 sf habitable GFA (100% of penthouse habitable space will be market rate)	TBD in the second stage PUD submission	Market rate	NA	NA	8% of penthouse of the total habitable penthouse space shall be reserved at 50% of AMI

**Building C**

Residential Unit Type	GFA/Percentage of Total	Units	Reserved for	Affordable Control	Tenure (rental	Notes
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			household earning equal to or less than	Period	or sale)	
Total	272,000 sf of GFA (100%)	272	NA	NA	NA	
Market Rate	244,800 sf of GFA (90%)	245	Market Rate	NA	NA	
IZ	7,440 sf of GFA (2.5% + 8% of the total habitable penthouse space)	TBD in the 2 <sup>nd</sup> -stage PUD submission	50% MFI	Life of the project	Rental and/or sale	3 bedroom units
IZ	6,800 sf of GFA (2.5%)	TBD in the 2 <sup>nd</sup> -stage PUD submission	60% MFI	Life of the project	Rental and/or sale	3 bedroom units
IZ	13,600 sf of GFA (5%)	TBD in the 2 <sup>nd</sup> -stage PUD submission	60% MFI	Life of the project	Rental and/or sale	Unit size will be proportional to market rate unit sizes
Total Penthouse Habitable GFA	8,000 sf habitable GFA (100% of penthouse habitable space will be market rate)	TBD in the 2 <sup>nd</sup> -stage PUD submission	Market rate	NA	NA	8% of penthouse of the total habitable penthouse space shall be reserved at 50% of AMI

In addition to the affordable housing specified above, the Applicant shall provide a housing trust fund payment for habitable space on the roof of the offices. (Ex. 60A.).

57. The Project will be constructed to a density of 8.99 floor area ratio (“FAR”) and a height of 130 feet. The MU-9 zone permits a maximum FAR of 9.36 in a PUD project. A PUD project in the MU-9 zone is permitted a maximum building height of 130 feet. (Ex. 2, 38-38A2, 44A1-A10, 51-51b).

### **PUD Flexibility**

58. The Applicant requested flexibility to vary the phasing anticipated for the Project, vary interim uses at the Property while the other phases of the Project are being finalized; and adjust the parking downwards if needed to meet market demand, but not below the minimum required by the Zoning Regulations. (Ex. 13.)

### **Government Agency Reports**

59. In the OP Setdown Report, OP requested that the Applicant (a) provide retail on the ground floor of all buildings, (b) provide more details on the interim uses of the site, (c) examine deeper commitment to amenities, (d) provide full roof and penthouse plans, including height and setbacks, as well as rear yard/court-in-lieu calculation, (e) show the meaningful connection between Buildings D and E, (f) explain why Building D needs a separate parking entrance from Building E, and show where loading occurs for Building D, (g) withdraw the request for flexibility to vary the locations of the office and the

residential components, and the request for flexibility to provide above-ground parking within the building's core instead of underground parking. (Ex. 10.)

60. In response to the OP Setdown Report, the Applicant provided the following information and made the following updates to the proposed Project in its PHS and Initial 20-Day Statement: (Ex. 13-13D, 21-21B)
- (a) Applicant proposed to provide ground-floor retail at all buildings;
  - (b) Applicant provided additional information about the interim uses of the site, including interim storing, staging, and parking, as well as urban farming;
  - (c) Applicant provided additional benefits and amenities, including workforce development, streetscape improvements, and additional details with respect to the communication with WMATA about improvements to the Anacostia Metrorail station;
  - (d) Applicant provided roof and penthouse plans;
  - (e) Applicant provided information on the redesigned bridge between buildings D and E and clarified the loading entrance for Building D;
  - (f) Applicant further refined the streetscape and relocated the westernmost curb cut along Howard Road; and
  - (g) Applicant withdrew its requests for flexibility to vary the locations of the office and residential components and its request to provide above-ground parking within the building's core instead of underground parking.
61. In the Final OP Report, OP requested that Applicant (a) provide additional retail on the ground floor of all buildings, (b) offer a greater IZ percentage, deeper affordability, and more three-bedroom IZ units, (c) provide an examination of archaeological resources on the Property, (d) quantify details and timing of the proposed WMATA improvements, (e) clarify why Building D requires a separate parking entrance from Building E, and clarify where loading occurs for Building D, (f) confirm whether the residential portion of the Project will be rental or condominium, (g) make design adjustments to break up façades through indentations, rather than just projection, and provide more renderings of Howard Road, toward the river and open spaces, (h) provide more detail on the meaningful connection between buildings D and E, (i) provide that all new private streets and alleys should be accessible to the public and not closed off for tenant use only, and a public access easement should be a condition of approval of the PUD, and (j) explore ways to make the general contractor apprenticeship more robust (Ex. 22). At the Public Hearing, OP inquired about the size and mix of the IZ units and suggested that the Applicant proffer 12% of the entire floor area as IZ units and supported ANC 8A's questions regarding recreation space. (Tr. 2 @ 82.)

62. The Applicant addressed OP's comments in its Second 20-Day Statement and in its Post-Hearing submission as follows: (Ex. 38-38B, 51-51B)

- (a) Continuous ground-floor retail is provided at the Project;
- (b) The Applicant shall devote 10% of the residential gross floor area to affordable IZ units at both 50% and 60% AMI. The unit mix and income distribution of the units shall be as follows<sup>1</sup>: 50% of the IZ gross floor area will be programmed with three bedrooms with half at 50% AMI and half at 60% AMI. The remaining 50% of the IZ gross floor area will be proportional to the gross floor area reflected in the market unit mix at 60% AMI. The market unit mix will be determined during the planning and design of Phase 2 of the PUD with the delivery of the first residential building;
- (c) The Applicant is committed to a Phase I study to learn more about the archaeology of the site;
- (d) The Applicant will continue to work with WMATA to quantify details and timing of WMATA improvements;
- (e) The entrance to Building D along Howard Road is removed;
- (f) The Applicant requested that the determination of residential units as rental or condominium be addressed at the PUD stage-two residential submission, as at this early, first-stage of the PUD process, it is premature to determine whether the residential portion of the Project is rental or condominium;
- (g) The Applicant has provided more detail of building façades and streetscape perspectives that reflect the breaking up of façades and massing of the buildings;
- (h) The Applicant clarified that Buildings D and E will have a passable connection between them, but demising walls with double doors may be added by future tenants;
- (i) The Applicant agreed to provide public access in the private streets and service road as a condition of PUD approval;
- (j) The Applicant commits to enter into a workforce development agreement as part of the stage-two PUD, with an appropriate community organization, such as an ANC;
- (k) Prior to the issuance of the final certificate of occupancy for the first building, the Applicant shall work with NPS, WMATA, OP, DDOT, DPR, and ANCs 8A and 8C to optimize open space and recreation placemaking opportunities throughout the Project as well as adjacent parks and underutilized land. The design of the

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<sup>1</sup> The Applicant later clarified its affordable housing commitment as set forth in FF 56. (Ex. 60A).

open space and recreation improvements shall include a collaborative public charrette process of the Applicant's design team, local neighborhood families, ANC Commissioners, NPS, WMATA, and DC public agencies, including OP; and

- (l) The Applicant shall provide outdoor open space courts at and above grade in buildings A, B, D and E. In addition, all five building will have programmed rooftop amenities within the outdoor open spaces. Prior to the issuance of the final certificate of occupancy for each of these buildings, the Applicant shall deliver these open space courts and amenities.
63. In the Final OP Report, OP noted that it does not generally object to the Applicant's requested flexibility, consisting of (a) PUD-related map amendment from MU-14 to MU-9 ("Map Amendment"), (b) flexibility to vary the phasing anticipated for the Project as the proposed phasing may need to be revised to meet market demands, (c) vary interim uses at the Property while the other phases of the Project are being finalized, and (d) adjust parking downwards if needed to meet market demand. (Ex. 22.)
  64. At the Public Hearing, OP noted its appreciation for the Applicant's adjustment of the ground floor retail to be located on the entire street frontage, the Applicant's agreement to perform Phase I archaeology studies, and the Applicant's apprenticeship program. (Tr. 2 @ 81-82.)
  65. This Commission finds that the Applicant satisfactorily addressed all of OP's comments and questions.
  66. This Commission finds that OP's reports and testimony were thorough and credible and helpful in considering the Application and accordingly gives such testimony the great weight it is entitled.
  67. In the DDOT Report, DDOT expressed no objection to the PUD with several conditions, as outlined in the DDOT Report. (Ex. 23.) In its Second 20-Day Statement and in the testimony of Jami Milanovich at the Public Hearing, the Applicant responded to DDOT's Report and addressed all of the conditions outlined in the DDOT Report, with the modification that the Applicant will provide either an annual car share membership to all new residents over the age of 16 in the first three years after initial delivery of the residential building or provide an annual Capital Bikeshare membership to all new residents over the age of 16 in the first three years after initial delivery of the residential building (in lieu of providing both). (Tr. 2 @ 27, 82-84.) In the testimony of Jami Milanovich, the Applicant also clarified that the Applicant will provide the minimum number of bicycle parking spaces required by the Zoning Regulations. (Tr. 2 @ 84.)
  68. The Commission finds that the DDOT Report was thorough and credible and helpful in considering the Application and accordingly gives such testimony its appropriate weight in reviewing the Application and further finds that the Applicant satisfactorily addressed all of DDOT's comments as appropriate for this first-stage PUD.

69. In the DOEE Report, DOEE recommended support and approval of the PUD, and noted several items as a part of the specific building plans and applications for the second-stage PUD. (Ex. 24.) In response to the DOEE Report, the Applicant has agreed to refine the conceptual stormwater management plan to generate additional retention volume, capturing stormwater volume up to a 1.7-inch storm event. Additionally, the Applicant has designed and engineered the building footprint outside of the 100- and 500-year flood plain. (Ex. 51.) In its Second 20-Day Statement, the Applicant committed to evaluate DOEE's comments as the second-stage of the PUD is developed. (Ex. 38-38B.) This Commission finds that the Applicant has therefore satisfactorily addressed DOEE's comments as appropriate for this first-stage PUD.

### **ANC Reports**

70. ANC 8C submitted a report on November 27, 2017. The report stated that at its public meeting on November 1, 2017, with a quorum of five commissioners present, ANC 8C voted 4-1 to support the development of the Project, and that Mary Cuthbert, ANC 8C Chair would testify on behalf of the ANC<sup>2</sup>. The report stated that the "only concern was the impact of the traffic on Howard Road [that] affect[s] the Anacostia Metro buses. Presently the intersection is heav[ily] traveled from Martin Luther King Ave. to 295 and [the] Frederic Douglas[s] Bridge." (Ex. 40.)
71. ANC 8A also submitted a report on November 27, 2018. The report stated at its regularly scheduled, properly noticed meeting on November 7, 2017, with a quorum of six commissioners present, ANC 8A voted unanimously in support of the PUD. The report stated that the ANC designated the SMD Commissioner from ANC 8A06 to represent it on this matter<sup>3</sup>. The report did not list any issues or concerns. The report did state "the developer has agreed to continue working with residents and the Commission to identify additional items to include in the Community Benefits Agreement (CBA) before the [PUD] is approved." (Ex. 43.)
72. On January 22, 2018, ANCs 8A and 8C submitted a joint letter. The letter did not state whether the contents of the letter were considered by the ANCs at a properly noticed

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<sup>2</sup> At the hearing, Mary Cuthbert, Chair of ANC 8C, testified in support of the Project. Ms. Cuthbert noted a concern about traffic on Howard Road, S.E. (Tr. 2 @ 91). As noted in the Applicant's Post-Hearing Submission, and by Jami Milanovich in her testimony at the Public Hearing, DDOT thoroughly evaluated the traffic impacts of the Project and determined that the proposed mitigation plan is adequate to mitigate the traffic impacts of the Project, and offered a finding of "no objection," subject to the conditions discussed at the Public Hearing. (Tr. 2 @ 83; Ex. 51, 51B.)

<sup>3</sup> At the Public Hearing, Greta Fuller, Commissioner for ANC 8A06 testified in support of the Project. As part of her cross-examination of the Applicant, Ms. Fuller requested additional details on the plans for recreation spaces for the residents of the Project and the surrounding community. (Tr. 2 @ 74-78.) The Applicant has provided additional information about the plans for recreation spaces at the Project in its Post-Hearing Submission, including plans for a collaborative public charrette process including the Applicant's design team, local neighborhood families, and the ANCs to optimize open space and recreation place-making opportunities throughout the Project. (Ex. 51-51B.)

public meeting with a quorum present, or whether a vote was held to adopt the report. It was signed by the representatives designated by ANCs 8A and 8C in their initial reports, as well as by the Chair of ANC 8A. The letter stated that the Commission requested that ANCs 8A and 8C “provide additional information with respect to the Community Benefits Agreement. This document responds to that request and is a continuance of the Proffered Benefits and Amenities Document submitted by the Applicant as Exhibit 51.” The letter stated that one of the Applicant’s responsibilities was to “deliver an acceptable Community Benefits Agreement” and suggested that the Applicant should make a \$5 million contribution to an intermediary, the Far Southeast Family Strengthening Collaborative, who would then distribute the money to three named groups, the Anacostia Coordinating Council, the Wish List Committee and the Southeast Tennis and Learning Center, and the Congress Heights Community Association. (Ex. 55.)

73. On March 9, 2018, ANCs 8A and 8C submitted a second joint letter. As with the first, the letter did not state whether the contents of the letter were considered by the ANCs at a properly noticed public meeting with a quorum present, or whether a vote was held to adopt the report. It was signed by the representatives designated by ANCs 8A and 8C in their initial reports, as well as by the Chair of ANC 8A. It repeated the assertions of the ANCs’ January 22<sup>nd</sup> letter, but changed the suggested contribution amount to \$1.25 million dollars, with commensurate reductions to the disbursements to the three named groups. (Ex. 61.)
74. On April 2, 2018, ANCs 8A and 8C submitted a document entitled “Community Benefits Agreement By and Between Redbrick LMD and Advisory Neighborhood Commissions 8A and 8C.” The purported agreement was signed by the ANC representatives who signed the joint ANC letters dated January 22, 2018 and March 8, 2018. It was not signed by a representative of Redbrick LMD. As with the two joint letters submitted by the ANCs, the document did not state whether the contents of the letter were considered by the ANCs at a properly noticed public meeting with a quorum present, or whether a vote was held to adopt the report. The document listed numerous terms for Redbrick LMD to follow. (Ex. 63.)
75. The Commission finds that because the joint ANC submission dated April 2, 2018 was not signed by the Applicant or Redbrick LMD, it does not constitute a voluntary bilateral agreement, nor do the terms constitute voluntary PUD proffers by the Applicant. The Applicant’s final list of proffers was submitted on Mach 2, 2018. (Ex. 60A.)

### **Commission Questions and Comments**

76. At the Public Hearing, the Commission asked the Applicant (a) for additional information on the timing of the WMATA proffer, (b) whether the Applicant will refine the stormwater plan and generate additional retention volume, especially at grade, capturing stormwater volume up to a 1.7-inch storm event as requested in the DOEE Report, (c) for a commitment on solar panels at the first-stage of the PUD, (d) for additional information on the plans for the west side of the Property where there is a large building setback, (e) requested deeper affordability, (f) requested additional information about the unit mix, (g)

requested information on the trust fund payment for the habitable space on the roof of the office buildings, (h) requested details on the phasing of the Project, (i) requested additional information about the roof top amenities, (j) requested more information about the open space at ground level as a project amenity, (k) requested a quantification all of the proffered public benefits and amenities, (l) requested additional information about the connection between the buildings, (m) requested additional information about the workforce development program offered by the Applicant, and (n) requested additional information about the traffic impact associated with the removal of the I-295 southbound off-ramp at Howard Road. (Tr. 2.)

77. The Applicant responded completely to the Commission's questions and comments at the Public Hearing and in its Post-Hearing Submission. The Applicant's responses are supported by substantial evidence:
- (a) Timing of WMATA Proffer: At the Public Hearing, the Applicant confirmed that prior to the issuance of the final Certificate of Occupancy for the first building, the Applicant will complete construction of the WMATA improvements;
  - (b) Stormwater retention: In its Post-Hearing Submission, the Applicant clarified that it will refine the conceptual stormwater management plan to generate additional retention volume up to a 1.7-inch storm event;
  - (c) Solar: In its Post-Hearing Submission, the Applicant clarified that it shall provide rooftop solar panels, as shown on the plans in Exhibit 51A of the Record, that will generate an estimated 436,626 kwh;
  - (d) Open Space: Prior to the issuance of the final certificate of occupancy for the first building, the Applicant shall work with NPS, WMATA, OP, DDOT, DPR, and ANCs 8A and 8C to optimize open space and recreation placemaking opportunities throughout the Project as well as adjacent parks and underutilized land;
  - (e) Affordability, Unit Mix, and Trust Fund Payment: In its Post-Hearing Submission, the Applicant noted that it will devote 10% of the residential gross floor area to affordable IZ units at both 50% and 60% AMI. The unit mix and income distribution of the units will be as follows: 50% of the IZ gross floor area will be programmed with three bedrooms with half at 50% AMI and half at 60% AMI. The remaining 50% of the IZ gross floor area will be proportional to the gross floor area reflected in the market unit mix at 60% AMI. The market unit mix will be determined during the planning and design of Phase 2 with the delivery of the first residential building. The Applicant will provide residential penthouse IZ at eight percent of the total habitable penthouse space at 50% AMI and will provide

a housing trust fund payment for habitable space on the roof of the offices of \$196,9124;

- (f) Phasing: In its Post-Hearing Submission, the Applicant provided additional information with respect to a phasing plan for the Project, describing three phases for construction of Buildings A-E;
- (g) Rooftop Amenities: In its Post-Hearing Submission, the Applicant noted that all five buildings will have programmed rooftop amenities within outdoor open spaces. These respective open space amenities will be delivered prior to the issuance of the final certificate of occupancy for each of the buildings;
- (h) Open Space at Ground Level: In its Post-Hearing Submission, the Applicant noted that the design of the open space and recreation improvements shall include a collaborative public charrette process of the Applicant's design team, local neighborhood families, ANC Commissioners, NPS, WMATA and DC public agencies, including OP. The Applicant also noted it will create a community pocket park adjacent to the Metro station plaza entrance;
- (i) Quantification of Public Benefits and Amenities: The Applicant provided a comprehensive quantification of public benefits and amenities as part of its Post-Hearing Submission;
- (j) Connection between Buildings: At the Public Hearing, the Applicant explained that the connection between the buildings was modified to be more substantial and significant in response to comments made prior to the Public Hearing; (Tr. 2 @ 47-48.)
- (k) Workforce Development: In its Post-Hearing Submission, the Applicant provided a detailed description of workforce development program; and
- (l) Traffic impact associated with the removal of the I-295 southbound off-ramp at Howard Road: In its Post-Hearing Submission, the Applicant's traffic engineer, Jami Milanovich, provided a detailed response to this Commission's question regarding traffic impact associated with removal of the I-295 southbound off-ramp at Howard Road.

(Ex. 51-51B.)

### **Contested Issues Raised by Persons in Opposition**

78. At the Public Hearing, Chris Otten of DC for Reasonable Development: Ward 8 Review Team (DC4RD: W8RT), Empower DC and Barry Farms Tenants & Allies (BFTAA) provided testimony in opposition to the Project. Mr. Otten noted the following concerns

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<sup>4</sup> The Applicant later clarified its affordable housing commitment as set forth in Finding of Fact ("FF") No. 56. (Ex. 60A.)



with the Project: (a) approval of the Project represents a significant public entitlement requiring that the development review process consider the impacts on the surrounding area; (b) the Project is suited to “the downtown business district”; (c) the use of immediately adjacent streets to measure the Project’s height as permitted by the Height Act of 1910 will lead to a “...canyon effect that is otherwise discouraged by all city planning documents”; (d) concerns about (i) training and hiring from the affected communities of Ward 8, (ii) addressing permanent and affordable commercial and retail incubator space for upcoming Ward 8 entrepreneurs, small businesses and social service and cultural organizations, and (iii) assessing how Ward 8 will benefit from the Project; (e) concerns about the adverse impact on the site’s archaeological and cultural features; (f) concerns that the Project will eliminate recreation and aesthetic resources; (g) concerns that the Project does not include family-sized affordable housing (three, four, five, and six bedrooms); (h) concerns about the 500-year floodplain due to climate change and the location of the Project; and (i) concerns about traffic and Metro impacts of the Project. (Ex. 49, Tr. 2 @ 126-129.)

79. The Commission has considered the responses to Mr. Otten’s concerns provided by the Applicant in its Post-Hearing Submission as well as the Applicant’s Initial Application, Initial 20-Day Statement, and Second 20-Day Statement, and CTR and finds that the Applicant has satisfactorily responded to Mr. Otten’s concerns: (Ex. 2, 13-13D, 17-17B, 21-21B, 38-38C, 51-51B.)

(a) The Project is a significant public entitlement: The Applicant has thoroughly investigated and addressed all impacts of the project not only on the community but the District as a whole and the Project’s extensive public benefits far outweigh any adverse impacts. This Commission notes that the Applicant has undergone coordination with DDOT and agreed to adhere to a Transportation Management Plan, as well as to provide significant multi-modal transportation improvements as part of the Project, and with the implementation of the multi-modal improvement and robust Transportation Management Plan, the Project is not anticipated to have an adverse impact on the surrounding roadway network. (Ex. 44A10.) Additionally, the Project offers commendable public benefits, which this Commission finds outweigh any adverse impacts of the Project. Strong community support for the Project has been demonstrated. Both ANC 8A and ANC 8C, as well as 11 local community groups and organizations, and Ward 8 Councilmember Trayon White support the Project. These groups are well-positioned to evaluate any impacts of the Project on Ward 8; (Ex. 30-37, 39-41, 43, 45-46.)

(b) The Project is suited to the “downtown business district”: As noted by the Applicant in its Post- Hearing Submission, the Property is in fact within the Central Employment Area (“CEA”). (Ex. 51.) Further, the site is classified on the Future Land Use Map of the Comprehensive Plan as High-Density Residential and High-Density Commercial as well as Institutional. The High-Density Commercial/High-Density Residential Classification is the highest classification

of the Comprehensive Plan. The Project is therefore appropriate for the Property and location;

- (c) Height of the Project: As noted by the Applicant in its Post-Hearing Submission, the City’s primary planning guidance actually encourages very high density and height in this exact location. (Ex. 51.) As noted by OP at Setdown, the Zoning Administrator has made determinations that all buildings comprising the Project front on either South Capitol Street or Anacostia Freeway. (Tr. 1 @ 26.) The Project is supported by OP, and the Applicant has designed the connections between the buildings to be raised from the street level which preserves the view shed to Anacostia Park and the river. (Ex. 21-21B.) The design of the streetscape as well as the building facades, which the Applicant updated in design in response to OP comments, will also contribute to an open atmosphere at the Project, rather than a “canyon effect”;
- (d) Workforce Development Commitment and Retail Uses: The Applicant is providing significant workforce opportunities for Ward 8 residents and small businesses. As noted in the Applicant’s Post Hearing Submission, not only do ANCs 8A and 8C support the project and the proffered amenities, but also the Ward 8 Councilmember and 11 local community groups and organizations. (Ex. 51, 30-37, 39-41, 43, 45-46). The Applicant further notes that support of such groups also signifies that any impacts on the local communities are being addressed. The ANCs and the Councilmember are in the best position to weigh any of the displacement pressures cited by Mr. Otten from the Project against the overall benefits of the Project. The Applicant has described extensive workforce development plans which this Commission finds commendable, and the Applicant plans to offer neighborhood serving retail amenities and services;
- (e) Archaeological and Cultural Impact: The Applicant is addressing Mr. Otten’s stated concerns about adverse impact on the site’s archaeological and cultural features by proffering an archaeological study as one of the Project’s amenities. Additionally, as described in the Applicant’s Post-Hearing Submission, the Applicant has committed to working in partnership with the Historic Anacostia Preservation Society and the National Trust for Historic Preservation to support actions that benefit the Historic Anacostia District and preserve the historic character and fabric of the neighborhood. (Ex. 51.) The Commission finds that the Applicant has therefore taken concrete and meaningful steps to investigate and address any adverse impact of the Project on the Property’s archaeological features and is working to ensure that the history of the Property and community are preserved;
- (f) Recreation and Aesthetic Resources: Mr. Otten raises concerns that the Project will “permanently eliminate the recreational and aesthetic resource” of the “open air and calm nature of the project site and thereabouts along the Anacostia river.” (Ex. 49.) The Applicant stated in its Post-Hearing Submission that the Property is directly adjacent to Anacostia Park and the location offers numerous other

recreational activities, including connecting bike paths. (Ex. 51.) The Commission also recognizes that the Applicant's WMATA amenity proffer includes a pocket park, which will be designed to serve residents and neighbors as well as a commitment "to work with the National Park Service on increasing the opportunities to leverage the Anacostia Park's natural, cultural and recreational amenities for the neighborhood's use and enjoyment." (Ex. 51.) The Commission finds that the Applicant's provision of a pocket park, and commitment to working with NPS Service to enhance the neighborhood's use of Anacostia Park will avoid the permanent elimination of the recreational and aesthetic resource of the "open air and calm nature of the project site and thereabouts" about which Mr. Otten is concerned;

- (g) Affordable Housing: Mr. Otten is concerned about the number of affordable family-sized housing units, including units up to six plus bedrooms offered by the Project. The Applicant notes that three-bedroom affordable units are being provided and such housing mix and type are supported by OP. The Applicant has adjusted its proffer of affordable housing in response to comments by OP and is offering family-sized affordable three-bedroom units. The Project, including its unit mix, is supported by ANC 8A and ANC 8C, the elected representatives for the Ward 8 population. The Commission finds that the Applicant is offering a meaningful number of affordable family-sized units;
- (h) Floodplain: Mr. Otten noted concerns with respect to the Project's location in the flood plain. Based upon discussions with OP and DOEE, the Applicant proposed a design and build strategy to avoid development in the 100- and 500-year flood plain for a sustainable and resilient Project. As part of the Application, the Applicant designed and engineered the building footprint outside of the 100- and 500-year floodplain while simultaneously meeting all the requirements of local and federal regulations. (Ex. 51.) The Commission finds that the Applicant has taken satisfactory steps to address flood plain concerns; and
- (i) Traffic Impact: The Applicant's traffic engineer has thoroughly addressed concerns about traffic and metro impacts in its response to Mr. Otten's testimony. (Ex. 51B.) The Applicant has undergone coordination with DDOT and agreed to adhere to a Transportation Demand Management ("TDM") Plan, as well as provide significant multi-modal transportation improvements as part of the Project, and with the implementation of the multi-modal improvement and robust TDM Plan, the Project is not anticipated to have an adverse impact on the surrounding roadway network. (Ex. 44A10.) This Commission therefore finds that adverse traffic impacts are being satisfactorily addressed by the Applicant.

80. While it denied CARE's party status application for the reasons stated above, the Commission would also like to address the substance of the CARE objections stated in the attachment to their party status request and in Ms. Matthews' testimony at the hearing. (Ex. 48.) CARE's stated objections were (1) the approval of the building would further a non-race neutral DHCD policies in an unconstitutional manner; and (2) the

value of the public benefits of the Project do not outweigh its adverse impacts. Ms. Matthews, who signed the party status application on behalf of CARE, testified at the hearing about the racial impact of the Project.

81. The CARE statement alleged that several DHCD policies are unconstitutional, but did not allege any connection between those policies and the instant Application, and there is no evidence of a connection between the DHCD policies and the Application in the record. The Commission's obligation is limited to judging the instant Application in accordance with the PUD rules, and does not include consideration of DHCD policy statements that are not connected to the Project. The only allegation that relates to the Project itself is that the "project is a 700 unit 10% affordable mixed income apartment building which represents the city and developers' first beachhead, crossing the Anacostia River into the 98% black 'pockets' DHCD seeks to lighten." (Ex. 48, p. 2.) The Commission finds that CARE's assertions about the racial composition of the apartment units in the Project are completely speculative.
82. CARE's claim that the potential adverse effects of the Project outweigh its public benefits has two parts. The first essentially is that the future residents of the Project will be different racially and economically from current neighborhood residents. The Commission finds that CARE's assertions about the racial composition of the Project's future residents are completely speculative. The Commission finds that the presence of market rate housing, which adds to the available supply of housing in the District, is a positive aspect of the Project. To the extent that the future residents of the Project are able to pay for market rate housing, and that leads to changes in the neighborhood, the Commission finds that any potential adverse effect of this are outweighed by the public benefits of the Project. The second is that the Project is located in a floodplain. For the reasons stated above in connection with Mr. Otten's similar comment, the Commission finds that the Applicant has taken satisfactory steps to address flood plain concerns.
83. For the foregoing reasons, the Commission finds that the Applicant has satisfactorily addressed the concerns raised by Mr. Otten at the Public Hearing and in his written testimony, as well as the concerns raised by CARE and Ms. Matthews.

#### **Development Incentives: Map Amendment and Flexibility**

84. The PUD process specifically allows greater flexibility in planning and design than is possible under strict application of the Zoning Regulations. Under the Zoning Regulations, this Commission retains discretion to grant relief from the development standards of the Zoning Regulations and to allow for project flexibility development incentives. (11-X DCMR §§ 303.1, 303.11, 303.13.) The Zoning Regulations specifically allow the Commission to approve any such zoning relief that would otherwise require the approval of the Board of Zoning Adjustment. Generally, such relief is available at the discretion of the Commission. (11-X DCMR § 303.13.) A Zoning Map amendment is a type of development incentive and accordingly is addressed here. (11-X DCMR § 303.12.)

85. As part of the Application, the Applicant requested the Commission grant the following development incentives (collectively, the “Development Incentives”): (a) the Map Amendment; (b) flexibility to vary the phasing anticipated for the Project; (c) the flexibility to vary interim uses at the Property while the other phases of the Project are being finalized; and (d) flexibility to adjust the parking downwards if needed to meet market demand, but not below the minimum required by the Zoning Regulations.
86. The Commission finds that, overall, the Project conforms to the Zoning Regulations, except for the modest relief set forth in the immediately foregoing paragraph. Where the Project requires relief and flexibility, the Commission finds that such relief is either minimal in nature or reasonable in light of the proposed uses and Public Benefits and otherwise does not derogate or impair, but rather is in accordance with, the general intent and purposes of the Zoning Regulations. The general intent and purposes of the Zoning Regulations are, inter alia, to promote the “public health, safety, morals, convenience, order, prosperity, and general welfare to (a) provide adequate light and air, (b) prevent undue concentration of population and the overcrowding of land, and (c) provide distribution of population, business, and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services.” (11-A DCMR § 101.1 (“Zoning Purposes”).)
87. The Project is in harmony with the Zoning Purposes because it protects light and air on the Property and surrounding properties, prevents overcrowding by providing outdoor open spaces and public spaces, and provides a more equitable distribution of business land uses that create favorable conditions with respect to transportation (e.g., transit-oriented employment opportunities). The Project is also consistent with the Zoning Regulations. For the reasons set forth above, the Commission finds the Applicant has satisfied the standards necessary for the Commission to grant the requested Development Incentives.

### **PUD Requirements**

88. As set forth in the Zoning Regulations, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, provided that the project that is the subject of the 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; (c) protects and advances the public health, safety, welfare, and convenience; (d) is not inconsistent with the Comprehensive Plan and does not result in action inconsistent therewith; (e) does not circumvent the intent and purposes of the Zoning Regulations; and (f) undergoes a comprehensive public review by the Commission in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits (collectively, the “PUD Requirements”). (11-X DCMR §§ 300.1, 300.2, and 300.5.) The Project meets these requirements as follows:

- (a) For the following reasons, the Project is superior to the development of the Property under the matter-of-right standards:
- **Housing.** The Project adds approximately 700 units to the housing stock of the District, including three-bedroom units, located within walking distance from the Anacostia Metrorail station;
  - **Retail Uses.** The Project will add over 52,000 gross square feet of ground-floor retail uses in a transit-oriented location;
  - **Other Public Benefits.** The Project includes other Public Benefits, none of which would be required or feasible under a matter-of-right development. Only a project the scale of the one proposed herein could contribute the high quality urban design, architecture, landscaping, planning, amount of housing and level of affordability, and the environmental, transportation/mass transit, and other community benefits described more thoroughly below. A developer of matter-of-right units on the Property would have no incentive or reason to provide any of the uses of special value enumerated above; and
  - **Community Engagement.** A matter-of-right development would not have afforded the community and the ANCs as many opportunities to engage with the Applicant and provide feedback;
- (b) The Public Benefits are commendable in number and quality. The Project's Public Benefits are discussed in detail below. For the reasons set forth more fully in the Public Benefits findings, the Public Benefits are of a commendable quality. There are multiple distinct categories of Public Benefits for the Project, and an absolute number that the Commission finds to be commendable. Finally, the Commission finds that the Public Benefits are meaningful. The Public Benefits address the preferences, needs and concerns of community residents, were developed following the Applicant's robust community engagement process, supported by OP, and are not inconsistent with the Comprehensive Plan;
- (c) The Project protects and advances the public health, safety, welfare, and convenience as follows:
- **Public Health.** The Project protects and advances the public health by being designed in a high-quality manner and in compliance with all applicable construction codes. The Project includes a number of mitigation measures, including the Transportation Demand Management program ("TDM"), which protect and affirmatively advance the public health. The Project also encourages walking through the pedestrian-friendly streetscape, measures that advance public health. The Project does not entail any overcrowding or overpopulation, but instead rationally increases residential density near a Metrorail station and a considerable

amount of protected open space. The Project also complies with, and exceeds many, applicable environmental performance standards;

- Safety. The Project protects and advances safety: the Project has been designed in a manner to allow pedestrians, cyclists, and vehicles to safely share space, and will provide ground-floor retail to promote active use and engagement with the Project;
  - Welfare. The Project protects and advances the public welfare by bringing much-needed economic activity to Ward 8, which has long been overlooked for the purposes of locating new market-rate housing and retail; and
  - Convenience. Finally, the Project protects and advances the public convenience by adding new neighborhood-serving retail uses as well as transit-oriented housing and office development;
- (d) The Project is not inconsistent with the Comprehensive Plan and would not result in any action inconsistent with the Comprehensive Plan. Extensive findings regarding the Project's lack of inconsistency with the Comprehensive Plan are provided below;
- (e) The Project does not circumvent the Zoning Purposes. The Project does not circumvent the Zoning Purposes. The general intent and purposes of the Zoning Regulations are, inter alia, to promote the "public health, safety, morals, convenience, order, prosperity, and general welfare." (11-A DCMR § 101.1.) Findings regarding the Project's protection and advancement of the public health, safety, convenience, and welfare are provided above:
- Morals. The Project promotes morals insofar as the Application was undertaken in concert with extensive community outreach. The Commission finds that this community dialogue exemplifies public morals as expressed through the Zoning Regulations and PUD process;
  - Order. The Project exemplifies orderly, well-planned development that is undertaken on behalf of the best interests of the residents of the District with respect to the above-cited objectives. The Project complies with all of the specific development standards set forth in the Zoning Regulations, except where flexibility is hereby requested, which flexibility is minor in this instance and expressly contemplated as part of the PUD process. (X §§ 300.1, 303.1.) The Project allows for an appropriate amount of light and air by virtue of its bulk, height, orientation, setbacks, and location; and
  - Prosperity. As noted with respect to public welfare above, the Project promotes prosperity by putting to productive use land that is currently underutilized. The Project also promotes public prosperity with respect to

its future provision of tax revenue to the District and its addition of many new employees in Ward 8; and

- (f) The Project has undergone a comprehensive public review by the Commission, which has evaluated the Project's flexibility and incentives in proportion to the Public Benefits. The Commission has reviewed the entirety of the record. The record is complete with multiple detailed briefings from the Applicant and reports from multiple District agencies and the ANCs. The Commission heard presentations on the Application and had the opportunity to ask questions of the Applicant, OP, and the ANCs. In every material way, the Applicant responded satisfactorily to the requests from the Commission. The Applicant has also responded thoroughly to OP, DDOT, and the ANCs' comments. The record in this matter is unquestionably full, and the Commission has reviewed it in its entirety.

89. The Commission finds that the Project satisfies the PUD Requirements.

### **PUD Balancing and Evaluation Standards**

#### **PUD Balancing**

90. As set forth in the Zoning Regulations, the Commission must evaluate and grant or deny a PUD application according to the standards of 11-X DCMR § 304. The Applicant has the burden of proof to justify the granting of the Application according to such standards. (11-X DCMR § 304.2.)
91. The Commission's findings in relation to a PUD must be supported by substantial evidence. (See *Howell v. District of Columbia Zoning Comm'n.*, 97 A.3d 579 (D.C. 2014).) The Commission finds that the Applicant has satisfied the relevant evidentiary threshold to carry its burden of proof in the instant proceeding. The Applicant has provided multiple filings containing volumes of evidence all relevant to this proceeding. This Commission, in its reasonable determination, accepts such filings as containing evidence adequate to support the findings contained herein.
92. Pursuant to 11-X DCMR § 304.3, in deciding on the Application, the Commission has, according to the specific circumstances of the Application, judged, balanced, and reconciled the relative value of: (a) the Public Benefits and other project amenities offered as part of the Project, (b) the Development Incentives requested by the Applicant (where, pursuant to 11-X DCMR § 303.12, the requested Map Amendment is a type of PUD incentive), and (c) any potential adverse effects (collectively, the "PUD Balancing Test") and finds the following:
  - (1) The Public Benefits are numerous and of a high quality. In sum, the Project provides the numerous and high quality Public Benefits. A full accounting of the quality of the Public Benefits is provided below;
  - (2) The Project's Development Incentives are comparatively minor and appropriately granted in light of the Public Benefits. The Commission finds that the Applicant



requests comparatively minor Development Incentives for the Project. The Project's individual Development Incentives are described above. The most significant, by far, of the Development Incentives is the Map Amendment, which allows the Applicant to construct the Project to a higher density and greater height than is possible as a matter of right. The Development Incentives underlie and indeed make possible the Public Benefits, and the Public Benefits justify the additional height and density afforded by the Map Amendment;

- (3) Any potential adverse effects of the Project are appropriately mitigated or outweighed by the Public Benefits. Mr. Otten, CARE, and Ms. Matthews expressed some potential adverse effects of the Project. As this Commission found in response to each individual articulated concern or objection to the Project, these potential adverse effects are either not valid or capable of being mitigated or appropriate in light of the Public Benefits; and
- (4) The Public Benefits together outweigh the Project's potential adverse effects and justify the Development Incentives. The Commission returns to a familiar point in its review of the record in this proceeding: the Project adds much-needed housing, including affordable family-sized housing, as well as transit-oriented retail and office development and numerous Public Benefits. These items are the crux of the Project's trade-off for the reasonable additional height, density, and flexibility of use sought through the Application.

93. The Commission has reviewed the record, identified the circumstances of the Application, the Property, the Project and the surrounding area, and balanced, reconciled, and judged the Public Benefits against the PUD Incentives and potential adverse effects. In sum, the Commission finds that the Project satisfies the PUD Balancing Test.

#### PUD Evaluation Standards

94. As set forth in the immediately succeeding paragraphs, the Commission hereby also finds that the Project: (a) is not inconsistent with the Comprehensive Plan or other adopted public policies and active programs (collectively, the "Plan") related to the Property; (b) does not result in unacceptable project impacts on the surrounding area or on the operation of District services and facilities but instead is either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and (c) includes specific public benefits and amenities, which are not inconsistent with the Plan with respect to the Property (collectively, the "PUD Evaluation Standards"). (See 11-X DCMR § 304.3.)

#### The Project is Not Inconsistent with the Plan

95. Comprehensive Plan Purposes. The purposes of the Comprehensive Plan are to: (a) define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development; (b) guide executive and legislative decisions and matters affecting the District and its citizens; (c) promote economic growth in jobs for District residents; (d) guide private and public development in order to achieve

District and community goals; (e) maintain and enhance the natural and architectural assets of the District; and (f) assist in conservation, stabilization and improvement of each neighborhood and community in the District. (See D.C. Official Code § 1-306.01(b).) The Project advances these purposes by furthering social and economic development through the construction of new residential, retail, and office uses on currently underutilized land, investing in a District neighborhood that seeks new investment, committing to the implementation of the TDM measures, and improving the urban design and public space surrounding the Property. The Project assists in the improvement and stabilization of the urban environment in the immediate neighborhood and the District as a whole.

96. OP Findings regarding the Comprehensive Plan. The OP Setdown Report and OP Final Report find that the Project is not inconsistent with the Comprehensive Plan. (Ex. 10, 22.) The Commission gives great weight to these OP findings, which the Commission hereby adopts as if restated herein. The Commission credits the testimony of the Applicant, OP, and ANCs 8A and 8C, regarding the consistency of the Project with the Comprehensive Plan, and concludes that the PUD and related rezoning is not inconsistent with the Plan and fosters numerous themes and elements of the Comprehensive Plan. Based on the substantial evidence in the record, the Commission concludes that the proposed PUD and Map Amendment is not inconsistent with the Comprehensive Plan, for the reasons described in detail below.
97. Future Land Use Map and Generalized Policy Map. The Framework Element provides guidelines for using the Future Land Use Map. This Element states that the Future Land Use Map should be interpreted “broadly” and notes that the zoning for an area should be guided by the Future Land Use Map interpreted in conjunction with the text of the entire Comprehensive Plan. The Framework Element also clearly provides that density and height gained through the PUD process are bonuses that may exceed the typical ranges cited for each category. (10A DCMR § 226(c).)

On the Future Land Use Map, the Property is mapped for mixed uses. The Property is mapped for Mixed-Use High-Density Residential/High-Density Commercial, as well as Institutional land uses. The High-Density Residential designation characterizes neighborhoods and corridors with high-rise apartment buildings (eight stories or more). The Plan notes that “the R-5-D and R-5-E Zone districts are generally consistent with the High Density Residential category.” (10A DCMR § 225.6.) The High-Density Commercial “designation is used to define the central employment district of the city and other major office employment centers on the downtown perimeter . . . characterized by office and mixed office/retail buildings greater than eight stories in height.” (10A DCMR § 225.11.) The Plan notes that the C-3-C Zone District under the 1958 Zoning Regulations, now the MU-9 zone, is appropriate for the High-Density Commercial designation.

The Project is consistent with the Future Land Use Map because the Property is in the exact designation for which re-zoning of the Property to the MU-9 zone (which was the C-3-C Zone District when the Comprehensive Plan was written) is appropriate and

contemplated by the Future Land Use Map. The Project will create a prime office, retail, and residential property in close proximity to a major Metrorail station in accordance with the overall vision of the Future Land Use Map.

On the Generalized Policy Map, the Property is designated as a “Land Use Change Area.” Land Use Change Areas “are areas where change to a different land use from what exists today is anticipated.” (10A DCMR § 223.9.) These areas “include many of the city’s large development opportunity sites.” (§ 223.10.) The Framework Element specifically notes that the Lower Anacostia Waterfront/Near Southwest Area, where the Property is located, is predicted to house 16.5% of the District’s household growth and 20.3% of its job growth. (10A DCMR § 215.19.) The proposed Project on the Property is a quintessential Land Use Change Area development. The Project will take largely vacant and underutilized land and provide office, retail, and housing near a Metrorail station that is pedestrian friendly and enhances a vacant property on the Anacostia River. Therefore, the Project is not inconsistent with the Property’s designation on the Generalized Policy Map as discussed below:

- (a) Land Use Element. The Project is not inconsistent with the Land Use Element. The proposed Project advances several policies of the Land Use Element. First, the Land Use Element advises that the Central Employment Area (“CEA”) should include higher-density mixed-use areas, 10A DCMR § 304.8 (LU-1.1.3 Central Employment Area), and that specifically the Near Southeast/Navy Yard area should see “mixed use neighborhoods combining high-density residential, office, [and] retail.” (10A DCMR § 304.11 (LU-1.1.5 Urban Mixed Use Neighborhoods).) Additionally, the Land Use Element encourages a “mix of new uses on large redeveloped sites,” including Poplar Point. (10A DCMR § 305.7 (LU-1.2.2 Mix of Uses on Large Sites).) Finally, the Land Use Element encourages development around Metrorail stations with “the establishment and growth of mixed use centers at Metrorail stations,” including supplying housing and affordable housing around Metrorail stations. (10A DCMR § 306.10 (LU-1.3.1 Station Areas as Neighborhood Centers and § 306.12 (LU-1.3.3 Housing Around Metrorail Stations).) Here, the Project presents a large site within the CEA ideal for high-density mixed-use as proposed by the Project. The Project will provide office, retail, and housing, including affordable housing, in close proximity to a Metrorail station on a currently largely vacant site.

Second, the residential use at the Project meets the goals of “maintaining the multi-family residential character of the District’s Medium- and High-Density residential areas” by taking an underutilized and undeveloped area and developing that property to office, retail, and multi-family residential use at the Property. (10A DCMR § 309.15 (LU-2.1.10 Multi-Family Neighborhoods).)

The Land Use Element encourages creative parking management to respond to the level of demand and mitigate congestion. (10A DCMR §§ 306.15, 309.16, and 312.12 (LU-1.3.6 Parking near Metro Stations, LU-2.1.11 Residential Parking Requirements, and LU-2.4.8 Addressing Commercial Parking Impacts).) The

Element focuses developments on placing “a priority on attractive, pedestrian-friendly design and a de-emphasis on auto-oriented uses and surface parking.” (10A DCMR § 306.4 (LU-1.3 Transit-Oriented and Corridor Development).) The Project meets the objectives of the Land Use Element by offering an appropriate amount of below-grade parking for residents, visitors, and employees of the Project. The Property is also located adjacent to a major Metrorail station, and as part of the Project the Applicant proposes improvements to the Metrorail station to help make the Poplar Point area truly transit-oriented;

- (b) Transportation Element. The Project is not inconsistent with the Transportation Element. The Transportation Element encourages pedestrian-oriented development around transit stations, and discourages auto-oriented uses such as “drive-through” business, and large surface parking lots. (10A DCMR § 403.1 (T-1.1.4 Transit-Oriented Development) and § 404.8 (T-1.2.3 Discouraging Auto-Oriented Uses).) Additionally, the element encourages “transit-oriented and transit-accessible employment throughout the region.” (10A DCMR § 405.11 (T-1.3.1 Transit-Accessible Employment).) The Project is a model transit-oriented development and adds none of the auto-oriented features the Comprehensive Plan seeks to discourage. As discussed, the Project is located in close proximity to the Anacostia Metrorail station and multiple bus lines at the Metrorail station. Therefore, the site encourages residents, students, and employees to take public transit based on the convenient location and opportunity to do so. Further, the Project will provide below-grade parking at the Property, but will not employ any auto-oriented uses such as large surface parking lots. This enables the Project to account for traffic generated by the Project, while still encouraging pedestrian access to the site, thus furthering the Transportation Element’s policies. Finally, the Project includes numerous improvements related to bicycles, including bike lanes, long and short term bicycle parking, and connection to the overall DC bicycle network, thus advancing the Element’s policies regarding bicycle integration and safety; (10A DCMR §§ 409.8-10 (T-2.3.1 Better Integration of Bicycle and Pedestrian Planning; T-2.3.2 Bicycle Network; T-2.3.3 Bicycle Safety).)
- (c) Housing Element and Economic Development Element. The Project is not inconsistent with the Housing Element or the Economic Development Element. By having numerous residential units, the Project “provide[s] new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives.” (10A DCMR § 503.2 (H-1.1.1 Private Sector Support).) The specific location of the Project in a vacant area on the Anacostia waterfront in close proximity to the Anacostia Metrorail station fulfills the Housing Element’s goal of “promot[ing] mixed use development, including housing, on commercially zoned land, particularly . . . around appropriate Metrorail stations.” (10A DCMR § 503.5 (H-1.1.4 Mixed Use Development).) The Project specifically provides “new high-density housing in Central Washington and along the Anacostia River,” with a “new neighborhood developed on [a] large site.” (10A DCMR § 503.7 (H-1.1.6 Housing in the Central City) and

§ 503.8 (H-1.1.7 New Neighborhoods).) The ground-floor retail use at the Project “create[s] additional shopping opportunities in Washington’s neighborhood commercial districts to better meet the demand for basic goods and services.” (10A DCMR § 708.7 (ED-2.2.3 Neighborhood Shopping).) This mixed-use development will “promote the vitality and diversity of Washington’s neighborhood commercial areas.”; (10A DCMR § 713.5 (ED-3.1.1 Neighborhood Commercial Vitality).)

- (d) Urban Design Element. The Project is not inconsistent with the Urban Design Element. The Project furthers the Element’s goal of creating “neighborhood centers . . . that reinforce community identity” by creating an “urban square [that] stimulate[s] vibrant pedestrian street life and provide[s] a focus for community activities.” (10A DCMR § 910.9 (UD-2.2.3 Neighborhood Centers) and § 913.15 (UD-3.1.8 Neighborhood Public Space).) The Project “creates [an] attractive and interesting commercial streetscape” that will make the Property a place-maker for this area of the District. The Project also “protects major views in the city,” in the way it designed the “buildings . . . and pedestrian walkways on or near [a] waterfront site.” (10A DCMR § 904.6 (UD-1.2.4 View Protection) and § 905.10 (UD-1.3.5 River Views).) Finally, the Project considers “not only the site itself, but the broader context presented by surrounding neighborhoods,” by designing and anticipating “a street grid that is more compatible with the texture of Washington’s neighborhoods.”; and (10A DCMR § 911.6 (UD-2.33 Design Context for Planning Large Sites) and § 911.4 (UD-2.3.2 Large Site Scale and Block Patterns).)
- (e) Lower Anacostia Waterfront/Near Southwest Area Element. The Property is within the Lower Anacostia Waterfront/Near Southwest Area Element. This element encourages the exact kind of mixed-use development contemplated by the Project – “Create new mixed use neighborhoods on vacant or underutilized waterfront lands. . . . new neighborhoods should be developed at . . . Poplar Point.” (10A DCMR § 1908.3 (AW-1.1.2 New Waterfront Neighborhoods).) The Element also encourages “bring[ing] more retail services and choices to the Anacostia Waterfront as well as space for government and private sector activities, such as offices,” which the Project provides in significant amounts. (10A DCMR § 1908.4 (AW-1.1.3 Waterfront Area Commercial Development).)

Specifically, for the Poplar Point area, the Area Element prioritizes creating “a new transit-oriented mixed use neighborhood . . . linked to the Anacostia Metrorail station. . . . [which] include[s] a significant component of affordable housing, . . . retail . . . [and] segments of the future development . . . devoted entirely to office use to encourage location of Federal office space and other office space.” (10A DCMR §1914.9 (AW-2.4.3 Poplar Point Mixed Use Neighborhood).) The Project provides all of these uses as contemplated by the Area Element. Further, the scale of the development is consistent with the Area Element as it “recognizes the area’s proximity to a Metrorail station and other major surface arterials and that the area is physically separated from surrounding

neighborhoods and, therefore, may accommodate buildings and site plans unlike but compatible with the fine-grained pattern found in nearby Historic Anacostia.” 10A DCMR § 1914.11 (AW-2.4.5 Scale of Development at Poplar Point). Finally, the Project will “capitalize on significant views to the river and U.S. Capitol,” and will “bring economic development opportunities to adjacent neighborhoods.” (10A DCMR § 1914.12 (AW-2.4.6 Poplar Point Vista and View Preservation) and § 1914.13 (AW-2.4.7 Poplar Point as an Economic Catalyst).) The Project will create a truly mixed use, vitalizing development for the underutilized area as the start of future development in this area of the District.

98. Taken as a whole, the Project is not inconsistent with the District or Area Elements of the Plan or with the objectives of other adopted public policies applicable to the Property. There are individual objectives in these site-specific plans that the Project either does not address or does not substantially advance. Planning policy documents by their very nature are comprehensive and occasionally internally contradictory. However, the Project is not inconsistent with the broad public planning objectives for Ward 8.
99. The Commission finds that there were no particularized allegations of inconsistency with the Comprehensive Plan raised by OP, the ANCs, any other agency, or party or person. Therefore, for the reasons set forth more fully above the Commission finds that the Application, including the Map Amendment, is not inconsistent with the Plan.

#### Project Impacts

100. For the following reasons, the Commission finds that the Project does not result in unacceptable impacts on the surrounding area or on the operation of District services and facilities but instead is either favorable, capable of being mitigated, or acceptable given the quality of Public Benefits:
  - (a) Zoning and Land Use:
    - (1) From a land use perspective, the Project creates no unacceptable impacts on surrounding neighborhoods. Any impacts from the Project’s proposed land use are either favorable, capable of being mitigated, or acceptable given the quality of the significant public benefits included as part of the Project. The Project will create prime office, residential, and retail space in an undeveloped area within the Central Employment Area in close proximity to a major Metrorail station, including affordable housing. The height and density of the Project are appropriate given the proximity to transit, the Comprehensive Plan’s Future Land Use Map designation, and the avoidance of adverse impacts on nearby residential areas. The Project will improve the Poplar Point area and begin the overall area development, including beginning the street grid and utility improvements needed for the area. The Project will have a positive land use impact that is consistent with the Comprehensive Plan and other planning goals of the District of Columbia;

- (2) The Applicant requests a Zoning Map Amendment for the Property to the MU-9 zone. This proposed zone plan is consistent with the Comprehensive Plan. The Future Land Use Map of the Comprehensive Plan locates the Property in the Mixed-Use High-Density Residential/High-Density Commercial, as well as Institutional, land use categories, and the Property is located within the Central Employment Area. At the Property, the Applicant proposes a truly mixed-use development with robust office, residential, and retail uses. The proposed MU-9 zoning is necessary to accommodate these uses at the proposed height and density. The Comprehensive Plan explicitly lists the proposed MU-9 zone as consistent with the High Density Commercial designation. (10A DCMR § 225.9.) Additionally, the MU-9 zone is generally described as a zone that permits high-density development, specifically located in the Central Employment Area. The Property is located in the Central Employment Area and ripe for high-density development. Accordingly, the proposed rezoning of the Property to the MU-9 zone is consistent with the Comprehensive Plan;
  - (3) The Project's introduction of additional retail helps attract and retain a critical mass of commercial uses in the neighborhood. This effect is a favorable land use impact of the Project. The proposed retail uses create economic opportunities and continue the stabilization of the neighborhood. The contribution of new, high-quality multifamily housing units to Ward 8 has additional positive impacts on the surrounding areas. Moreover, the Project's conversion of underutilized lots to productive and active uses, and the creation of a thoughtfully-designed pedestrian space also has positive impacts; and
  - (4) To the extent there are any ancillary unfavorable land use impacts arising out of the Project, such impacts are either mitigated by the Project's design or offset by the quality of the Public Benefits associated with this Project;
- (b) Transportation and Mobility Impacts. The Commission credits the testimony of the Applicant's traffic consultant and DDOT and finds that the traffic, parking, and other transportation impacts of the Project on the surrounding area are capable of being mitigated through the measures proposed by the Applicant and are acceptable given the quality of public benefits of the PUD as follows:
- (1) The Project will not have an adverse impact on the facilities that it will rely on for service. The Anacostia Metrorail station is adjacent to the Property. Numerous Metrobus lines also service the site via the Anacostia Metrorail station, and it is expected that many of the Project's occupants and visitors will use public transit. The Project also over 900 parking spaces to accommodate the parking demand of residents, employees, and visitors who may choose to drive to the Project. Bicycle usage will also

be coherently integrated into the design of the Project, including the bicycle lanes on the streets, connecting into the overall D.C. bike network, and providing both long-term spaces and short-term spaces in connection with the Project; and

- (2) The Applicant's traffic expert submitted a detailed comprehensive transportation review ("CTR") evaluating proposed transportation impacts of the Project. The Project includes a robust TDM plan to mitigate any transportation impacts. To the extent the Project creates transportation or mobility impacts on the neighborhood or District more generally, they are either capable of being mitigated through the TDM or acceptable given the quality of the Public Benefits;
- (c) Project Impacts on City Services and Project Environmental Impacts. The Project does not have any adverse impacts on the public facilities or District services that it relies on for service. Likewise, the Project does not have adverse environmental impacts:
- (1) Water Demand. The Project contains approximately 2,358,380 square feet of new GFA. The average daily water demand for this Project can be met by the existing District water system. The proposed connection for the fire and residential water supply will be made within the existing distribution system and will be coordinated with DC Water. The Project has multiple individual water meters;
  - (2) Sanitary Sewer Demand. The proposed connection for the sanitary sewer line will be made with the existing distribution system and will be coordinated with the D.C. Department of Public Works and the D.C. Water and Sewer Authority;
  - (3) Stormwater Management. The project will meet or exceed the current stormwater management requirements of the D.C. Department of the Environment. The proposed Best Management Practices for water quality will be designed and constructed in compliance with the standards set by the D.C. Department of Public Works, the D.C. Department of the Environment, and the D.C. Water and Sewer Authority;
  - (4) Solid Waste Services. Solid waste and recycling materials generated by the Project are to be collected regularly by a private trash collection contractor;
  - (5) Electrical Services. Electricity for the new building is provided by Pepco in accordance with its usual terms and conditions of service. All electrical systems are designed to comply with the D.C. Energy Code. Transformers will be installed on the Property in accordance with Pepco's design guidelines;



- (6) Energy Conservation. The Project is designed in full compliance with Article 24 (Energy Conservation) of the Building Code. Conformance to code standards minimize the amounts of energy needed for the heat, ventilation, hot water, electrical distribution, and lighting systems contained in the building. The Project will include features attaining LEED-Gold certification for the Project; and
- (7) Erosion Control. During excavation and construction, erosion on the Property will be controlled in accordance with District law; and
- (d) Other Impacts. The findings related to issues raised by the ANC, other agencies, Otten and the Commission includes additional discussion on the Project’s impacts and the Commission’s balancing thereof. In sum, the Project’s impacts are either capable of being mitigated or not unacceptable in light of the Public Benefits.

Public Benefits

- 101. The objective of the PUD process is to encourage high-quality development that provides public benefits and amenities by allowing greater flexibility in planning and design than may be possible under matter-of-right zoning. (11-X DCMR § 305.1.)
- 102. The Project achieves the goals of the PUD process by creating a high quality mixed-use commercial development with significant related Public Benefits. The Commission finds that the Project includes the following Public Benefits, which are not inconsistent with the Plan as a whole with respect to the Property.
- 103. 11-X DCMR § 305.4 requires that a majority of the public benefits of the proposed PUD relate to the geographic area of the ANC in which the application is proposed. Findings with respect to the geographic effect of the Public Benefits are addressed in the following paragraphs. In general, the Public Benefits relate to the area of the ANCs.
- 104. The Applicant, in its written submissions and testimony before the Commission, noted that the following benefits and amenities will be created as a result of the Project, in satisfaction of the enumerated PUD standards in 11-X DCMR § 305:

- (a) Housing and Transit-Based Housing.

11-X DCMR § 305.5 provides that public benefits of a proposed PUD may be documented in the category of housing, if that housing “exceeds the amount that would have been required through matter-of-right development under existing zoning,” or “provides units with three (3) or more bedrooms.” (11-X DCMR §§ 305.5(f)(1) and 305.5(f)(3).)

There is no housing requirement in the existing MU-14 zone. (Ex. 22, p. 8.) The Project will create approximately 700 new residential units, totaling approximately 691,590 gross square feet of new housing. (Ex. 60A.) The Project

will include approximately 36,297 gross square feet of housing reserved for three-bedroom units. (*Id.*) Both are significant public benefits of the PUD;

(b) Affordable Housing.

11-X DCMR § 305.3(g) provides that affordable housing is a public benefit of a PUD, “except that affordable housing provided in compliance with the Inclusionary Zoning requirements of Subtitle C, Chapter 22, shall not be considered a public benefit except to the extent it exceeds what would have been required through matter-of-right development under existing zoning.”

If Buildings B and C were developed to their maximum potential under the existing matter-of-right MU-14 zone, the buildings would be required to set aside eight percent of their residential GFA at 60% MFI level if rental units, and at the 80% of MFI level if ownership units. (Ex. 22, p. 8.) The maximum residential GFA under the existing matter-of-right zoning would have resulted in 40,982 square feet of GFA reserved for required IZ units. (*Id.*)

The affordable housing provided in the Project exceeds what would have been required under the existing matter of right zoning in several respects. First, the total amount of residential GFA devoted to IZ units will be approximately 69,159 square feet of GFA, (Ex. 60A), resulting in approximately 28,000 square feet of additional space devoted to IZ units. (Ex. 60A.) Second, the Applicant will set aside 2.5% of the residential GFA plus eight percent of the total penthouse habitable space as IZ at the 50% of MFI level. (*Id.*) Only the penthouse space is required to be at the 50% MFI level. Thus the 2.5% of the residential GFA space provided at the 50% MFI level is a public benefit. Third, the Applicant will set aside 7.5% of the residential GFA at the 60% of MFI level regardless of whether the Project is rental or for sale. (*Id.*) The Commission finds that the additional affordable housing, at deeper levels of affordability, are public benefits of the PUD;

(c) Superior Urban Design and Architecture.

11-X DCMR § 305.5(a) lists urban design and architecture as categories of public benefits and project amenities for a PUD.

The proposed Project exhibits many characteristics of exemplary urban design. Specific features include the use of a variety of public spaces, providing public access to new private streets, well-designed sidewalks with street trees and active storefronts along Howard Road S.E., and well-located and carefully designed parking garages, loading zones, alleys, and private streets for not only the Project but also future development of nearby properties.

In addition, the Applicant shall underground utilities at the Project.

The Commission finds these are public benefits of the PUD;

(Ex. 2-2I13, 13-3B, 21-21B, 38A1-38A2, 44A1-44A10.)

(d) Streetscape Plans.

11-X DCMR § 305.5(l) states that streetscape plans are considered to be public benefits and project amenities of a PUD.

In order to capitalize on the pedestrian activity generated by the office, retail, and residential features of the Project, the Applicant has proposed significant streetscape improvements as a key benefit and amenity of the Project. The existing streetscape is dilapidated and needs complete redesign. The Applicant proposes to completely redesign the streetscape with appropriate sidewalks. Further, as part of the Project, the Applicant proposes to create private streets with public easements for access not only to the Project, but for future access to adjacent properties. The Howard Road frontage will be created in a manner that is place-making, creating a destination point in the community. Streetscape enhancements will include street trees and special paving features. Additionally, the Project will include regrading and replacing and undergrounding all of the utility lines along Howard Road, S.E. in front of the Property.

The Applicant proposes other streetscape improvements related to the Project that will also significantly improve pedestrian access along this key gateway location. The Applicant will replace the existing streetscape with new improvements that include new street trees and other plantings to create more defined, attractive pedestrian access. Finally, the Applicant is proposing significant bicycle-related streetscape improvements, including bicycle lanes along Howard Road, S.E. and a greater bicycle connection to the Anacostia Riverwalk Trail and the bicycle lanes in the District. (Ex. 2-2I13, 13-13B, 21-21B, 38A1-38A2, 44A1-44A10, 60A.) The Commission finds these are public benefits of the PUD;

(e) Site Planning, and Efficient and Economical Land Utilization.

Pursuant to 11-X DCMR § 305.5(c), “site planning and efficient and economical land utilization” are public benefits and project amenities to be evaluated by the Zoning Commission.

The site is currently underutilized and fails to capitalize on its proximity to the Anacostia Metrorail station. The site currently has little activity and does not encourage any pedestrian access. The proposed Project has been designed to provide residents, customers, employees, and visitors with open and inviting public and private spaces for entertainment and relaxation as detailed above. Additionally, the proposed private streets and alleys will be designed for future, adjacent development. The Project transforms an underutilized and inactive area into an attractive 21<sup>st</sup> century mixed-use development. (Ex. 2-2I13, 13-13B, 21-21B, 38A1-38A2, 44A1-44A10, 60A.) The Commission finds these are public benefits of the PUD;

(f) Environmental and Sustainability Benefits.

11-X DCMR § 305.5(k) states that environmental benefits are considered to be public benefits and project amenities of a PUD.

The Project will provide a number of environmental benefits that improve sustainability of the site and contribute to the sustainability of the neighborhood. These sustainability features include a commitment to achieve LEED v.4 Gold for all of the buildings, capitalizing on the strategic potential of a transit-oriented location proximate to a Metrorail station, updating existing utilities, and planting additional street trees. The Applicant will provide rooftop solar panels that will generate an estimated 436,626 kwh. Additionally, the Applicant proposes to underground the utilities along the Howard Road, S.E. street frontage. The Applicant proposes to clean up the contaminated Property by removing hazardous materials, contaminated soils, and underground tanks in connection with each of the development phases. Additionally, the Applicant will follow a design and build strategy to avoid development in the 100- and 500- year floodplain and will refine the conceptual stormwater management plan to generate additional retention volume. (Ex. 2-2I13, 13-13B, 21-21B, 38A1-38A2, 44A1-44A10, 60A.) The Commission finds these are public benefits of the PUD;

(g) Uses of Special Value.

11-X DCMR § 303.5(q) lists “uses of special value to the neighborhood or the District of Columbia as a whole” as public benefits and project amenities of a PUD.

The Commission finds that the Project will provide the following uses of special value:

- (1) Ground-Floor Retail: The proposed Project will provide approximately 52,120 square feet of ground-floor retail uses as well as streetscape improvements along the Project frontage, which have been previously recognized by the Commission as uses of special value; (Ex. 60A.)
- (2) Additional Retail Amenities and Services: The Applicant anticipates offering neighborhood serving retail amenities and services or other street activating uses, including pop-up retail amenities; (Ex. 60A.)
- (3) Transformation of adjacent vacant property: Situated adjacent to Building A at the western gateway to the Columbian Quarter PUD, DDOT owns 40,689 square feet of vacant land on Square 5860 /Lot 0937. The Applicant shall collaborate with DDOT and other DC agencies to determine viable options to transform the adjacent vacant property for future placemaking opportunities by incorporating buildings with ground-floor retail or street activating uses that serves the neighborhood, activates

the streetscape and seamlessly connects with the larger urban form; (Ex. 60A.)

(h) Mass Transit Improvements.

11-X DCMR § 303.5(p) lists “mass transit improvements” as public benefits and project amenities of a PUD.

The Applicant has engaged in discussions with the community and the District Department of Transportation (“DDOT”), as well as the Washington Metropolitan Area Transit Authority (“WMATA”) regarding the Anacostia Metrorail station. The Metrorail station is in great need of improvements. The Applicant proposes, as part of the Project, to assist in improving the Anacostia Metrorail station, including improvements to the entrance to the station nearest the Project. (Ex. 60A.) The Commission finds these are public benefits of the PUD;

(i) Open Space and Recreation Space.

11-X DCMR § 303.5(b) lists “Superior landscaping, or creation or preservation of open spaces” as public benefits and project amenities of a PUD.

The Commission finds that the Project will provide the following public benefits in this category:

- (1) The Applicant shall work with NPS WMATA, OP, DDOT, DPR, ANC 8A, and ANC 8C to optimize open space and recreation placemaking opportunities throughout the Project as well as adjacent parks and underutilized land. The design of the open space and recreation improvements shall include a collaborative public charrette process of the Applicant’s design team, local neighborhood families, ANC Commissioners, NPS, WMATA, and DC public agencies, including OP; (Ex. 60A.)
- (2) The Applicant shall provide outdoor open space courts at and above grade in buildings A, B, D, and E. In addition, all five building will have programmed rooftop amenities within the outdoor open spaces. Prior to the issuance of the final certificate of occupancy for each of these buildings, the Applicant shall deliver these open space courts and amenities; (Ex. 60A.)
- (3) The Applicant shall create a community pocket park adjacent to the Metro station plaza entrance; and (Ex. 60A.)
- (4) The Project is directly adjacent to the 1,108-acre Anacostia Park managed by NPS. The Applicant shall continue to work with NPS on increasing the opportunities to leverage the Anacostia Park’s natural, cultural and

recreational amenities for the neighborhood's use and enjoyment; (Ex. 60A.)

(j) Employment and Career Training Opportunities.

11-X DCMR § 303.5(h) lists "employment and training opportunities" as public benefits and project amenities of a PUD.

The Commission finds that the Project will provide the following public benefits in this category:

- (1) The Applicant shall engage in a partnership with DMPED's Ward 8 Works Program to connect Ward 8 residents with preconstruction and construction jobs on the Project in Ward 8, which shall include evidence of quarterly meetings/events with the commitment of hiring at least one Ward 8 Works Program participant in the Project; (Ex. 60A.)
- (2) The Applicant shall establish a Development Internship program for Ward 8 residents which shall include two summer internship opportunities in the real estate field for Ward 8 (Anacostia or Ballou) high school rising seniors. During the internship, the high school intern will work 35 hours at minimum wage. The internship program will focus on aspects of stage-one PUD development, including zoning and land use law, design, development, and community benefits and amenities. Through Redbrick LMD's departments and development partners, the high school student will be mentored and trained by the leading real estate experts in the Washington, D.C. area; (Ex. 60A;)
- (3) The Applicant shall offer two summer internship opportunities in the real estate field for a Ward 8 rising college seniors who graduated from Anacostia or Ballou High School. The mentoring and internship program will focus on all aspects of real estate development, including acquisitions, zoning and land use law, design, development, pre-construction, construction, marketing and branding, leasing, and property management and asset management. Through Redbrick LMD's departments and development partners, the college student will be mentored and trained by the leading real estate experts in the Washington, D.C. area. During the summer months of June, July, and August, the college intern will work 35 hours and earn \$15 per hour; (Ex. 60A.)
- (4) The Applicant shall provide documentation of its efforts to hire a Ward 8 resident to work on all aspects of construction; and (Ex. 60A).
- (5) The Applicant shall provide evidence that it will hire, through Redbrick LMD's Real Estate Professional Service Internship Program, two Ward 8 residents to participate in a hands-on, one-year internship program with

the property manager and developer that will focus on all aspects of residential property management during the leasing and stabilization of the first residential building at the Project; and (Ex. 60A).

(k) Historic Preservation.

11-X DCMR § 303.5(e) lists “historic preservation of private or public structures, places, or parks” as public benefits and project amenities of a PUD.

The Commission finds that the Project will provide the following public benefits in this category:

- (1) The Applicant shall enter into a partnership agreement with the Historic Anacostia Preservation Society and the National Trust for Historic Preservation to support and implement solutions for the benefit of the Historic Anacostia District that preserve the historic character and fabric of the neighborhood, which shall include, but is not limited to:
  - (A) Reducing displacement of existing residents and allowing low-income seniors to remain in their historic homes;
  - (B) Providing professional services expertise such as architectural, engineering and building sciences in a historic districtwide conditions assessment survey;
  - (C) Assisting in workforce development initiatives for historic preservation trades skill training to create employment opportunities for neighborhood residents; and
  - (D) Providing professional expertise and support for the rehab and reuse of vacant and abandoned historic structures, both residential and commercial.
- (2) The Applicant shall complete a phased archeology study in consultation with the State Archeologist.
- (3) The Applicant shall, based upon its phased archeology study findings, and in conjunction with the State Archaeologist, prepare a Phase II work plan, and complete appropriate mitigation measures, as part of the Project’s archaeological public benefits.

The Applicant’s proffered cost contribution to the historic and archaeological preservation benefits is limited to a value of \$125,000 in cash and in-kind services.

105. The Applicant also proffered a total of \$250,000 in monetary contributions to three organizations, the Anacostia Coordinating Council, the Wish List Committee and the

Southeast Tennis and Learning Center, and Congress Heights Community Center. (Ex. 60A.) These organizations were the same organizations identified by ANCs 8A and 8C in its joint letters dated January 22, 2018, and March 9, 2018. (Ex. 55, 61). The Commission finds that this proffer does not qualify as a public benefit or project amenity of the PUD because the Applicant did not designate the items or services the monetary contributions would be used for, and thus could not agree that no certificate of occupancy for the PUD may be issued unless the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided. Thus the proffered public benefit does not meet the criteria established for monetary contributions in 11-X DCMR § 305.3(d). The Commission has nonetheless included as a condition of this Order, a requirement that the Applicant make the contributions to the identified organizations, and the Applicant shall state the use of the funds in a manner that would satisfy the requirements of 11-X DCMR § 305.3(d) with its first second-stage PUD application, consistent with the Applicant's proffer. (Ex. 60A).

#### Consistency of the Public Benefits with the Plan

106. The Commission also finds that the Project's Public Benefits are not inconsistent with the Plan because each is an integral part of the Project, which itself is not inconsistent with the Plan. Moreover, such Public Benefits are each tangible, quantifiable, measurable, or capable of being completed or arranged prior to the issuance of a certificate of occupancy for the Project.
107. Accordingly, the Project satisfies the PUD Evaluation Standards.

### **CONCLUSIONS OF LAW**

#### Procedural and Jurisdictional Conclusions

1. A PUD application must adhere to certain procedural requirements. (X § 307.1; Z §§ 205, 300, 400-08, 600-06, 700-707.) The Commission must hear any PUD in accordance with the contested case procedures of Subtitle Z, Chapter 4. X § 300.3. The Commission has found and hereby concludes: (i) the Application satisfies the PUD application requirements, and (ii) the Applicant, OZ, OP, and the Commission have satisfied the applicable procedural requirements, including the applicable notice requirements of the Zoning Regulations and the following:
  - (a) The minimum area included within a proposed PUD must be no less than 15,000 sf and all such area must be contiguous. (X § 301.) The Application satisfies these minimum area and contiguity requirements; and
  - (b) The Application is subject to compliance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq. (the "Act").



2. A request for party status must satisfy the requirements of 11-Z DCMR § 404. The Commission has found and hereby concludes that the request for party status of CARE does not satisfy the requirements. The request for party status of CARE is both untimely and has not “clearly demonstrated that the person's interests would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public” as required under DCMR § 404.14.

### Evidentiary Standards

3. The Applicant has the burden of proof to justify the granting of the Application according to the PUD and Map Amendment standards. (X §§ 304.2, 500.2.) The Commission’s findings in relation to a PUD must be supported by substantial evidence. (See *Howell v. District of Columbia Zoning Comm’n.*, 97 A.3d 579 (DC 2014).) Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support” the conclusions contained herein. (*D.C. Library Renaissance Project v. District of Columbia Zoning Comm’n.*, 73 A.3d 107, 125 (DC 2013).) The Applicant’s filings, testimony, and expert witness presentations are credible and thorough and reasonably adequate to support the Commission’s analysis and conclusions contained herein. Accordingly, the Applicant has provided substantial evidence to demonstrate that the Project satisfies the relevant PUD evaluation standards.

### Consistency with the PUD Process, Zoning Regulations, and Plan

4. Pursuant to the Zoning Regulations, the purpose of the PUD process is “to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (a) Results in a project superior to what would result from the matter-of-right standards; (b) Offers a commendable number or quality of meaningful public benefits; and (c) Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.” (11-X DCMR § 300.1.)
5. The PUD process is intended to “provid[e] for greater flexibility in planning and design than may be possible under conventional zoning procedures, [but] the PUD process shall not be used to circumvent the intent and purposes of the Zoning Regulations, or to result in action that is inconsistent with the Comprehensive Plan.” (11-X DCMR § 300.2.)
6. The Commission concludes (i) the application satisfies the PUD application requirements and (ii) the Applicant, Office of Zoning, OP, and the Commission have satisfied the applicable procedural requirements, including the applicable notice requirements of the Zoning Regulations.
7. This Commission has found that the Project generally conforms to the requirements of the Zoning Regulations except for the few areas of articulated relief, which are nonetheless consistent with the intent and purposes of the Zoning Regulations. The

Project is not inconsistent with the Comprehensive Plan. Therefore, the Commission concludes that the Project does not circumvent the Zoning Regulations and is not inconsistent with the Plan. The Commission concludes that the approval of the Application is an appropriate result of the PUD process. The Project is a high-quality mixed-use development that is superior to what could be constructed on the Property as a matter-of-right via the underlying zoning. The Commission has found that the Public Benefits are meaningful and are commendable both in number and quality. Finally, this Commission has found that the Project does not injure but instead advances the public health, safety, welfare, or convenience, and is not inconsistent with the Comprehensive Plan.

#### Evaluation Standards

8. The Commission must evaluate the Map Amendment request and approve it only if it is not inconsistent with the Plan. (11-X DCMR §§ 500.1, 500.3.) The Commission has judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested (including the proposed map amendment), and any potential adverse effects, and concludes the approval of the PUD is warranted.
9. As part of a PUD application, the Commission may, in its discretion, grant relief from any building development standard or other standard (except use regulations). (11-X DCMR §§ 303.1, 303.11.) The Applicant seeks flexibility to vary the phasing anticipated for the Project, vary interim uses at the Property while the other phases of the Project are being finalized; and adjust the parking downwards if needed to meet market demand, but not below the minimum required by the Zoning Regulations. The Commission has found that such items of relief do not impair the Zoning Purposes and are not inconsistent with the Comprehensive Plan. The Commission concludes it may exercise its discretion to grant such development incentives subject to the Conditions (as such term is hereinafter defined) hereof.
10. The PUD is within the applicable height and bulk standards of the Zoning Regulations. The proposed height, density, and other PUD-related flexibility will not cause an adverse effect on nearby properties, and will create a more appropriate and efficient utilization of land at a significant transit-oriented location. The mix of residential, retail, and office uses are also appropriate for the site's location.
11. The Zoning Regulations define public benefits as “superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions of this title.” (11-X DCMR § 305.2.) Such public benefits must satisfy the following criteria (“Public Benefit Criteria”): (a) benefits must be tangible and quantifiable items; (b) benefits must be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; (c) benefits must primarily benefit the geographic boundaries of the ANC; and (d) monetary contributions shall only be permitted if made to a District of Columbia government program or if the applicant

agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided. (11-X DCMR §§ 305.3, 305.4.) Based on the Commission's findings regarding the Public Benefits as well as the Conditions of this Order, the Commission concludes that the Public Benefits benefit the surrounding neighborhood or the District as a whole to a significantly greater extent than would a matter-of-right development and readily satisfy the Public Benefit Criteria.

12. The PUD provisions require the Commission to evaluate whether the Application: “(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.” (11-X DCMR § 304.4.) The Commission has reviewed the entire record and issued findings to support its conclusion that the Application satisfy the PUD Evaluation Standards. In particular, the Commission concludes the Project is not inconsistent with the Plan as a whole, accepts the entirety of the Applicant's impact analysis contained in the record and concludes that the Project does not have any unacceptable impacts. The Commission further concludes that the Project includes the Public Benefits, which are also not inconsistent with the Plan.
13. The Commission must undertake a “comprehensive public review” of the PUD application “in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits.” (11-X DCMR § 300.5.) In deciding on the Application, this Commission must “judge, balance, and reconcile the relative value of the public benefits project and amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.” (11-X DCMR § 304.3.)
14. The Commission heard the Application at the Public Hearing and followed the contested case procedures of the Zoning Regulations. The Commission therefore concludes that it has satisfied the procedural requirements in order to review the Application and evaluate the flexibility and Development Incentives requested and potential adverse effects against the proposed Public Benefits in light of the circumstances of the case.
15. The Commission's review of the Application has been comprehensive. The Commission has reviewed the entire record and has identified and examined the concerns and statements about the Project raised by the ANCs and District agencies. The Commission has appropriately considered the substantial evidence presented by the Applicant. The Commission grants appropriate weight to the reports and testimony of the various reviewing District agencies and the ANCs. There are no items in the record that the Commission has excluded from its consideration notwithstanding in some instances this Order does not contain precise citation to such items.

16. The Project warrants the Development Incentives (including the Map Amendment) and flexibility in light of the Project's extensive and comprehensive Public Benefits. The Commission concludes that the Project's Development Incentives are warranted in light of the Public Benefits and the Project's overall consistency with the Comprehensive Plan.

#### Great Weight to the ANC and OP Reports

17. 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 issues and concerns raised in the affected ANC's written recommendation. Great weight requires the acknowledgement of the ANC as the source of the recommendations and explicit reference to each of the ANC's concerns. The written rationale for the decision must articulate with precision why the ANC does or does not offer persuasive evidence under the circumstances. In doing so, the Commission must articulate specific findings and conclusions with respect to each issue and concern raised by the ANC. (D.C. Official Code § 1-309.10(d)(3)(A) and (B).) ANC advice must be approved a properly noticed ANC meeting, that is open to the public, its advice must be expressed in writing, and articulate the basis for its decision. (D.C. Official Code § 1-309.10 (d)(1).)
18. As described in Findings of Fact 70-75 above, there were five written submissions by the affected ANCs in this case.
19. The first was ANC 8C's report dated November 27, 2017. (Ex. 40.) The report stated the ANC supported the Project, and that the ANC's "only concern was the impact of the traffic on Howard Road [that] affect[s] the Anacostia Metro buses. Presently the intersection is heav[ily] traveled from Martin Luther King Ave. to 295 and [the] Frederic Douglas[s] Bridge." The Commission carefully considered the ANC's concern, but ultimately agrees with DDOT's conclusion that the traffic, parking, and other transportation impacts of the Project on the surrounding area are capable of being mitigated through the measures proposed by the Applicant, and concludes that any traffic related impacts of the Project are acceptable given the quality of public benefits of the PUD.
20. The second was ANC 8A's report dated November 27, 2017. (Ex. 43.) The report stated the ANC supported the Project, and did not express any issues or concerns. Because the report expressed no issues or concerns, there is nothing for the Commission to give great weight to. (See *Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
21. With respect to the two ANC joint reports requesting enhancements to the public benefits of the PUD (Ex. 55, 61), and the draft agreement submitted by the ANCs that was not signed by the Applicant (Ex. 63), the Commission concludes as follows. The reports and purported agreement do not meet the standards of the ANC Act because they do not indicate that they were adopted by the ANCs at properly noticed meetings, and they do not explicitly state the issues and concerns of the ANCs. The Commission nevertheless

considered what it considered to be the implicit issue/concern of the reports, that the Commission should require the Applicant to enhance its proffer of public benefits to include the financial contributions in the amounts listed in the reports, and that the public benefits of the PUD without these enhancements do not justify approval of the PUD. The Commission does not find this advice persuasive because the PUD rules in the Zoning Regulations provide that the Commission “cannot compel the Applicant to add to its proffer of public benefits, but instead must judge the application based on the proffer and shall deny it if it thinks the proffered benefits do not justify the zoning relief requested (including the map amendment). Nevertheless, the Commission may at any time note the insufficiency of the public benefits and suggest how the benefits may be improved.” (11-X DCMR § 305.11.) The Commission therefore concludes that while the ANCs may think it beneficial if the public benefits package was enhanced to include the items included the ANC’s joint letters and the draft agreement submitted by the ANCs, the Applicant must voluntarily proffer PUD benefits, and the Commission cannot compel the Applicant to provide more than what has been voluntarily proffered. The Applicant did not proffer the financial contributions in the amounts that the ANCs apparently desired. The Commission performed the required PUD balancing based on the Applicant’s voluntary proffers, and concluded that they were sufficient to justify approval.

22. The Commission is also required to give great weight to the written reports of OP. D.C. Code § 6-623.04; 11-Z DCMR § 405.8. This Commission has reviewed the OP Setdown Report, and OP Final Report and heard testimony from OP and finds that OP supports the Application. The Commission gives great weight to OP’s recommendation to approve the Application and the Commission concludes it has properly granted OP’s reports the great weight they are due.

## **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 first-stage review and approval of a PUD and related map amendment from the MU-14 zone to the MU-9 zone for property consisting of Lots 97, 1025-1031, 1036, and 1037 in Square 5860 and a portion of the alley to be closed, and Lot 91 in Square 5861 (“Property”). This approval is subject to the following guidelines, conditions, and standards.

### **A. Project Development**

1. The Project shall be developed in accordance with the plans dated October 6, 2017 (Ex. 21A1-A11), November 14, 2017 (38A1-38A2), December 4, 2017 (Ex. 44A1-44A10), and December 18, 2017 (51A), as modified by guidelines, conditions, and standards herein (collectively, “Plans”).
2. The Project shall include five mixed-use buildings, containing approximately 52,120 gross square feet of retail use, 691,590 gross square feet of residential use comprising approximately 700 residential units, 1,614,670 gross square feet of office use, and approximately 983 vehicular parking spaces, as shown on the

Plans dated November 14, 2017 (Ex. 38A2) and December 4, 2017 (Ex. 44A1-A10) and as modified by the guidelines, conditions, and standards of this Order.

3. The Applicant shall be permitted to construct the Project to a maximum height of 130 feet and a maximum density of 8.99 FAR.
4. The Applicant shall have flexibility to vary the phasing anticipated for the Project, vary the interim uses at the Property as stated in condition B.4.b while the other phases of the Project are being finalized, and adjust the parking downwards if needed to meet market demand, but not below the minimum required by the Zoning Regulations.

**B. Public Benefits**

1. Urban design:
  - (a) The Project shall include the public spaces, sidewalks with street trees and storefronts along Howard Road, S.E., as shown on the Plans;
  - (b) **With each second-stage application**, the Applicant shall submit a detailed landscape plan showing the public spaces and sidewalks with street trees, and for the second-stage applications that include frontages along Howard Road, S.E., additional detailed plans showing the storefronts along Howard Road, S.E.; and
  - (c) **Prior to the issuance of the Certificate of Occupancy for the second building**, the Applicant shall demonstrate to the Zoning Administrator that all utilities for the Project have been constructed underground.
2. Transit-Based and Affordable Housing:
  - (a) The Applicant shall provide the affordable housing set forth in the following charts:

Building B

Residential Unit Type	GFA/Percentage of Total	Units	Reserved for household earning equal to or less than	Affordable Control Period	Tenure (rental or sale)	Notes
Total	419,590 sf of GFA (100%)	420	NA	NA	NA	
Market Rate	377,631 sf of GFA (90%)	378	Market Rate	NA	NA	

Residential Unit Type	GFA/Percentage of Total	Units	Reserved for household earning equal to or less than	Affordable Control Period	Tenure (rental or sale)	Notes
IZ	11,567 sf of GFA (2.5% + 8% of the total habitable penthouse space)	TBD in the 2 <sup>nd</sup> -stage PUD submission	50% MFI	Life of the project	Rental and/or sale	3 bedroom units
IZ	10,490 sf of GFA (2.5%)	TBD in the 2 <sup>nd</sup> -stage PUD submission	60% MFI	Life of the project	Rental and/or sale	3 bedroom units
IZ	20,980 sf of GFA (5%)	TBD in the 2 <sup>nd</sup> -stage PUD submission	60% MFI	Life of the project	Rental and/or sale	Unit size will be proportional to market rate unit sizes
Total Penthouse Habitable GFA	13,500 sf habitable GFA (100% of penthouse habitable space will be market rate)	TBD in the 2 <sup>nd</sup> -stage PUD submission	Market rate	NA	NA	8% of penthouse of the total habitable penthouse space shall be reserved at 50% of AMI

### Building C

Residential Unit Type	GFA/Percentage of Total	Units	Reserved for household earning equal to or less than:	Affordable Control Period	Tenure (rental or sale)	Notes
Total	272,000 sf of GFA (100%)	272	NA	NA	NA	
Market Rate	244,800 sf of GFA (90%)	245	Market Rate	NA	NA	
IZ	7,440 sf of GFA (2.5% + 8% of the total habitable penthouse space)	TBD in the 2 <sup>nd</sup> -stage PUD submission	50% MFI	Life of the project	Rental and/or sale	3 bedroom units
IZ	6,800 sf of GFA (2.5%)	TBD in the 2 <sup>nd</sup> -stage PUD submission	60% MFI	Life of the project	Rental and/or sale	3 bedroom units
IZ	13,600 sf of GFA (5%)	TBD in the 2 <sup>nd</sup> -stage PUD submission	60% MFI	Life of the project	Rental and/or sale	Unit size will be proportional to market rate unit sizes
Total Penthouse Habitable GFA	8,000 sf habitable GFA (100% of penthouse habitable space will be market rate)	TBD in the 2 <sup>nd</sup> -stage PUD submission	Market rate	NA	NA	8% of penthouse of the total habitable penthouse space shall be reserved at 50% of AMI

- (b) In addition to the affordable housing specified above, the Applicant shall provide a housing trust fund payment for habitable space on the roof of the offices; and
- (c) The covenant required by D.C. Official Code §§ 6-1041.05(a)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with this Condition.

3. Mass Transit Improvements:

- (a) **With its first-second stage PUD Application**, the Applicant shall submit a detailed plan to provide station improvements consistent with the plans dated October 6, 2017 (Ex. 21B) and December 4, 2017 (Ex. 44A9) (“Transit Improvement Plan”) based upon work with WMATA, OP, DDOT, DPR, ANC 8A, and ANC 8C;
- (b) **With its first second-stage PUD Application**, the Applicant shall submit a detailed plan to provide at least three of the following proffers:
  - (1) Facilitate the design of a new Metro Entrance plaza area by demolishing existing vacant buildings and parking deck vehicular ramp and moving the outdoor Kiss n’ Ride parking lot;
  - (2) Upgraded road, pedestrian and bicycle pathway improvements to Metrorail station from Howard Road S.E.;
  - (3) Enhanced landscaping and hardscaping around the Metrorail entrance plaza area;
  - (4) Metrostation amenities and features including DC Bikeshare Station, bike racks, benches, trash receptacles, local art installations; and
  - (5) Integrated potential retail areas within the proposed metro entrance plaza area; and
- (c) **With its first second-stage PUD Application**, the Applicant shall submit an update on the status of WMATA approval and/or conveyance and appropriate assurances that the Applicant can complete the improvements listed in this condition, or an appropriate substitute public benefit.

4. Uses of Special Value to the Neighborhood:

- (a) **Ground-Floor Retail. For the life of the Project**, the Applicant shall reserve no less than 52,000 square feet of gross floor area in the Project



for retail or other street activating use<sup>5</sup>. The space reserved for retail or other street activating use in each building shall be provided in the locations and sizes shown the Plans dated December 4, 2017; (Ex. 44A5.)

- (b) Additional Retail Amenities and Services.
  - (1) **Prior to the delivery of the first building in the PUD, at least two times per year until December 31, 2022,** the Applicant shall offer pop-up retail amenities and services, or other street activating pop-up uses<sup>6</sup>; and
  - (2) **With its first second-stage PUD application, and with each subsequent second-stage PUD application until it has completed its obligation under this condition,** the Applicant shall provide evidence of its compliance with this condition;
- (c) Transformation of Vacant Property. **With its first second-stage PUD application, and with each subsequent second-stage PUD application until it has completed its obligation under this condition,** the Applicant shall provide evidence of its attempts to collaborate with DDOT and other DC agencies to determine viable options to transform the adjacent vacant property<sup>7</sup> for future place-making opportunities by incorporating buildings with ground-floor retail or street activating uses that serves the neighborhood, activates the streetscape and seamlessly connects with the larger urban form;

5. Open Space and Recreation Space:

- (a) **With its first second-stage PUD application,** the Applicant shall demonstrate that it has developed an open space plan (“Open Space Plan”) based upon work with NPS, WMATA, OP, DDOT, DPR, ANC 8A, and ANC 8C to optimize open space and recreation place making opportunities throughout the Project, adjacent parks and adjacent underutilized land;
- (b) **Prior to the issuance of the Certificate of Occupancy for Buildings A, B and C,** the Applicant shall demonstrate to the Zoning Administrator that it has completed the construction of all Open Space Plan improvements within the Property;

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<sup>5</sup> Examples include affordable and healthy fast casual restaurants, small urban format grocery stores, Café/Coffee Shop/Eatery, Pharmacy, Bank/ATM, Dry Cleaner, and/or Full Service Day Care Centers.

<sup>6</sup> Examples include quarterly pop-up farmer’s market, popup food, entertainment and music events, pop-up diner associated with the farmer’s market, and/or pop-up commuter bike service/repair/storage hub.

<sup>7</sup> Situated adjacent to Building A at the western gateway to the Property, DDOT owns 40,689 SF of vacant land on Square 5860, Lot 0937.

- (c) **With its first second-stage PUD application**, the Applicant shall demonstrate that it has coordinated in good faith with the respective neighboring property owners who are responsible for Open Space Plan improvements that lie outside the Property;
- (d) **Prior to the issuance of a Certificate of Occupancy for each building**, the Applicant shall demonstrate it has completed construction of the outdoor open space courts at and above grade in buildings A, B, D and E as shown on the Plans dated November 14, 2017 (Ex. 38A1, Sheet 33); and demonstrate that, all 5 building will have programmed rooftop amenities within the outdoor open spaces consistent with the Roof Plan dated November 14, 2017; (Ex. 38A1, Sheet 36; Ex. 51A.)
- (e) **With its first second-stage PUD application**, the Applicant shall:
  - (1) Demonstrate that it has designed a community pocket park adjacent to the Metro station plaza consistent with the Plans (“Pocket Park”), that the Pocket Park shall be programmed with both active and passive uses, including recreation/playground space for local neighborhood families, and that the specific recreational programming has been determined by a collaborative public charrette(s) of the Applicant’s design team, local neighborhood families, ANC Commissioners, NPS, WMATA and DC public agencies, including the Department of Parks and Recreation and OP; and
  - (2) Submit an update on the status of WMATA approval and/or conveyance and appropriate assurances that the Applicant can complete the improvements listed in this condition, or an appropriate substitute public benefit;
- (f) **Prior to the issuance of a Certificate of Occupancy for the first residential building**, the Applicant shall construct and initiate the programming for, the Pocket Park; and
- (g) **With its first second-stage PUD application**, the Applicant shall demonstrate its efforts to work with the National Park Service to increase opportunities to leverage Anacostia Park’s natural, cultural and recreational amenities for the neighborhood’s use and enjoyment.

6. **Employment and Career Training Opportunities:**

- (a) **With its first second-stage PUD application**, the Applicant shall provide evidence of its efforts to engage in a partnership with DMPED’s Ward 8 Works Program to connect Ward 8 residents with preconstruction and construction jobs on the Project in Ward 8, which shall include evidence of quarterly meetings/events with the commitment of hiring at least one Ward

8 Works Program participant in the Project, and the specific details of the Ward 8 Works Programs participant's involvement in the Project, including the hiring and job performance timeline, and description of the job the participant will perform. The first second-stage order shall include a condition incorporating the full terms of the commitment;

- (b) **With its first second stage PUD application**, the Applicant shall provide evidence that it has established a Development Internship program for Ward 8 residents which shall include two summer internship opportunities in the real estate field for Ward 8 (Anacostia or Ballou) high school rising seniors. During the internship, the high school intern will work 35 hours at minimum wage. The internship program will focus on aspects of Stage-One PUD development, including zoning and land use law, design, development, and community benefits and amenities. Through Redbrick LMD's departments and development partners, the high school student will be mentored and trained by the leading real estate experts in the Washington, D.C. area. The first second-stage order shall include a condition incorporating the full terms of the commitment;
- (c) **With its first second-stage PUD application**, the Applicant shall provide evidence that it has offered two summer internship opportunities in the real estate field for a Ward 8 rising college seniors who graduated from Anacostia or Ballou High School. The mentoring and internship program will focus on all aspects of real estate development, including acquisitions, zoning and land use law, design, development, pre-construction, construction, marketing and branding, leasing, property management and asset management. Through Redbrick LMD's departments and development partners, the college student will be mentored and trained by the leading real estate experts in the Washington, DC area. During the summer months of June, July, and August, the college intern will work 35 hours and earn \$15 per hour. The first second-stage order shall include a condition incorporating the full terms of the commitment;
- (d) **With its first second-stage PUD application**, the Applicant shall provide documentation of its efforts to hire a Ward 8 resident to work on all aspects of construction; and
- (e) **With its first second-stage PUD application for a residential building**, the Applicant shall provide evidence that it will hire, through Redbrick LMD's Real Estate Professional Service Internship Program, two Ward 8 residents to participate in a hands-on, one-year internship program with the property manager and developer that will focus on all aspects of residential property management during the leasing and stabilization of the first residential building at the Project. The first second-stage order for a residential building shall include a condition incorporating the full terms of the commitment.

7. Historic and Archaeological Preservation:

- (a) **With its first second stage PUD application**, the Applicant shall provide evidence to the Zoning Administrator that it has entered into a partnership agreement with the Historic Anacostia Preservation Society and the National Trust for Historic Preservation to support and implement solutions for the benefit of the Historic Anacostia District that preserve the historic character and fabric of the neighborhood, which include, but are not limited to:
- (1) Reducing displacement of existing residents and allowing low-income seniors to remain in their historic homes;
  - (2) Providing professional services expertise such as architectural, engineering and building sciences in a historic districtwide conditions assessment survey;
  - (3) Assisting in workforce development initiatives for historic preservation trades skill training to create employment opportunities for neighborhood residents; and
  - (4) Providing professional expertise and support for the rehab and reuse of vacant and abandoned historic structures, both residential and commercial;
- (b) **With its first second-stage PUD application**, the Applicant shall demonstrate that it has completed a phased archeology study in consultation with the State Archeologist;
- (c) **Prior to the issuance of a building permit for the first building**, the Applicant shall demonstrate to the Zoning Administrator that based upon its phased archeology study findings, and in conjunction with the State Archaeologist, that it has prepared a Phase II work plan, and appropriate mitigation measures, as part of the Project's archaeological public benefits. The first second-stage order shall include a condition incorporating the full terms of the obligation; and
- (d) The Applicant's cost contribution to the historic and archaeological preservation amenities (7a., b., and c.) shall not exceed a value of \$125,000 in cash and in-kind services.

8. Environmental and Sustainable Benefits:

- (a) **Prior to the issuance of a certificate of occupancy for each building**, the Applicant shall submit a LEED scorecard evidencing that the building has been designed to achieve 60 points under LEED v.4 Gold;

- (b) **Prior to the issuance of an initial certificate of occupancy for each building's shell and core**, the Applicant shall demonstrate to the Zoning Administrator that all contaminated and/or hazardous materials, contaminated soils, and underground tanks have been removed from the Property subject to the Certificate of Occupancy;
- (c) **Prior to issuance of a certificate of occupancy for each building**, the Applicant shall install rooftop solar panels as shown on the plans in Exhibit 51A of the record that will generate an estimated total of 436,626 kwh;
- (d) **Prior to issuance of a certificate of occupancy for each building**, the Applicant shall submit evidence to the Zoning Administrator that it has followed a design and build strategy to avoid development in the 100- and 500-year floodplain for a sustainable and resilient Project, while simultaneously meeting all the requirements of local and federal regulations, as shown on the Plans dated October 16, 2017 (Ex. 24), November 14, 2017 (Ex. 38A2), and December 4, 2017 (Ex. 44A6); and
- (e) **Prior to the issuance of a Certificate of Occupancy for each building**, the Applicant shall demonstrate to the Zoning Administrator that a stormwater management plan has been submitted for each building following the DOEE Stormwater Retention Database to meet a 1.7-inch storm event.

9. Community Benefits Agreement:

- (a) **With its first second-stage PUD application**, the Applicant shall provide evidence of an agreement with the Far Southeast Family Strengthening Collaborative that requires the Applicant to provide funds for community use by the following organizations in the stated amounts per building, totaling \$250,000:
  - (1) Anacostia Coordinating Council (\$25,000);
  - (2) Wish List Committee and The Southeast Tennis and Learning Center (total of \$12,500); and
  - (3) Congress Heights Community Association (\$12,500); and
- (b) The funds shall be used for purposes to be stated during the stage-two PUD process for the first building in accordance with 11-X DCMR § 305.3(d). The first second-stage PUD order shall state the full terms of this commitment.

C. **Mitigation Measures**

1. **Transportation Demand Management Measures:**

- (a) **With each second stage PUD application,** the Applicant shall submit a transportation demand management (TDM) program established in cooperation with DDOT, that shall include the following:
- (1) Designate a transportation management coordinator;
  - (2) Install transit screens in a common space in each building;
  - (3) Include transportation information on property management website;
  - (4) Provide covered, secure bicycle parking;
  - (5) Provide a bicycle repair station provided on P1 level of each garage;
  - (6) Provide two car sharing spaces, subject to agreement by the car sharing provider;
  - (7) Provide shower and changing facilities for office facilities;
  - (8) Designate parking for carpools or vanpools in the garage for the office component;
  - (9) Unbundle the cost of parking from leases;
  - (10) Provide personalized outreach to new residents regarding transportation options;
  - (11) Install 19 electric car charging stations provided in the garage on the north and south parcel;
  - (12) Fund the installation and first year's operating cost for a new Capital Bikeshare station near the site;
  - (13) Provide on shopping cart for every 50 resident units;
  - (14) Provide one cargo bike for every 100 residential units;
  - (15) Host a biannual meeting with goDCgo to inform residents and employers of commute alternatives; and
  - (16) Provide either one-year car share membership to all new residents over the age of 16 in the first three years after initial delivery of the

residential building or provide one-year Capital Bikeshare membership to all new residents over the age of 16 in the first three years after initial delivery of the residential building;

- (b) **Once the first building is 85% occupied and for every year thereafter,** the Applicant shall perform annual monitoring studies to measure the number of trips generated by the project. The Applicant shall determine details for the performance monitoring as part of the Stage-Two PUD. The parameters for the monitoring studies shall be as follows, subject to refinement during Stage-Two PUD review:
- (1) Timing - Conduct performance monitoring studies annually when Congress and schools are in session and when buildings are at least 80% occupied;
  - (2) Targets - Establish trip generation targets for each building at Stage-Two review;
  - (3) Methodology - Measure trip generation counts for each building by observation and tube counts. Measure mode splits for each building by observation and intercept surveys;
  - (4) Scope - In addition to trip generation and mode split targets, the performance monitoring study may include intersection capacity analyses and queuing, if a need is identified through Stage-Two reviews;
  - (5) Triggers- If the development exceeds the targeted vehicle trip generation, the Applicant will be required to conduct a robust survey of users to determine mode of travel to and from the site in order to determine additional TDM elements to be implemented to reach the trip generation target or physical improvements and operational changes to mitigate operations or queuing impacts;
  - (6) Evaluation by construction phase where feasible - Generally, monitoring should be completed by construction phase. However, parking garages and other shared transportation infrastructure may connect multiple buildings. As such, performance monitoring studies may include buildings from multiple phases rather than buildings in a single phase; and
  - (7) Sunset - When conditions are consistent with the requirements for two successive periods, the Applicant shall be released from the monitoring requirement; and
- (c) Each second-stage PUD order shall state the full terms of this commitment.

2. Transportation Improvements:

- (a) The Applicant shall implement the following transportation improvements prior to the initial certificate of occupancy for the phase of the project that triggers the need for the improvement, as determined by traffic studies conducted for each Stage-Two PUD:
  - (1) Prepare a traffic signal warrant study for the Suitland Parkway/Howard Road intersection and, if warranted, install a traffic signal at the intersection, subject to DDOT permit approval;
  - (2) Modify the traffic signal at the intersection of Howard Road and Firth Sterling Avenue to include a northbound advance left-turn phase on Howard Road with a concurrent eastbound right-turn overlap, subject to DDOT permit approval;
  - (3) Modify the traffic signal at the intersection of Firth Sterling Avenue and Suitland Parkway to include an eastbound advance left-turn phase on Firth Sterling Avenue and a southbound right-turn overlap to run concurrently with the westbound left-turn phase, subject to DDOT permit approval; and
  - (4) Restripe Sumner Road, S.E. to provide separate eastbound left and right turn lanes at its approach to Martin Luther King Junior Avenue, subject to DDOT permit approval. The removal of approximately three to four parking spaces will be required to accommodate the separate turn lanes; and
- (b) Each second-stage PUD order shall state the full terms of this commitment.

**D. Miscellaneous.**

- 1. No building permit shall be issued for this project until the owner of the Property 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 owner of the Property and all successors in title to construct on or use the Property in accordance with this Order and any amendment thereof by the Commission.
- 2. The first-stage PUD shall remain valid for eight years after the effective date of this Order, provided that a second-stage PUD application for the Phase I building is filed no later than one year from the effective date of this Order. The filing of each second-stage PUD application and the Commission's approval thereof shall vest the Commission's first stage approval with respect to the property that is the



subject of the second-stage application, even if other second-stage applications are not filed by the expiration date.

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


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


On April 9, 2018, upon the motion of Vice Chairman Miller, as seconded by Commissioner Shapiro, the Zoning Commission took **FINAL ACTION** to **APPROVE** the Application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on May 25, 2018.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

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

  
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**ANTHONY J. HOOD**  
CHAIRMAN  
ZONING COMMISSION

  
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**SARA A. BARDIN**  
DIRECTOR  
OFFICE OF ZONING