

District of Columbia

REGISTER

HIGHLIGHTS

- D.C. Council passes Law 22-49, Mobile DMV Act of 2017
- D.C. Council schedules Fiscal Year 2017-2018 Agency Performance Oversight Hearings
- D.C. Council schedules public hearings on the Fiscal Year 2019 Proposed Budget and Financial Plan
- D.C. Commission on the Arts and Humanities announces funding availability for the Fiscal Year 2018 Public Art Project Grant
- Department of Employment Services announces funding availability for the Fiscal Year 2018 Innovative Workforce Development Grants
- Board of Ethics and Government Accountability sets rules that require the District of Columbia Council members to file public financial disclosure statements semiannually
- Department of Human Services proposes new public assistance payment levels for the District's public benefit programs

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

The District of Columbia Office of Documents and Administrative Issuances publishes the *District of Columbia Register* (ISSN 0419-439X) every Friday under the authority of the *District of Columbia Documents Act*, D.C. Law 2-153, effective March 6, 1979, D.C. Official Code § 611 *et seq.* (2012 Repl.). The policies which govern the publication of the *Register* are set forth in the Rules of the Office of Documents and Administrative Issuances (1 DCMR §§300, *et seq.*). The Rules of the Office of Documents and Administrative Issuances are available online at dcregs.dc.gov. Rulemaking documents are also subject to the requirements of the *D.C. Administrative Procedure Act*, D.C. Official Code §§2-501 *et seq.* (2012 Repl.).

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DISTRICT OF COLUMBIA OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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ADMINISTRATOR

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COUNCIL OF THE DISTRICT OF COLUMBIA

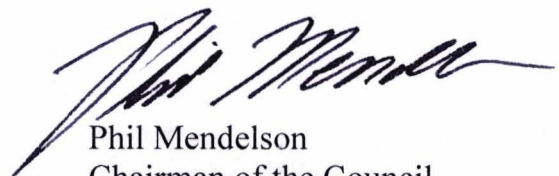
NOTICE

D.C. LAW 22-44

"Fiscal Year 2018 Budget Support Clarification Temporary Amendment Act of 2017"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-492 on first and second readings October 3, 2017 and November 7, 2017, respectively. Following the signature of the Mayor on November 29, 2017, pursuant to Section 404(e) of the Charter, the bill became Act 22-190 and was published in the December 8, 2017 edition of the D.C. Register (Vol. 64, page 12387). Act 22-190 was transmitted to Congress on December 11, 2017 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 22-190 is now D.C. Law 22-44, effective January 25, 2018.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

December	11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 26, 27, 28, 29
January	2, 3, 4, 5, 8, 9, 10, 11, 12, 16, 17, 18, 19, 22, 23, 24

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 22-45

"At-Risk Tenant Protection Clarifying Temporary Amendment Act of 2017"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-497 on first and second readings October 3, 2017, and November 7, 2017, respectively. Following the signature of the Mayor on November 29, 2017, pursuant to Section 404(e) of the Charter, the bill became Act 22-191 and was published in the December 8, 2017 edition of the D.C. Register (Vol. 64, page 12399). Act 22-191 was transmitted to Congress on December 11, 2017 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 22-191 is now D.C. Law 22-45, effective January 25, 2018.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

December	11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 26, 27, 28, 29
January	2, 3, 4, 5, 8, 9, 10, 11, 12, 16, 17, 18, 19, 22, 23, 24

COUNCIL OF THE DISTRICT OF COLUMBIA

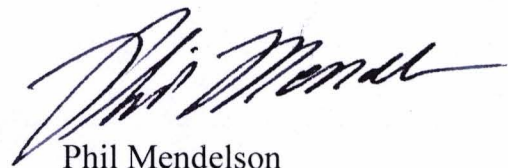
NOTICE

D.C. LAW 22-46

"Operator's Permit and Drug Offense Amendment Act of 2017"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-67 on first and second readings October 3, 2017, and November 7, 2017, respectively. Following the signature of the Mayor on November 29, 2017, pursuant to Section 404(e) of the Charter, the bill became Act 22-192 and was published in the December 8, 2017 edition of the D.C. Register (Vol. 64, page 12401). Act 22-192 was transmitted to Congress on December 11, 2017 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 22-192 is now D.C. Law 22-46, effective January 25, 2018.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

December	11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 26, 27, 28, 29
January	2, 3, 4, 5, 8, 9, 10, 11, 12, 16, 17, 18, 19, 22, 23, 24

COUNCIL OF THE DISTRICT OF COLUMBIA

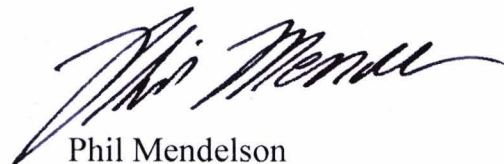
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D.C. LAW 22-47

"Exhaust Emissions Inspection Amendment Act of 2017"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-70 on first and second readings October 3, 2017, and November 7, 2017, respectively. Following the signature of the Mayor on November 29, 2017, pursuant to Section 404(e) of the Charter, the bill became Act 22-193 and was published in the December 8, 2017 edition of the D.C. Register (Vol. 64, page 12403). Act 22-193 was transmitted to Congress on December 11, 2017 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 22-193 is now D.C. Law 22-47, effective January 25, 2018.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

December	11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 26, 27, 28, 29
January	2, 3, 4, 5, 8, 9, 10, 11, 12, 16, 17, 18, 19, 22, 23, 24

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 22-48

"DMV Services Amendment Act of 2017"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-118 on first and second readings October 3, 2017, and November 7, 2017, respectively. Following the signature of the Mayor on November 29, 2017, pursuant to Section 404(e) of the Charter, the bill became Act 22-194 and was published in the December 8, 2017 edition of the D.C. Register (Vol. 64, page 12405). Act 22-194 was transmitted to Congress on December 11, 2017 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 22-194 is now D.C. Law 22-48, effective January 25, 2018.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

December 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 26, 27, 28, 29
January 2, 3, 4, 5, 8, 9, 10, 11, 12, 16, 17, 18, 19, 22, 23, 24

COUNCIL OF THE DISTRICT OF COLUMBIA

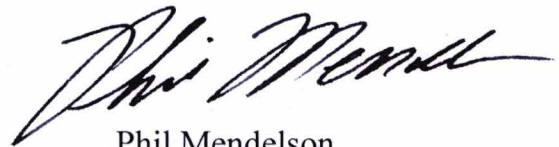
NOTICE

D.C. LAW 22-49

"Mobile DMV Act of 2017"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-122 on first and second readings October 3, 2017, and November 7, 2017, respectively, pursuant to Section 404(e) of the Charter, the bill became Act 22-197 and was published in the December 8, 2017 edition of the D.C. Register (Vol. 64, page 12411). Act 22-197 was transmitted to Congress on December 11, 2017 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 22-197 is now D.C. Law 22-49, effective January 25, 2018.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

December	11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 26, 27, 28, 29
January	2, 3, 4, 5, 8, 9, 10, 11, 12, 16, 17, 18, 19, 22, 23, 24

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-231

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 25, 2018

To symbolically designate the 700 and 800 blocks of G Street, N.W., in Ward 2, as Paul Devroux Way.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Paul Devroux Way Designation Act of 2018”.

Sec. 2. Pursuant to sections 401, 403a, and 423 of the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code §§ 9-204.01, 9-204.03a, and 9-204.23), the Council symbolically designates the 700 and 800 blocks of G Street, N.W., in Ward 2, as “Paul Devroux Way”.

Sec. 3. Transmittal.

The Council shall transmit a copy of this act, upon its effective date, to the Mayor, the District Department of Transportation, and the Office of the Surveyor.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

ENROLLED ORIGINAL

24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
January 25, 2018

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-232

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 25, 2018

To declare, on a temporary basis, that the District-owned real properties located at 1220 Maple View Place, S.E., known for tax and assessment purposes as Lot 811 in Square 5800, 1648 U Street, S.E., known for tax and assessment purposes as Lot 884 in Square 5765, 1518 W Street, S.E., known for tax and assessment purposes as Lot 814 in Square 5779, and 1326 Valley Place, S.E., known for tax and assessment purposes as Lot 849 in Square 5799, are no longer required for public purposes and to authorize the disposition of the properties to the L'Enfant Trust for the purpose of rehabilitating the properties in accordance with historic preservation standards and developing workforce housing.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Historic Anacostia Vacant Properties Surplus Declaration and Disposition Authorization Temporary Act of 2018".

Sec. 2. (a) Notwithstanding the requirements of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801 *et seq.*), the Council declares the real properties ("Properties") located at:

- (1) Lot 811 in Square 5800;
- (2) Lot 884 in Square 5765;
- (3) Lot 814 in Square 5779; and
- (4) Lot 849 in Square 5799

are no longer required for public purposes and authorizes the disposition of the Properties to the L'Enfant Trust, as approved by the Mayor; provided, that the land shall be transferred for the purpose of renovation in accordance with historic preservation standards for use as workforce housing.

(b)(1) Title to any property identified in subsection (a) of this section for which a certificate of occupancy has not been issued within 5 years of the date of transfer from the District to the L'Enfant Trust shall revert to the District.

(2) The District shall not assess or collect real property taxes for any property identified in subsection (a) of this section until a buyer at arm's length from the L'Enfant Trust purchases the property.

(c) As a condition of transfer, the L'Enfant Trust shall:

ENROLLED ORIGINAL

(1) Renovate and develop the properties as workforce housing, in accordance with historic preservation standards;

(2) Subcontract 35% of the total adjusted project budget to Certified Business Enterprises;

(3) Include in each property’s sales contract and deed of conveyance a provision that requires that the individuals who purchase each property shall qualify for workforce housing and occupy the premises as their primary residence for a minimum period of 3 years; and

(4) No later than December 31, 2018, partner with a Ward 8 homebuyers program that will conduct at least 2 informational sessions for Ward 8 residents who are also first-time homebuyers.

(d) For the purposes of this act, the term “workforce housing” means housing that must be owner-occupied by low- or moderate-income households whose total income does not exceed 120% of Area Median Income, as determined by the U.S. Department of Housing and Urban Development.

Sec. 3. To the extent the terms of this act conflict with the Historic Preservation of Derelict District Properties Act of 2016, effective March 11, 2017 (D.C. Law 21-223; 64 DCR 182), the terms of this act shall control.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review

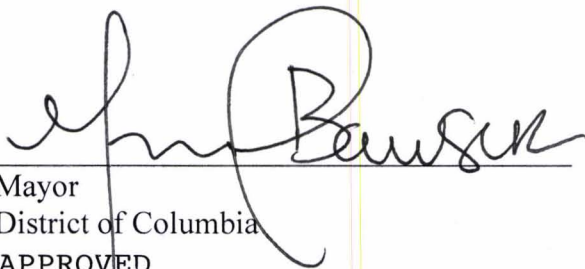
ENROLLED ORIGINAL

as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

(b) This act shall expire after 225 days of its having taken effect.



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
January 25, 2018

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-233

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 25, 2018

To approve, on an emergency basis, Modification Nos. 2, 3, 4, 5, and 6 to Contract No. CW45041 with Avid Systems, LLC, to provide Mission Oriented Business Integrated Services, and to authorize payment for the goods and services received and to be received under the modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Modifications to Contract No. CW45041 Approval and Payment Authorization Emergency Act of 2018”.

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 2, 3, 4, 5, and 6 to Contract No. CW45041 with Avid Systems, LLC, to provide Mission Oriented Business Integrated Services, and authorizes payment in the not-to-exceed amount of \$10 million for goods and services received and to be received under the modifications.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

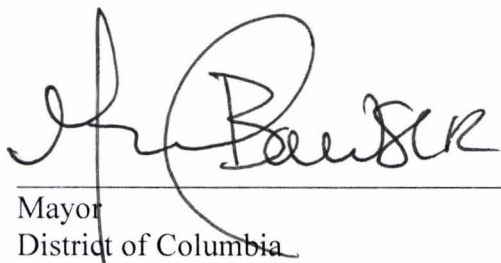
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in

ENROLLED ORIGINAL

section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
January 25, 2018

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-234

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 25, 2018

To approve, on an emergency basis, Modification No. 1 to Contract No. CW54105 with Friendship Place to provide case management services for the Rapid Rehousing Program, and to authorize payment for the goods and services received and to be received under the modification.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modification No. 1 to Contract No. CW54105 Approval and Payment Authorization Emergency Act of 2018".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification No. 1 to Contract No. CW54105 with Friendship Place to provide case management services for the Rapid Rehousing Program, and authorizes payment in the not-to-exceed amount of \$2,128,000 for the goods and services received and to be received under the modification.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

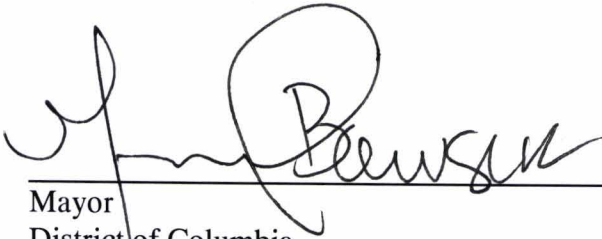
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in

ENROLLED ORIGINAL

section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
January 25, 2018

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-235

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 25, 2018

To symbolically designate, on an emergency basis, the 2600 block of Wisconsin Avenue, N.W., between Davis Street, N.W., and Edmunds Street, N.W., in Ward 3, as Boris Nemtsov Plaza.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Boris Nemtsov Plaza Designation Emergency Act of 2018”.

Sec. 2. Pursuant to sections 401, 403a, and 423 of the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code §§ 9-204.01, 9-204.03a, and 9-204.23), the Council symbolically designates the 2600 block of Wisconsin Avenue, N.W., between Davis Street, N.W., and Edmunds Street, N.W., in Ward 3, as “Boris Nemtsov Plaza”.

Sec. 3. Transmittal.

The Council shall transmit a copy of this act, upon its effective date, to the Mayor, the District Department of Transportation, and the Office of the Surveyor.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report for the Boris Nemtsov Plaza Designation Act of 2017, passed on 1st reading on January 9, 2018 (Engrossed version of Bill 22-539), as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

ENROLLED ORIGINAL

412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
January 25, 2018

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-236

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 25, 2018

To approve, on an emergency basis, Modification Nos. 11, 12, and 13 to Contract No. CW42864 with Trillian Technologies, LLC to provide information technology support services for the District of Columbia Access System, the Supplemental Nutritional Access Program, and the Temporary Assistance for Needy Families module, and to authorize payment for the goods and services received and to be received under the modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Modifications to Contract No. CW42864 Approval and Payment Authorization Emergency Act of 2018”.

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 11, 12, and 13 to Contract No. CW42864 with Trillian Technologies, LLC to provide information technology support services for the District of Columbia Access System, the Supplemental Nutritional Access Program, and the Temporary Assistance for Needy Families module, and authorizes payment in the amount of \$3,123,925.50 for the goods and services received and to be received under the modifications.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than

ENROLLED ORIGINAL

90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
January 25, 2018

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-237

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 25, 2018

To approve, on an emergency basis, Modification No. 4 to Contract No. NFPHC-155 between the Not-for-Profit Hospital Corporation and United Hospitalist Medical Services to provide daily acute care medical services, and to authorize payment for the services received and to be received under the modification.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modification No. 4 to Contract No. NFPHC-155 Approval and Payment Authorization Emergency Act of 2018".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification No. 4 to Contract No. NFPHC-155 between the Not-for-Profit Hospital Corporation and United Hospitalist Medical Services to provide daily adult acute care medical services, and authorizes payment in the amount of \$1,416,666 for the services received and to be received under the modification.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

ENROLLED ORIGINAL

412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
January 25, 2018

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-238

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 27, 2018

To authorize, on an emergency basis, the Mayor and the Council to make appointments to the Board of Directors for the Washington Metrorail Safety Commission and to grant the Mayor the authority to remove any Member or Alternate Member for misconduct or neglect of duty, or for other good cause; to make a conforming amendment to the Confirmation Act of 1978; to repeal the Washington Metropolitan Area Transit Authority Safety Regulation Act of 1997; and to repeal the Washington Metrorail Safety Commission Board of Directors Appointment Temporary Amendment Act of 2017.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Washington Metrorail Safety Commission Board of Directors Appointment Emergency Amendment Act of 2018".

Sec. 2. Authority to appoint Members of the Board of Directors of the Washington Metrorail Safety Commission.

(a) Pursuant to Article III.B of section 2 of the Washington Metrorail Safety Commission Establishment Act of 2016, effective April 7, 2017 (D.C. Law 21-250; D.C. Official Code § 9-1109.11), the District of Columbia shall appoint Members of the Board of Directors of the Washington Metrorail Safety Commission as follows:

(1)(A) The Mayor shall appoint or reappoint (including to fill an unexpired term) one Member and one Alternate Member, each of whom shall be subject to confirmation by the Council pursuant to section 2(e) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)).

(B) The Member initially appointed by the Mayor shall serve a 2-year term. The Alternate Member initially appointed by the Mayor shall serve a 3-year term.

(2)(A) The Council shall appoint or reappoint (including to fill an unexpired term) one Member.

(B) The Member initially appointed by the Council shall serve a 4-year term.

(C) The Council shall not instruct its appointee as to the position to take on a particular matter or otherwise direct its appointee in the performance of his or her duties.

ENROLLED ORIGINAL

(3) The term of each initial appointment shall not commence until the latest date by which each of the Mayor's 2 appointees has been confirmed by the Council and the Council's appointment has become effective by publication in the District of Columbia Register.

(b) The Mayor may remove or suspend any Member or Alternate Member of the Board for misconduct or neglect of duty, or for other good cause, after notice to the Member or Alternate Member of the Board and to the Board.

Sec. 3. Section 2(e) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)), is amended as follows:

(a) Paragraph (31) is amended by striking the phrase “; and” and inserting a semicolon in its place.

(b) Paragraph (32) is amended by striking the period at the end and inserting the phrase “; and” in its place.

(c) A new paragraph (33) is added to read as follows:

“(33) The Board of Directors of the Washington Metrorail Safety Commission established by Article III.B of section 2 of the Washington Metrorail Safety Commission Establishment Act of 2016, effective April 7, 2017 (D.C. Law 21-250; D.C. Official Code § 9-1109.11).”.

Sec. 4. The Washington Metropolitan Area Transit Authority Safety Regulation Act of 1997, effective September 23, 1997 (D.C. Law 12-20; D.C. Official Code § 9-1109.01 *et seq.*), is repealed.

Sec. 5. The Washington Metrorail Safety Commission Board of Directors Appointment Temporary Amendment Act of 2017, enacted on November 29, 2017 (D.C. Act 22-189; 64 DCR 12310), is repealed.

Sec. 6. Applicability.

Section 4 shall apply upon certification pursuant to 49 U.S.C. § 5329(e)(7) and 49 C.F.R. Part 674 by the Federal Transit Administration of the Washington Metrorail Safety Commission as the State Safety Oversight agency.

Sec. 7. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report for the Washington Metrorail Safety Commission Board of Directors Appointment Amendment Act of 2018, passed on 2nd reading on January 9, 2018 (Enrolled version of Bill 22-464), as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

ENROLLED ORIGINAL

Sec. 8. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia

UNSIGNED

Mayor
District of Columbia
January 25, 2018

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-206

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To recognize the importance of providing students access to healthy lunches at school, and to declare October 9 through October 13, 2017, as “National School Lunch Week” in the District of Columbia.

WHEREAS, National School Lunch Week will take place from October 9 through October 13, 2017 and celebrates the vast benefits of the National School Lunch Program;

WHEREAS, the National School Lunch Program, established in 1946, is a federal meal program that provides low or no-cost lunches to children across the country;

WHEREAS, the National School Lunch Program promotes healthy eating habits that can last a lifetime and provides balanced meals that contain a protein, grain, milk, and 2 fruits or vegetables;

WHEREAS, approximately 2/3 of school-aged children in the District are served lunch each day at school through the National School Lunch Program;

WHEREAS, the National School Lunch Program’s emphasis on providing children access to healthy meals greatly benefits the 50% of District children that are at risk of hunger and the 80% that reportedly do not get enough servings of fruits and vegetables each day;

WHEREAS, in 1962, President John F. Kennedy established National School Lunch Week, which recognizes the National School Lunch Program, helps to increase student participation in the National School Lunch Program, and demonstrates to parents that schools are serving nutritious and delicious lunches; and

WHEREAS, “School Lunch: Recipes for Success” is the theme for 2017 National School Lunch Week.

ENROLLED ORIGINAL

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “National School Lunch Week Recognition Resolution of 2017”.

Sec. 2. The Council of the District of Columbia recognizes the vital role of the National School Lunch Program and declares October 9 through October 13, 2017, as “National School Lunch Week” in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-207

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To congratulate *Meet the Press* on its 70th anniversary and to recognize its longtime role as a premier political affairs television program.

WHEREAS, *Meet the Press* is a weekly television program that offers interviews with national and global leaders, analysis of current events, and reviews of weekly news;

WHEREAS, *Meet the Press* is the longest-running television program in television history, with the initial episode airing on November 6, 1947;

WHEREAS, the radio program *American Mercury Presents: Meet the Press* preceded and inspired the television program;

WHEREAS, in September 2015, *Meet the Press* debuted its daily counterpart, *Meet the Press Daily*;

WHEREAS, in September 2016, *Meet the Press* launched an accompanying podcast, *1947: The Meet the Press Podcast*;

WHEREAS, *Meet the Press* regularly interviews prominent leaders and has interviewed every President of the United States since John F. Kennedy;

WHEREAS, Martha Rountree served as the first moderator of *Meet the Press*, followed by Ned Brooks, Lawrence E. Spivak, Bill Monroe, Roger Mudd, Marvin Kalb, Chris Wallace, Garrick Utley, Tim Russert, Tom Brokaw, David Gregory, and current moderator, Chuck Todd;

WHEREAS, *Meet the Press* has made its home in the District of Columbia, filming episodes at the NBC studio in Upper Northwest;

WHEREAS, *Meet the Press* was the most-watched Sunday morning political affairs show for the 2016–2017 season, garnering 3.6 million viewers; and

WHEREAS, *Meet the Press* and the American Film Institute (“AFI”) are partnering on the inaugural Meet the Press Film Festival, which celebrates both *Meet the Press*’ 70th

ENROLLED ORIGINAL

anniversary and AFI's 50th anniversary, and will feature politically focused and issue-oriented short documentaries.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Meet the Press 70th Anniversary Recognition Resolution of 2017".

Sec. 2. The Council of the District of Columbia recognizes, honors, and celebrates *Meet the Press* for 70 years of weekly interviews with world leaders addressing politics, economics, foreign policy, and public affairs.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-210

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To honor Café Milano on the occasion of the celebration of its 25th anniversary and to declare November 9, 2017, as “Café Milano/Franco Nuschese Day” in the District of Columbia.

WHEREAS, twenty-five years ago, when Franco Nuschese was 29 years old, he opened Café Milano on the same day that President Clinton was elected to his first term, November, 3, 1992, and Bill and Hillary Clinton have since become regulars at the restaurant;

WHEREAS, Café Milano has become a ritual stop for kings and kids, popes and celebrities when they come to Washington, D.C., and Cafe Milano has become the premier place to see and be seen;

WHEREAS, on January 17, 2013, former First Lady Michelle Obama celebrated her birthday at Café Milano;

WHEREAS, famous guests of Café Milano include: Michael Jordan, Yogi Berra, Danny DeVito, Sophia Loren, Quincy Jones, Catherine Zeta-Jones, Bradley Cooper, Jon Voight, Eva Longoria, Morgan Freeman, Renee Zellweger, Chris Matthews, Nancy Pelosi, Colin Powell, Valerie Jarrett, New Gingrich, Vice President and Dr. Jill Biden, Wolf Blitzer, Charlie Rose, Angelina Jolie, Brad Pitt, Matt Damon, Leonardo Dicaprio, Jennifer Lopez, Marc Anthony, Michael Douglas, Denzel Washington, Reese Witherspoon, LeBron James, Andrea Bocelli, Vittorio Grigolo, Placido Domingo, Luciano Pavarotti, Anthony Hopkins, Sharon Stone, and Bono;

WHEREAS, Franco Nuschese has always celebrated his Italian roots and has given back to the community by serving as a member of Georgetown University’s Italian Research Institute, whose mission is to support the great talent of contemporary Italian scholars and leaders;

WHEREAS, Franco Nuschese has been a long-time friend of Georgetown University, not only having hosted graduation events at Café Milano for years, but championing the university’s research and dedication to public service;

ENROLLED ORIGINAL

WHEREAS, on December 13, 2010, Franco Nuschese was knighted as “Commendatore dell’Ordine al Merito della Repubblica Italiana” by the President of the Italian Republic in recognition for setting a positive image of Italians in America and throughout the world, and, on April 16, 2008, he hosted the 81st birthday Lunch for Pope Benedict XVI at the Vatican Embassy;

WHEREAS, since September 2013, Franco Nuschese has served on the Board of Directors for prestigious think tank The Atlantic Council, a forum that addresses international challenges and promotes ideas that advance positive change in the fields of politics and economics;

WHEREAS, Franco Nuschese received in May of 2010 the Ellis Island Medal of Honor given to persons of various ethnic backgrounds who have shown outstanding qualities in their personal and professional lives while continuing to preserve the richness of their particular heritage; and

WHEREAS, past honorees of the Ellis Island Medal of Honor include 6 Presidents, as well as Nobel Prize winners and leaders of industry, education, the arts, sports, and government.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Café Milano 25th Anniversary Recognition Resolution of 2017”.

Sec. 2. The Council of the District of Columbia is immensely proud to recognize, honor, and express our overwhelming gratitude to Franco Nuschese for his many contributions and deeds to help those in need and declares November 9, 2017, as “Café Milano/Franco Nuschese Day” in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-211

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To posthumously recognize and celebrate the life of Jamahri Rome Wallace Sydnor for her kindness, passion, and commitment to scholastic achievement and to declare December 17, 2017, as “Jamahri Rome Wallace Sydnor Day of Peace and Kindness” in the District of Columbia.

WHEREAS, Jamahri Rome Wallace Sydnor was born in Washington, D.C. at MedStar Washington Hospital Center on December 17, 1999;

WHEREAS, Jamahri Rome Wallace Sydnor was raised in the Ward 5 community of Brookland/Edgewood;

WHEREAS, Jamahri Rome Wallace Sydnor attended Lafayette Elementary School, Alice Deal Middle School, and graduated from Woodrow Wilson High School in 2017;

WHEREAS, Jamahri Rome Wallace Sydnor was known in the District, and Ward 5 community, as a paragon of virtue to her peers;

WHEREAS, Jamahri Rome Wallace Sydnor, at Woodrow Wilson High School, served as the captain of the cheerleading squad, and a member of the crew team;

WHEREAS, Jamahri Rome Wallace Sydnor served as a peer counselor to classmates at Woodrow Wilson High School;

WHEREAS, Jamahri Rome Wallace Sydnor was a member of an award-winning jazz choir and the Woodrow Wilson High School Advance Choir;

WHEREAS, Jamahri Rome Wallace Sydnor performed as a dancer with The Joy of Dance, The Dance Institute of Washington, DC, The Davis Center, and The Department of Recreation Footsteps;

WHEREAS, Jamahri Rome Wallace Sydnor loved to dance, performed on many platforms, and would seize any opportunity to dance;

ENROLLED ORIGINAL

WHEREAS, Jamahri Rome Wallace Sydnor, while attending Alice Deal Middle School, was honored to performed with First Lady Michelle Obama in the well-known video promoting her “Let’s Move” campaign;

WHEREAS, Jamahri Rome Wallace Sydnor was a member of the Takoma Park Swim Team and Silver Award member of the Girl Scouts of the United States of America;

WHEREAS, Jamahri Rome Wallace Sydnor was accepted to Florida Agricultural and Mechanical University, Class of 2021, and planned to study Communications with a focus on Broadcasting Journalism and Digital Media;

WHEREAS, Jamahri Rome Wallace Sydnor had hoped to be the first African-American President of the United States of America, but after President Barack Obama was elected, planned to be the first female African-American President of the United States of America;

WHEREAS, Jamahri Rome Wallace Sydnor planned to address the city’s violence, and expose and eliminate what she perceived as racial and socioeconomic inequalities;

WHEREAS, Jamahri Rome Wallace Sydnor travelled to numerous countries and served as a United States Student Ambassador;

WHEREAS, Jamahri Rome Wallace Sydnor’s love for travelling helped develop her world vison;

WHEREAS, Jamahri Rome Wallace Sydnor was the beloved daughter of Q. Edwina Wallace and Alvin Jerome Sydnor and sister to Taurica Shawne’ Wallace, Keo D. Wallace, Quintin Magyar, Nathan M. Sydnor, and Faith D. Sydnor;

WHEREAS, Jamahri Rome Wallace Sydnor was a devoted aunt and enjoyed the responsibility and honor of being a positive role model; and

WHEREAS, Jamahri Rome Wallace Sydnor was loved by her entire community and was a “child” of the Metropolitan Police Department.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Jamahri Rome Wallace Sydnor Recognition Resolution of 2017”.

Sec. 2. The Council of the District of Columbia posthumously recognizes and celebrates the life of Jamahri “Jammi” Sydnor, honoring her uplifting spirit of generosity and joyful

ENROLLED ORIGINAL

attitude, dedication, and passion for all, and declares December 17, 2017, as “Jamahri Rome Wallace Sydnor Day of Peace and Kindness” in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-212

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To recognize, honor, and express overwhelming gratitude to Stephen B. Lyons for his commitment to excellence as a public servant and for his numerous contributions to the government of the District of Columbia and her citizens.

WHEREAS, Stephen B. Lyons currently serves as Deputy General Counsel for the Office of the Chief Financial Officer;

WHEREAS, Stephen B. Lyons has provided his expertise on public finance to the District of Columbia since 2001;

WHEREAS, Stephen B. Lyons is one of the pre-eminent experts in public finance law for the District of Columbia;

WHEREAS, Stephen B. Lyons' guidance on legal matters over the years has led to the District of Columbia successfully securing hundreds of millions of dollars for critical government services for the benefit of District residents;

WHEREAS, Stephen B. Lyons is well-respected as a public servant of honesty and integrity, intelligence, and good humor; and

WHEREAS, Stephen B. Lyons will be retiring from service with the Government of the District of Columbia this month.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Stephen B. Lyons Recognition Resolution of 2017".

Sec. 2. The Council of the District of Columbia recognizes, honors, and appreciates Stephan B. Lyons' commitment to excellence and stellar public service performance on behalf of the citizens of the District of Columbia and wishes him only the best in his retirement.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-213

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To celebrate Philip's Shoe Repair, located at 808 Upshur Street, N.W., for 51 years of business in the District of Columbia, and to recognize the shoe repair store for its contributions to the Ward 4 business community.

WHEREAS, Philip's Shoe Repair is a shoe repair business located in the Petworth neighborhood of Washington, D.C.;

WHEREAS, in 1966, after apprenticing as a cobbler specializing in orthopedic shoes in Sicily, Philip Calabro migrated to the District of Columbia to work with Nick Cicala at Nick's Shoe Repair;

WHEREAS, in 1969, Philip Calabro purchased Nick's Shoe Repair and changed the name to Philip's Shoe Repair;

WHEREAS, over the past 5 decades, Philip's Shoe Repair has served countless residents, including numerous mayors of the District of Columbia;

WHEREAS, Philip's Shoe Repair has been a staple of the Petworth neighborhood and a valued member of the Ward 4 business community; and

WHEREAS, on November 17, 2017, Philip's Shoe Repair will close its doors after 51 years of business and service.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Philip's Shoe Repair Recognition Resolution of 2017".

Sec. 2. The Council of the District of Columbia celebrates Philip's Shoe Repair, located at 808 Upshur Street, N.W., on 51 years of business in the District of Columbia, and recognizes owner Philip Calabro and his wife Laurretta for their contributions to the Petworth community.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-214

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To recognize and honor Christ Church, Georgetown on the occasion of its 200th anniversary and to declare November 12, 2017, as “Christ Church, Georgetown Day” in the District of Columbia.

WHEREAS, a second Episcopal congregation in Georgetown was formed at a meeting in the Bridge Street residence of Thomas Corcoran, Sr. on November 10, 1817;

WHEREAS, that congregation shortly thereafter began holding services in the Lancaster School building on Beall Street;

WHEREAS, that congregation purchased a lot at the corner of Congress and Beall Streets in Georgetown and commenced building a church on May 15, 1818;

WHEREAS, the first services in the new church were held on Christmas Day in 1818;

WHEREAS, the new church was consecrated on December 30, 1818, by Bishop James Kemp and given the name Christ Church;

WHEREAS, Christ Church, Georgetown, has continued at the same site ever since, now occupying the third church building at what is now the corner of 31st and O Streets, N.W.; and

WHEREAS, Christ Church, Georgetown has been an integral part of the Georgetown community throughout its history, contributing notably to its educational and social resources in addition to being a place of Christian worship.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Christ Church, Georgetown 200th Anniversary Celebration Recognition Resolution of 2017”.

Sec. 2. The Council of the District of Columbia recognizes and honors Christ Church, Georgetown on the observance of its 200th anniversary celebration and declares November 12, 2017, as “Christ Church, Georgetown Day” in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-215

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To join The Kosciuszko Foundation in recognizing and honoring the memory of General Thaddeus Kosciuszko, an extraordinary hero, for his singular contributions to the freedoms we all enjoy as Americans, and for his commitment to “freedom for all,” which remains a shining example to the District of Columbia and her citizens, and to declare December 2, 2017, as “General Thaddeus Kosciuszko Day” in the District of Columbia.

WHEREAS, The Kosciuszko Foundation marks 2017 as the 200th anniversary of the death of General Thaddeus Kosciuszko;

WHEREAS, General Thaddeus Kosciuszko demonstrated death-defying bravery during his 7-year of service in George Washington’s Continental Army during the Revolutionary War;

WHEREAS, General Kosciuszko was instrumental in the key American victory at the Battle of Saratoga in 1777;

WHEREAS, General Kosciuszko was a skilled engineer who fortified West Point and authored the United States Army’s First artillery manual;

WHEREAS, General Kosciuszko led the insurrection of 1794 in his native Poland against the Russian occupation;

WHEREAS, General Kosciuszko was a strong proponent of the abolition of serfdom in Europe and slavery in America, who exhorted his American friends to fulfill the promise of their doctrine of inalienable rights for all by ending slavery;

WHEREAS, General Kosciuszko left his American estate to his friend Thomas Jefferson with instructions that it be used to purchase the freedom of American slaves and provide for their education; and

WHEREAS, General Kosciuszko’s commitment to liberty and equality are an inspiration to this day.

ENROLLED ORIGINAL

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “General Thaddeus Kosciuszko Recognition Resolution of 2017”.

Sec. 2. The Council of the District of Columbia recognizes, honors, and salutes General Thaddeus Kosciuszko for his unwavering commitment (in the words of Thomas Jefferson) to “that liberty which is to go to all, and not to the few or rich alone”, an ideal relevant to this day to the District of Columbia and her citizens, and declares December 2, 2017, as “General Thaddeus Kosciuszko Day” in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-216

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To recognize Dr. Thomas J. LeBlanc on his inauguration as the 17th President of the George Washington University and to declare November 13, 2017, as “Thomas J. LeBlanc Day” in the District of Columbia.

WHEREAS, Dr. Thomas J. LeBlanc officially begins his service to the George Washington University (“GWU”) as its 17th President on November 13, 2017;

WHEREAS, President LeBlanc presides over an institution that has fostered deep ties and friendships with the Washington, D.C. metropolitan community that have endured for nearly 2 centuries;

WHEREAS, President LeBlanc pledges to continue GWU’s culture of public and community service throughout all 8 wards of the District, including building upon a record 711,841 hours of community service logged this past year by the GWU community; and

WHEREAS, President LeBlanc has already demonstrated his desire and commitment to maintain good neighbor relations and open dialogue, use his institution as a vehicle for social mobility, particularly within the District, and spur the university’s continued growth as a world-class research institution that contributes to the economic, cultural, and civic life of the Washington, D.C. metropolitan area for years to come.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “George Washington University President Thomas J. LeBlanc Inaugural Recognition Resolution of 2017”.

Sec. 2. The Council of the District of Columbia welcomes President LeBlanc and his family into our community, embraces his desire to contribute to the people and institutions throughout the Washington, D.C. metropolitan area, and declares November 13, 2017, as “Thomas J. LeBlanc Day” in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-217

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To recognize and honor the work of Channing D. Phillips for his service as District of Columbia U.S. Attorney.

WHEREAS, Channing D. Phillips was born in the District of Columbia, the eldest child of Jane and Channing E. Phillips, a District clergyman, civil rights activist, and, in 1968, the first African American to be placed in nomination for President by a major political party;

WHEREAS, Channing D. Phillips is a graduate of the District's Wilson High School and went on to earn a Bachelor's degree at the University of Virginia in 1980 and a law degree at Howard University in 1986;

WHEREAS, Channing D. Phillips began his legal career as a law clerk to the Honorable Shellie F. Bowers of the Superior Court of the District of Columbia, serving from September of 1987 to August of 1990.

WHEREAS, from 1994 through 2010, Channing D. Phillips served the U.S. Attorney's Office in several capacities, including Assistant U.S. Attorney; Special Counsel to the United States Attorney; Chief of Staff for the United States Attorney; and Principal Assistant United States Attorney;

WHEREAS, subsequent to his tenure at the U.S. Attorney's Office, Channing D. Phillips served as the Deputy Associate Attorney General for the U.S. Department of Justice, working on the Attorney General's Diversity Management Plan, and, thereafter, became Senior Counselor to the Attorney General focusing on criminal justice matters and reform efforts until October 2015;

WHEREAS, based on the findings of the Federal Law Enforcement Nominating Commission, D.C. Delegate Eleanor Holmes Norton recommended Channing D. Phillips to President Barack Obama for U.S. Attorney for the District of Columbia;

WHEREAS, on October 8, 2015, President Barack Obama nominated Channing D. Phillips for U.S. Attorney for the District of Columbia;

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WHEREAS, Channing D. Phillips took office on October 19, 2015, replacing Acting U.S. Attorney for the District of Columbia Vincent Cohen;

WHEREAS, Channing D. Phillips led the District of Columbia’s U.S. Attorney’s Office, both the largest U.S. Attorney’s office and unique among the 93 United States Attorney’s Offices, as it conducts both local and federal prosecutions for the District of Columbia;

WHEREAS, Channing D. Phillips managed over 350 assistant United States Attorneys and over 350 support staff to fulfill the work of the U.S. Attorney’s Office for the District of Columbia; and

WHEREAS, Channing D. Phillips served with rigor and integrity until he was replaced by President Donald Trump’s nominee, Jessie K. Liu, in September 2017.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA That this resolution may be cited as the “Channing D. Phillips Recognition Resolution of 2017”.

Sec. 2. The Council of the District of Columbia recognizes and honors Channing D. Phillips for his years of service to the District of Columbia as the U.S. Attorney.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-218

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To recognize and honor St. Anthony of Padua Catholic Church for its longstanding commitment to Ward 5 and District residents on the occasion of its 125th anniversary.

WHEREAS, St. Anthony of Padua Parish has been located in Brookland, a Ward 5 neighborhood, for 125 years;

WHEREAS, St. Anthony of Padua Catholic Church has been a pillar in the community, providing critical services through the St. Vincent De Paul Emergency Food Pantry and the Missionary Childhood Association for the Pontifical Mission Societies;

WHEREAS, St. Anthony of Padua Catholic Church provides athletic opportunities to young people and an environment to improve teamwork, competition, and fair play through the Champions of Youth program;

WHEREAS, St. Anthony of Padua Catholic Church provides education to District children at St. Anthony Catholic School; and

WHEREAS, St. Anthony of Padua Catholic Church provides resources to seniors through “The Tonies” program to ensure that the ill or homebound individuals and seniors with physical limitations are supported.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “St. Anthony of Padua Catholic Church 125th Anniversary Recognition Resolution of 2017”.

Sec. 2. The Council of the District of Columbia recognizes and honors St. Anthony of Padua Catholic Church on the occasion of its 125th anniversary for its commitment to the Ward 5 community and the District.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-219

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To recognize the Catalogue for Philanthropy: Greater Washington on the occasion of its 15th anniversary.

WHEREAS, the Catalogue for Philanthropy: Greater Washington was founded in 2003 by Barbara Harman, who recognized the need to identify and highlight the best community-based nonprofits in the District of Columbia and the metropolitan region;

WHEREAS, the Catalogue for Philanthropy: Greater Washington began in the District with strong support from local residents and has now grown to be a nonprofit serving the entire metropolitan Washington, D.C. region;

WHEREAS, the Catalogue for Philanthropy: Greater Washington has created a rigorous vetting process that is implemented by local experts to ensure excellence in the programming, finances, and impact of selected nonprofits;

WHEREAS, the Catalogue for Philanthropy: Greater Washington raises the visibility and resources of these nonprofits, connects them with philanthropic dollars that fuel their growth, and works to create a movement for social good in the metropolitan Washington, D.C. region;

WHEREAS, the Catalogue for Philanthropy: Greater Washington has a tradition of advocating for and supporting nonprofits through capacity-building programs designed to strengthen them in the face of rapid change;

WHEREAS, the leaders of the Catalogue for Philanthropy: Greater Washington envision a stronger, more resilient, more hopeful community that is a better place to live for everyone; and

WHEREAS, the Catalogue for Philanthropy: Greater Washington has demonstrated its impact by raising over \$40 million for the charities in its network, including the 200 organizations operating within the District of Columbia.

ENROLLED ORIGINAL

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Catalogue for Philanthropy: Greater Washington 15th Anniversary Recognition Resolution of 2017”.

Sec. 2. The Council of the District of Columbia recognizes the Catalogue for Philanthropy: Greater Washington for its contributions to the community and celebrates its 15th anniversary.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-220

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To recognize and honor Dignity/Washington on the occasion of its 45th anniversary celebration and for its contributions to communities throughout the District of Columbia.

WHEREAS, Dignity/Washington is a local chapter of a national organization of Lesbian, Gay, Bisexual, and Transgender (“LGBT”) Catholics;

WHEREAS, Dignity/Washington was founded in December 1972 at a meeting in the cafeteria of the Shrine of the Immaculate Conception;

WHEREAS, Dignity/Washington provides religious, social, and pastoral programs for the benefit of the District of Columbia's LGBT community at The Dignity Center at 721 8th Street, S.E., and at St. Margaret’s Episcopal Church at 1820 Connecticut Avenue, N.W.;

WHEREAS, Dignity/Washington purchased The Dignity Center at 721 8th Street, S.E., in 1997 to provide a space for Dignity/Washington's office and social needs and for meeting use by several local LGBT organizations;

WHEREAS, Dignity/Washington has organized 2 DignityUSA national conventions and numerous regional meetings in the District of Columbia;

WHEREAS, Dignity/Washington has celebrated Mass for its members, families, and friends on all Sundays of the year since 1976, as well as Mass on holy days of obligation; hosted monthly anointings with holy oils for those sick in body, mind, or spirit; and hosted retreats, Triduum events, baptisms, marriages, funerals, and other spiritual activities, as needed;

WHEREAS, Dignity/Washington has contributed thousands of dollars to local charities and relief efforts to various national and international natural catastrophes, including the Indian Ocean tsunami, earthquakes in Haiti and Nepal, and hurricanes Katrina, Irma, and Maria, among others;

ENROLLED ORIGINAL

WHEREAS, Dignity/Washington ministers to members of the LGBT community by providing a place of comfort and support, and providing insight to the Catholic Church and the greater community about the holiness of LGBT-identifying individuals and their worth as full members of the Catholic Church, city, and world;

WHEREAS, Dignity/Washington has been involved in many demonstrations of support for the civil and religious rights of the LGBT community, including various national marches on Washington, D.C.; testimonies before the Council in support of marriage equality for LGBT individuals; all visits to the District of Columbia by Popes John Paul II, Benedict XVI, and Francis; and all Capital Pride Parades and festivals; and

WHEREAS, on December 2, 2017, Dignity/Washington will celebrate its 45th anniversary with a formal dinner.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Dignity/Washington 45th Anniversary Celebration Recognition Resolution of 2017”.

Sec. 2. The Council of the District of Columbia recognizes and honors Dignity/Washington on its 45th anniversary of providing affirming outreach to LGBT Catholics and others while establishing a nurturing community of worship, blessing, celebration, ministry, spiritual development, education, and fellowship throughout the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-221

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To recognize the contributions of the DC Arts and Humanities Education Collaborative, celebrating its 20th anniversary on October 30, 2017.

WHEREAS, the DC Arts and Humanities Education Collaborative consists of more than 100 nonprofit member cultural organizations and education practitioners in the District of Columbia;

WHEREAS, the mission of the DC Arts and Humanities Education Collaborative is to work with its members to advance and provide equitable access to arts and humanities education for all District of Columbia public and public charter schools;

WHEREAS, the DC Arts and Humanities Education Collaborative was founded in 1998 by the District of Columbia’s Commission on the Arts and Humanities and The John F. Kennedy Center for the Performing Arts and Humanities Council of Washington, DC, along with District of Columbia Public Schools and other local cultural institutions and funders, to improve and advance equitable access to learning opportunities in the arts and humanities for all District of Columbia public and public charter school students;

WHEREAS, through its legacy program, ‘Arts and Humanities for Every Student,’ the DC Arts and Humanities Education Collaborative has sent more than 600,000 District of Columbia public and public charter school students from 145 schools to high-quality arts and humanities experiences at many of the greatest cultural institutions in the world that are here in the District of Columbia;

WHEREAS, the DC Arts and Humanities Education Collaborative works to improve the collective impact of its education community of practice’s connection to curriculum, both in and out of the classroom, through trainings and professional development opportunities for its member educators;

ENROLLED ORIGINAL

WHEREAS, the DC Arts and Humanities Education Collaborative’s current and emeritus board, executive director, and staff have provided steadfast leadership to the arts and humanities education community to the betterment of the District of Columbia;

WHEREAS, equitable access to an arts and humanities education plays an important role in engaging students and educators and ensuring students are prepared to compete in an information-based economy where they are in the best position to learn and to succeed;

WHEREAS, the DC Arts and Humanities Education Collaborative advocates and advances for greater public/private partnerships and investment in arts and humanities educational opportunities for the District’s youngest residents; and

WHEREAS, the DC Arts and Humanities Education Collaborative is an invaluable resource to the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “DC Arts and Humanities Education Collaborative 20th Anniversary Recognition Resolution of 2017”.

Sec. 2. The Council of the District of Columbia recognizes and honors the DC Arts and Humanities Education Collaborative’s outstanding leadership, contributions, and invaluable service offered to the arts and humanities education community and District of Columbia public and public charter school students and educators and the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-224

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To recognize the Transgender Day of Remembrance, to celebrate the resilience of transgender individuals, and to declare November 20, 2017, as “Transgender Day of Remembrance” in the District of Columbia.

WHEREAS, transgender individuals face high rates and severity of violence, including accounting for over 68% of murdered lesbian, gay, bisexual, transgender, or HIV-positive individuals in 2016, according to the National Coalition of Anti-Violence Projects;

WHEREAS, the District of Columbia has a particularly alarming history of violence against transgender individuals, especially transgender women of color, including the murders of Deeniquia Dodds, Deoni Jones, Lashai Mclean, Tyli’a Mack, Elexius Woodland, Bella Evangelista, Emonie Spaulding, Stephanie Thomas, Ukea Davis, and too many others;

WHEREAS, countless transgender individuals experienced violence and harassment this year in the District of Columbia and the metropolitan area;

WHEREAS, the national political climate of the past few years has demonized transgender people, including an effort to roll-back federal civil rights protections for transgender individuals;

WHEREAS, the vast majority of transgender women murdered and attacked each year are African American or Latina, requiring that the continued commitment to fight racism be a critical component of efforts to protect transgender lives;

WHEREAS, the District of Columbia strives to be a city that is welcoming and safe for all residents and visitors, including transgender people;

ENROLLED ORIGINAL

WHEREAS, the Transgender Day of Remembrance is held on November 20 around the world to memorialize those killed due to anti-transgender hatred or prejudice;

WHEREAS, Transgender Day of Remembrance is also a time to recognize the resilience of transgender communities and individuals, and to celebrate those who are living and fighting against hatred; and

WHEREAS, the District of Columbia transgender community and allies have commemorated Transgender Day of Remembrance since 2001, growing from a small group of activists to an event that attracts hundreds of participants and attendance from government officials.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Transgender Day of Remembrance Recognition Resolution of 2017”.

Sec. 2. The Council of the District of Columbia recognizes the contributions of the transgender community, its vulnerability to violence, and the resilience of transgender individuals, and declares November 20, 2017 as “Transgender Day of Remembrance” in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-225

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To posthumously honor the life of Ray Noll for his commitment to the animals of the District of Columbia and his impact on the District of Columbia.

WHEREAS, Ray Noll joined the Humane Rescue Alliance in 2012 as Director of Animal Control Field Services;

WHEREAS, as Vice President of Field Services at the Humane Rescue Alliance, Ray Noll led the Animal Control and Humane Law Enforcement divisions, including animal control officers, animal control investigators, humane law enforcement officers, dispatchers, and wildlife specialists;

WHEREAS, before joining the Humane Rescue Alliance, Ray Noll was the Chief of Special Police at the World Bank;

WHEREAS, Ray Noll’s caring and protective nature was exemplified by his work at the Humane Rescue Alliance, as an EMT, and as a longtime humane law enforcement officer and K-9 officer;

WHEREAS, Ray Noll saved the lives of thousands of animals throughout his career;

WHEREAS, in 2016, Roy Noll received the Metropolitan Police Department COP Special Award for his compassion, cooperation, and professionalism;

WHEREAS, on September 28, 2017, Ray Noll passed away at 55 years of age; and

WHEREAS, Ray Noll is survived by his 2 children, Samantha and RJ, his girlfriend Lori Mayer, and his family at the Humane Rescue Alliance.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Ray Noll Recognition Resolution of 2017”.

Sec. 2. The Council of the District of Columbia honors and celebrates the life of Ray Noll for his outstanding achievements and steadfast dedication to serving the people and animals of the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-226

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To posthumously honor the life of Zaire Kelly, a District resident, scholar, and youth leader, and to declare October 19, 2018, as “Zaire Kelly Day” in the District of Columbia.

WHEREAS, Zaire Kelly was born on October 19, 2000 and lived in the Brentwood neighborhood of Ward 5;

WHEREAS, Zaire Kelly attended Thurgood Marshall Academy Public Charter School, with hope of becoming senior class president;

WHEREAS, Zaire Kelly was a member of the Thurgood Marshall Academy track and basketball teams;

WHEREAS, Zaire Kelly participated in College Bound, a program that provides academic tutoring, mentorship, retreats, college tours, and other scholastic opportunities at the Ward 5 Beacon House Site;

WHEREAS, Zaire Kelly was planning to attend Florida Agricultural and Mechanical University and wanted to major in Chemistry;

WHEREAS, Zaire Kelly intended to begin a career in forensic sciences after graduating from college;

WHEREAS, District of Columbia Attorney General Karl A. Racine said his office choose Zaire Kelly for the Right Direction Award because he was an “exceptional role model for his peers;”

WHEREAS, Zaire Kelly served as a Ward 5 representative to the Marion Barry Youth Leadership Institute;

WHEREAS, Zaire Kelly will be deeply missed by his family, mother and step-father, Zanette and Ishmael Childs; father and step-mother, Curtis and Delicia Kelly; fraternal twin brother, Zion Blessing Kelly, and 13 siblings, aunts, uncles and cousins; and

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WHEREAS, Zaire Kelly will also be missed by his friends, former classmates, and several communities in the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Zaire Kelly Recognition Resolution of 2017”.

Sec. 2. The Council of the District of Columbia posthumously recognizes Zaire Kelly and declares October 19, 2018, as “Zaire Kelly Day” in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-227

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To declare the week of November 13 through November 19, 2017, as “Apprenticeship Week” in the District of Columbia.

WHEREAS, the week of November 13 through November 19, 2017, is National Apprenticeship Week;

WHEREAS, the national registered apprenticeship system enables residents to earn while they learn and helps employers build a talented workforce by ensuring high-quality training;

WHEREAS, the average wage for a fully proficient worker who completes an apprenticeship translates to approximately \$60,000 annually, and apprentices who complete their program earn approximately \$300,000 more over their careers than non-apprenticeship participants;

WHEREAS, District law requires all contractors who contract with the city to perform construction, renovation, or information technology work of at least \$500,000 to register an apprenticeship program;

WHEREAS, District law requires all beneficiaries of city-contracted projects in excess of \$1 million that the District administers to register an apprenticeship program;

WHEREAS, District law requires that at least 35% of all apprentice hours performed pursuant to programs required by the above-referenced provisions be worked by District of Columbia residents;

WHEREAS, District law requires that at least 60% of all apprentice hours performed on construction projects with \$5 million or more of government assistance be worked by District of Columbia residents;

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WHEREAS, the vast majority of registered apprenticeship programs in the District are in the construction trades;

WHEREAS, there is a need to expand apprenticeships in the other high-demand industries in the District, such as healthcare and information technology;

WHEREAS, the vast majority of apprentices are male; and

WHEREAS, there is a need to ensure that these opportunities are available to all residents, including women.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Apprenticeship Week Recognition Resolution of 2017”.

Sec. 2. The Council of the District of Columbia declares the week of November 13 through November 19, 2017, as “Apprenticeship Week” in the District of Columbia and encourages interested parties to contact the Department of Employment Services so District residents can learn how a registered apprenticeship can start them on a career path and District businesses can learn how operating a registered apprenticeship program can address their long-term hiring needs.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-228

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To recognize and celebrate Myrna Sislen, a local small business owner, for her significant donation to the Jefferson Middle School Academy Music Department in memory of Lindy Mendelsohn Sislen, Ms. Sislen’s mother and an alumna of the school.

WHEREAS, each spring, members of the National Association of Music Merchants (“NAMM”) gather in the District of Columbia to advocate on Capitol Hill for the right of every child to have access to a music education;

WHEREAS, NAMM’s multi-day advocacy effort included a “Fly-In Day of Service,” where NAMM members volunteered to sort and inventory 130 band instruments at Jefferson Middle School Academy, a District of Columbia Public Schools school located in the Southwest Waterfront neighborhood of Ward 6;

WHEREAS, NAMM member volunteers determined that, of the 130 instruments inspected on the Fly-In Day of Service, 100 of Jefferson Academy’s instruments were damaged and in desperate need of repair;

WHEREAS, of the 100 NAMM members asked to volunteer additional time and resources to repair the instruments, District resident Myrna Sislen was the only NAMM member to undertake the costly and extensive restoration effort –at her own expense;

WHEREAS, Ms. Sislen’s instrument expertise derives from her ownership of the District’s only full-service music store, Middle C Music, located in the Tenleytown community, which recently celebrated 15 years of service;

WHEREAS, Ms. Sislen volunteered to repair and maintain the instruments in loving memory of her mother, Lindy Mendelsohn Sislen, who graduated from Jefferson Academy, formerly Jefferson Junior High School, in 1938, and Eastern High School in 1942;

WHEREAS, Ms. Sislen’s grandmother, Ray Burke Mendelsohn, owned and operated Ray’s Toyland mere blocks away from Jefferson Academy on 4th Street, S.W., from 1931 to 1953; and

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WHEREAS, to date, Ms. Sislen has personally transported and repaired 38 band instruments and counting, including flutes, clarinets, trumpets, trombones, alto saxophones, bass clarinets, euphoniums, and tubas.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Myrna Sislen Recognition Resolution of 2017”.

Sec. 2. The Council of the District of Columbia honors Myrna Sislen and thanks her for her generous and extensive donation of repair and refurbishment services to the Jefferson Middle School Academy Music Department.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-229

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To celebrate and honor the life of Konstantinos Kraniotis, a celebrated neighborhood gardener, talented musician, and a beloved leader in the District of Columbia's Glover Park community in Ward 3, where everyone called him "Dino."

WHEREAS, Mr. Kraniotis was born into a musical family on June 12, 1946 in Argos, Greece in the Peloponnese, where he was raised before studying electronics and marine architecture at the University of Athens, Greece;

WHEREAS, in his youth, Mr. Kraniotis performed with Mikis Theodorakis and later with the Poulis Orchestra, where he developed his guitar techniques and gained a profound appreciation for international music while under the tutelage of Dimitri Poulis;

WHEREAS, Mr. Kraniotis sang with the Trio Moreno in Athens and performed in nightclubs throughout Greece while enjoying success as a songwriter;

WHEREAS, Mr. Kraniotis met his wife, Patricia, in the seaport town of Nafplion, Greece in the early 1970s;

WHEREAS, after marrying, the couple lived in Greece before relocating to Seattle, Washington, where their daughter Lydia was born;

WHEREAS, the young family eventually moved to the District of Columbia, where Mr. Kraniotis continued his professional music career at venues such as the Astor Mediterranean Restaurant;

WHEREAS, in the mid-1980s, Mr. Kraniotis took up gardening as a hobby at the Glover Park Community Garden and quickly became an adored presence in the community, known for his dry humor and dedication to his garden located in the heart of the large, 150-plot community space;

WHEREAS, Mr. Kraniotis maintained his personal garden for over 30 years and served as the Garden Manager and President of the Glover Park Community Garden Association for the past 14 years;

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WHEREAS, while managing a community space which included residents of 36 different ethnic nationalities, Mr. Kraniotis built a strong and inclusive community among his fellow gardeners and neighbors while ensuring the space was well-maintained and weed-free;

WHEREAS, considered to be one of Glover Park’s premier gardeners, Mr. Kraniotis served as a mentor to new community garden members, often volunteering his time and expertise to novices;

WHEREAS, Mr. Kraniotis was an inviting and unifying force in the neighborhood who welcomed all to his weekly barbeques and garden-centered social events –he truly radiated affection and kindness; and

WHEREAS, the Glover Park Community mourns the loss of their beloved “gardener by day, professional musician by night.”

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Konstantinos Kraniotis Recognition Resolution of 2017”.

Sec. 2. The Council of the District of Columbia honors Konstantinos Kraniotis.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-230

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To recognize and honor the Jack & Lovell Olender Foundation Awardees for 2018 for their dedicated service to the community and to declare November 29, 2017, as “Jack & Lovell Olender Foundation Awardees Day” in the District of Columbia.

WHEREAS, the Jack & Lovell Olender Foundation aims to provide opportunity and justice, and honor the public figures and ordinary citizens who have made exemplary contributions;

WHEREAS, for 3 decades, the Jack & Lovell Olender Foundation has recognized and honored citizens of the District of Columbia and the world for their dedicated, heroic, and meritorious service;

WHEREAS, the Jack & Lovell Olender Foundation Awardees for 2018 have been selected;

WHEREAS, Robert Peter Gale, M.D., has been selected by the Jack & Lovell Olender Foundation as the recipient of the *Peacemaker 2018* Award; and

WHEREAS, six students from Howard Law School and 6 students from the University of the District of Columbia David A. Clarke School of Law have been selected to receive the Earl H. Davis Award of the Jack & Lovell Olender Foundation for their legal work for the public.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Jack & Lovell Olender Foundation Awardees for 2018 Recognition Resolution of 2017”.

Sec. 2. The Council of the District of Columbia recognizes, honors, salutes, and congratulates the Jack & Lovell Olender Foundation Awardees for the valuable contributions they have made to the District of Columbia and declares November 29, 2017, as “Jack & Lovell Olender Foundation Awardees Day” in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-231

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To recognize and honor the Genderson family of Schneider's of Capitol Hill for their numerous contributions to the Capitol Hill neighborhood and the broader Ward 6 community.

WHEREAS, the Genderson family has been a part of the Capitol Hill community for more than 100 years;

WHEREAS, the Genderson family first owned and operated a bar in Southeast Washington, D.C., that Jon and Rick Genderson's grandfather bought before Prohibition, and their mother and father each attended Stuart Junior High School, now called Stuart Hobson Middle School;

WHEREAS, the Genderson family business, Schneider's of Capitol Hill, has been open for business in the same location since 1949, and has been an anchor of the Capitol Hill business community for generations;

WHEREAS, the Genderson family has been involved with the development of Barracks Row on 8th Street, S.E., and the Capitol Hill Village, which serves seniors in the community;

WHEREAS, the Genderson family has made generous contributions to support nearly every Capitol Hill school, children's sports organization, and neighborhood group; and

WHEREAS, the Genderson family is the first recipient of Hill Havurah's Community Service Award, recognizing individuals who exemplify the spirit of *Tikkun Olam* [repair of the world] in the immediate community, in the greater Washington, D.C. area, and in the wider world.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Genderson Family Recognition Resolution of 2017".

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Sec. 2. The Council of the District of Columbia acknowledges and honors the Genderson family's commitment and service to neighbors, Capitol Hill, and the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

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A CEREMONIAL RESOLUTION

22-232

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To honor the life of Dolores Kendrick, the District's second poet laureate, for a lifetime of contributions to the District of Columbia and the literary world and to encourage all District residents to read her work.

WHEREAS, Dolores Kendrick served as the District of Columbia's second poet laureate from 1999 until her death, on November 7, 2017, at 90 years of age in her home in Southwest Washington, D.C.;

WHEREAS, Dolores Kendrick was a lifelong District resident, born on September 7, 1927, who grew up in the LeDroit Park neighborhood, was a long-time member of Immaculate Conception Catholic Church on 8th Street, N.W., and lived in Southwest Washington, D.C. for the last 20 years, where she always took an interest in the lives of her neighbors and had a kind word for all, so humble that many did not know her title;

WHEREAS, Dolores Kendrick graduated from Dunbar High School and Miner Teacher's College, which would later merge with the University of the District of Columbia; received an M.A. from Georgetown University; taught for 20 years in District of Columbia public schools; and helped found the School Without Walls;

WHEREAS, Dolores Kendrick worked with the District of Columbia Commission on Arts and the Humanities to establish programs that would inspire young poets in the District, including the Poetry Out Loud competition and the Poet-In-Progress program;

WHEREAS, Dolores Kendrick inspired a generation of poets, especially African-American women, through her writing and teaching and published 4 collections of poetry during her life: *Through the Ceiling* in 1975, *Now Is the Thing to Praise* in 1984, *The Women of Plums: Poems in the Voices of Slave Women* in 1990, and *Why the Woman is Singing on the Corner: a Verse Narrative* in 2001;

WHEREAS, Dolores Kendrick received the Anisfield-Wolf Book Award, given annually to recognize books that have made important contributions to our understanding of racism and human diversity, for *The Women of Plums*, which, based on thorough research, created lyrical

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monologues of 34 enslaved black women, and which was adapted for the theater and won the New York Playwrights Award in 1997 and was the inspiration for the album *The Color of Dusk*;

WHEREAS, Dolores Kendrick continued to write and inspire until the end of her life, recently finishing a collection of poems called *Rainbow on Fire*, which will be published posthumously by Black Classic Press;

WHEREAS, Dolores Kendrick's words appear just outside of the NoMa-Gallaudet U Metro station, forever reminding us all to "Go slowly in taking the steps, and fast when counting stars"; and

WHEREAS, the District of Columbia and the Council of the District of Columbia are privileged and honored to remember the life and work of Dolores Kendrick as a teacher and writer.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Poet Laureate Dolores Kendrick Recognition Resolution of 2017".

Sec. 2. The Council of the District of Columbia recognizes Dolores Kendrick for her work as a teacher and a writer, and as a neighbor and lifelong District resident, and urges all District residents to read the works of Dolores Kendrick.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-233

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To declare December 2017 as “AIDS Awareness Month” in the District of Columbia.

WHEREAS, HIV and AIDS continues to be a major global public health issue;

WHEREAS, in 2015, an estimated 36.7 million people were living with HIV, including 1.8 million children, and 1.1 million people died of AIDS-related illnesses;

WHEREAS, according to the Center for Disease Control and Prevention, more than 1.2 million people in the United States are living with HIV, and one in 8 of them don’t know it;

WHEREAS, AIDS Awareness Month is a prime opportunity to raise awareness, commemorate the lives lost, and celebrate victories such as increased access to treatment and prevention services;

WHEREAS, the District of Columbia has been devoted to the fight against AIDS and has experienced a 74% decline in new HIV infection cases since 2007;

WHEREAS, on December 1, 2015, World AIDS Day, Mayor Bowser signed the Fast Track Cities Declaration, an initiative led by mayors and city governments from more than 50 high-HIV-burden cities around the world, reaffirming the District’s long-standing commitment toward fighting HIV/AIDS;

WHEREAS, in December 2016, Mayor Bowser released the 90/90/90/50 Plan Ending the HIV Epidemic in the District of Columbia by 2020 developed by the Department of Health in a public-private partnership with the DC Appleseed Center and Washington AIDS Partnership;

WHEREAS, World AIDS Day was started in 1988 and is celebrated every year on December 1;

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WHEREAS, World AIDS Day continues to be an important day globally because it serves as a reminder that HIV has not gone away, and there remains a vital need to raise money, increase awareness, fight prejudice, and improve education;

WHEREAS, the 2017 World AIDS Day theme is “Increasing Impact through Transparency, Accountability, and Partnerships”; and

WHEREAS, recognizing December as AIDS Awareness Month reaffirms the District’s commitment to combatting this epidemic, both locally and globally.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “AIDS Awareness Month Recognition Resolution of 2017”.

Sec. 2. The Council of the District of Columbia recognizes and supports AIDS Awareness Month, declares December 2017 as “AIDS Awareness Month” in the District of Columbia, urges citizens to be tested, and supports the ongoing efforts by Mayor Bowser, the District of Columbia government, health care providers, concerned citizens, and community-based organizations to fight and ultimately defeat this epidemic.

Sec. 3. This resolution shall take into effect immediately upon the first date of publication in the District of Columbia Registrar.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-235

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To recognize the Xi Zeta Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated® as its members celebrate 35 years of Sisterhood and Service.

WHEREAS, the Xi Zeta Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated® was chartered by 80 women on January 16, 1982 at Howard University, the birthplace of Alpha Kappa Alpha Sorority, Incorporated®, during the sorority’s 74th anniversary;

WHEREAS, the Xi Zeta Omega Chapter currently has 252 active members, including 24 Golden and 74 Silver Star members, and operates under the leadership of President Daphne Doyle Benbow;

WHEREAS, the Xi Zeta Omega Chapter offers its members a broad range of activities designed for fun, fellowship, and personal growth, including its Esther G. Pollard Leadership AKAdemy, the Ivy Pearl Book Club, heritage celebrations, and health and fitness events;

WHEREAS, the Xi Zeta Omega Chapter, since its inception, has focused its activities on implementing the programs of Alpha Kappa Alpha Sorority, Incorporated®, establishing and executing initiatives specifically benefitting District of Columbia communities in service to all mankind;

WHEREAS, the Xi Zeta Omega Chapter has supported and served more than 50 community organizations over the past 35 years, championing and supporting causes and issues that impact youth and families in need throughout the District of Columbia with scholarships for college-bound students, seasonal wraps and resource workshops for senior citizens, cleanup projects in children’s playgrounds, voter registration drives, and issue forums;

WHEREAS, the Xi Zeta Omega Chapter consistently supports the International Program of Alpha Kappa Alpha Sorority, Incorporated®;

WHEREAS, the Xi Zeta Omega Chapter also maintains its signature chapter service offerings, such as the Youth Service Awards, which recognizes young people and youth-serving organizations that exemplify, promote, and support positive youth development; Youth Oratorical Contest, which focuses on the writings of famous African Americans and promotes

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self-confidence through public speaking; the support of the residents of Asbury Dwellings, a local senior citizens residential community by playing Bingo every other month, celebrating Christmas, and donating seasonal clothing and personal care items; the support of Howard University's annual Alternative Spring Break through a financial donation to assist students volunteering in depressed urban areas; and the financial contribution to Food2Feed, a WHUR-FM radio project that feeds 20,000 families during the Thanksgiving and Christmas holidays;

WHEREAS, the Xi Zeta Omega Chapter's members established The Ivy Foundation in 1986 as a 501(c)(3) organization, of which Rosalie H. Stroman currently serves as the executive director, to provide opportunities for young people to achieve healthy and productive outcomes; support academic achievement and higher education; promote community economic development; and encourage volunteerism through community service while offering 4 scholarships for graduating high school seniors planning to pursue 4-year university studies: the Citywide Scholarship, the Legacy Scholarship, the Wilma G. Shepherd Memorial Scholarship, and the Hollie C. Chapmon Scholarship;

WHEREAS, the Xi Zeta Omega Chapter supervises the Omicron Pi undergraduate chapter of Alpha Kappa Alpha Sorority, Incorporated®, which includes The Catholic University of America, Georgetown University, and Trinity Washington University; and

WHEREAS, the Xi Zeta Omega Chapter celebrates 35 years of Sisterhood and Service in the District of Columbia, marking the milestone with a December 9, 2017 event to acknowledge and thank their community partners, members who have served for more than 50 years, and others who have supported the Xi Zeta Omega Chapter along its journey.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Xi Zeta Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated® 35th Anniversary Recognition Resolution of 2017".

Sec. 2. The Council of the District of Columbia congratulates the Xi Zeta Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated® for 35 years of Sisterhood and Service and recognizes the chapter for its many contributions to the communities of the District of Columbia in service to all mankind.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-236

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To recognize and honor the work of Nancy Ware for her service in management and administration of juvenile and adult criminal justice programs on the local, state, and national level.

WHEREAS, Nancy Ware was born in the District of Columbia, the eldest child of Dr. St. Elmo and Mrs. Mamie Crawford;

WHEREAS, Nancy Ware graduated from Calvin Coolidge High School and went on to earn Bachelor’s and Master’s degrees from Howard University in Educational Psychology;

WHEREAS, early in her career, Nancy Ware served as Executive Director of the Rainbow Coalition, Executive Director of the Citizenship Education Fund, and Executive Director of the District of Columbia Mayor's Youth Initiatives Office;

WHEREAS, from 2002 through 2010, Nancy Ware served as the first Executive Director of the Criminal Justice Coordinating Council (“CJCC”), where she developed the infrastructure to promote collaboration between the District of Columbia government and the executive and judicial branches of the federal government on critical public safety issues, including the development of the technical capability to support information sharing among CJCC member agencies;

WHEREAS, Nancy Ware's professional experience includes serving as Director of Technical Assistance and Training for the Department of Justice's Weed and Seed Program and as Director of National Programs for the Bureau of Justice Assistance, Office of Justice Programs;

WHEREAS, on December 1, 2011, Nancy Ware was appointed Director of the Court Services and Offender Supervision Agency for the District of Columbia (“CSOSA”), and, in that capacity, she has led the agency's 800 federal employees in providing community supervision for over 15,000 adults on probation, parole, and supervised release in the District of Columbia;

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WHEREAS, among other accomplishments, Nancy Ware implemented a young adult initiative to address the unique needs of CSOSA supervisees who are 25 years of age or younger, instituted the first citywide awards program for justice-involved individuals, and received congressional support to institute incentive-based supervision at CSOSA;

WHEREAS, Nancy Ware has devoted her professional career to public service and has spent many years working to ensure that the nation's capital remains safe for residents, workers, and visitors, and that juveniles and adults who have become involved in the criminal justice system are provided opportunities to re-enter, contribute, and thrive; and

WHEREAS, Nancy Ware's 6-year term as Director of CSOSA will expire as of December 1, 2017.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Nancy Ware Recognition Resolution of 2017".

Sec. 2. The Council of the District of Columbia recognizes, honors, and thanks Nancy Ware for her years of service to the District of Columbia in criminal justice policy and operation.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

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A CEREMONIAL RESOLUTION

22-237

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To recognize the contributions of the District of Columbia Chapter of the National Hook-Up of Black Women, Inc., celebrating its 40th anniversary on December 9, 2017.

WHEREAS, Dr. Arnita Young Boswell and 13 other spirited women founded the National Hook-Up of Black Women, Inc., in 1974 during the Fourth Congressional Black Caucus Legislative Weekend;

WHEREAS, the National Hook-Up of Black Women, Inc., gave African American women a desire and challenge to achieve their goals and aspirations;

WHEREAS, the National Hook-Up of Black Women, Inc.'s agenda is to impact public policy and legislation for the betterment of the minority community in general and the economic and political status of women;

WHEREAS, the National Hook-Up of Black Women, Inc., has chapters across the United States, all working towards the common goal of improving the lives of women and their families through the support of the arts, culture, health wellness, education, and human service programs;

WHEREAS, on December 9, 1977, the District of Columbia Chapter of the National Hook-Up of Black Women, Inc., was founded at the All Souls Unitarian Church under the leadership of Dr. Janette Hoston Harris;

WHEREAS, Dr. Janette Hoston Harris, a dutiful Ward 4 resident, served as founding chapter President for 7 years and has been serving as the chapter President since 2016;

WHEREAS, Dr. Janette Hoston Harris has contributed greatly to the District of Columbia as a professor, artist, author, and activist;

WHEREAS, in 1998, Dr. Janette Hoston Harris was appointed city historian for Washington, D.C., the first person to hold the post;

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WHEREAS, the District of Columbia Chapter of the National Hook-Up of Black Women, Inc., was founded as a communication network and community-based organization comprised of black women from the metropolitan Washington, D.C. area;

WHEREAS, the District of Columbia Chapter of the National Hook-Up of Black Women, Inc., has remained committed to improving the quality of life of the District's black community and the status of black women in particular;

WHEREAS, the District of Columbia Chapter of the National Hook-Up of Black Women, Inc.'s early history was intertwined with the National Office and has left an indelible mark in the community;

WHEREAS, the District of Columbia Chapter of the National Hook-Up of Black Women, Inc., has provided assistance and leadership to the national programs, scholarships, and operational support;

WHEREAS, the District of Columbia Chapter of the National Hook-Up of Black Women, Inc., established the idea of the National Fannie Lou Hamer Dinner and Award Program;

WHEREAS, the District of Columbia Chapter of the National Hook-Up of Black Women, Inc., has spearheaded numerous programs and services in the District of Columbia community;

WHEREAS, the District of Columbia Chapter of the National Hook-Up of Black Women, Inc., remains the flagship chapter of the National Hook-Up of Black Women, Inc.; and

WHEREAS, on December 9, 2017, the District of Columbia Chapter of the National Hook-Up of Black Women, Inc., will celebrate its 40th anniversary.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Chapter of the National Hook-Up of Black Women, Inc., 40th Anniversary Recognition Resolution of 2017".

Sec. 2. The Council of the District of Columbia recognizes and honors Dr. Janette Hoston Harris for her leadership in founding the District of Columbia Chapter of the National Hook-Up of Black Women, Inc., and the organization and its members, both past and present, for their outstanding leadership, contributions, and invaluable service to the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-238

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To recognize the International Day to End Violence Against Sex Workers, and to declare December 17, 2017, as “International Day to End Violence Against Sex Workers” in the District of Columbia.

WHEREAS, sex workers, or people who offer sexual services in exchange for something of value, are disproportionately targeted for violence around the globe and in the District of Columbia;

WHEREAS, criminalization of sex work and the accompanying stigma lead to sex workers being viewed as less worthy of having their human rights respected and protected, as exemplified by the comments of Gary Ridgeway, the Green River Killer, after admitting to the murders of over 70 women in the Washington State: “I picked prostitutes because I thought I could kill as many of them as I wanted without getting caught”;

WHEREAS, sex workers organized the first International Day to End Violence Against Sex Workers on the date of Ridgeway’s conviction, to draw attention to the impunity with which people commit violence against sex workers, and the obstacles sex workers face when attempting to report violence;

WHEREAS, studies in the U.S. have revealed that as many as 80% of street-based sex workers have faced violence in the course of their work;

WHEREAS, research in the District of Columbia has found that more than half of sex workers who reached out to police for help received negative reactions, and one in 10 had been subject to physical or sexual violence at the hands of law enforcement;

WHEREAS, this violence disproportionately affects people involved in commercial sex who are marginalized in other ways, such as women, people of color, transgender individuals, migrants, and young people;

WHEREAS, the District of Columbia strives to be a city that is welcoming and safe for all residents and visitors, and ending violence in our communities is a high priority;

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WHEREAS, the International Day to End Violence Against Sex Workers is commemorated on December 17 around the world; and

WHEREAS, in the District of Columbia, a memorial event has been planned by community members and organizations to recognize International Day to End Violence Against Sex Workers.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “International Day to End Violence Against Sex Workers Recognition Resolution of 2017”.

Sec. 2. The Council of the District of Columbia recognizes the human rights of sex workers, including their right to be free from violence, and declares December 17, 2017, as “International Day to End Violence Against Sex Workers” in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

COUNCIL OF THE DISTRICT OF COLUMBIA
NOTICE OF INTENT TO ACT ON NEW LEGISLATION

The Council of the District of Columbia hereby gives notice of its intention to consider the following legislative matters for final Council action in not less than **15 days**. Referrals of legislation to various committees of the Council are listed below and are subject to change at the legislative meeting immediately following or coinciding with the date of introduction. It is also noted that legislation may be co-sponsored by other Councilmembers after its introduction.

Interested persons wishing to comment may do so in writing addressed to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, NW, Room 5, Washington, D.C. 20004. Copies of bills and proposed resolutions are available in the Legislative Services Division, 1350 Pennsylvania Avenue, NW, Room 10, Washington, D.C. 20004 Telephone: 724-8050 or online at www.dccouncil.us.

COUNCIL OF THE DISTRICT OF COLUMBIA**PROPOSED LEGISLATION****PROPOSED RESOLUTIONS**

- | | |
|----------|--|
| PR22-738 | Compensation Collective Bargaining Agreement between the District of Columbia Government and Compensation Units 1 and 2, FY 2018 - FY 2021, Approval Resolution of 2018

Intro. 1-23-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Labor and Workforce Development |
| <hr/> | |
| PR22-739 | Changes to District Government Employee Pay Schedules Approval Resolution of 2018

Intro. 1-23-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Labor and Workforce Development |
| <hr/> | |
| PR22-740 | Medical Marijuana Cultivation Center Schedule of Fines Rulemaking Approval Resolution of 2018

Intro. 1-23-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health |
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**COUNCIL OF THE DISTRICT OF COLUMBIA
ABBREVIATED NOTICE OF PUBLIC HEARINGS
AGENCY PERFORMANCE OVERSIGHT HEARINGS
FISCAL YEAR 2017-2018**

1/25/2018

SUMMARY

February 5, 2018

Committee of the Whole Public Briefing on the Fiscal Year 2017 Comprehensive Annual Financial Report (CAFR) at 1:30 p.m. in Room 500

February 7, 2018 to
March 9, 2018

Agency Performance Oversight Hearings on Fiscal Year 2017-2018

The Council of the District of Columbia hereby gives notice of its intention to hold public oversight hearings on agency performances for FY 2017 and FY 2018. The hearings will begin Wednesday, February 7, 2018 and conclude on Friday, March 9, 2018 and will take place in the Council Chamber (Room 500), Room 412, Room 123, and Room 120 of the John A. Wilson Building; 1350 Pennsylvania Avenue, N.W.; Washington, DC 20004.

Persons wishing to testify are encouraged, but not required, to submit written testimony in advance of each hearing to the committee at which you are testifying. If a written statement cannot be provided prior to the day of the hearing, please have at least 10 copies of your written statement available on the day of the hearing for immediate distribution to the Council. Unless otherwise stated by the Committee, the hearing record will close two business days following the conclusion of each respective hearing. Persons submitting written statements for the record should observe this deadline. For more information about the Council's budget performance oversight hearing schedule, please contact the committee of interest.

PUBLIC HEARING SCHEDULE

COMMITTEE OF THE WHOLE

Chairman Phil Mendelson

MONDAY, FEBRUARY 5, 2018; COUNCIL CHAMBER (Room 500)	
Time	Subject
1:30 p.m. - End	Committee of the Whole Public Briefing on the Fiscal Year 2017 Comprehensive Annual Financial Report (CAFR)

COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY

Chairperson Charles Allen

THURSDAY, FEBRUARY 8, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
9:30 a.m. - End	Commission on Judicial Disabilities and Tenure
	Office of Unified Communications
	Office of Victim Services and Justice Grants
	District of Columbia Board of Ethics and Government Accountability
	District of Columbia Board of Elections
	Office of Campaign Finance

Persons wishing to testify about the performance of any of the foregoing agencies may email: judiciary@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON HEALTH

Chairperson Vincent Gray

MONDAY, FEBRUARY 12, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:30 a.m. - End	Department of Health

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron (mcameron@dccouncil.us) or by calling 202-654-6179.

COMMITTEE ON HOUSING & NEIGHBORHOOD REVITALIZATION

Chairperson Anita Bonds

MONDAY, FEBRUARY 12, 2018; Room 412	
Time	Agency
10:00 a.m. - End	District of Columbia Office on Aging
	Commission on Aging
	Age Friendly DC Task Force

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel (omontiel@dccouncil.us) or by calling 202-724-8198.

COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Chairperson Elissa Silverman

MONDAY, FEBRUARY 12, 2018; Room 123	
Time	Agency
10:00 a.m. - End	Office of Employee Appeals
	Public Employees Relations Board
	Office of Risk Management

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Charnisa Royster (croyster@dccouncil.us) or by calling 202-724-7772.

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Chairperson Kenyan McDuffie

TUESDAY, FEBRUARY 13, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
1:00 p.m. - End	Department of Small and Local Business Development
	Department of Insurance, Securities and Banking
	Department of For-Hire Vehicles
	For-Hire Vehicle Advisory Council

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Chanell Autrey (cautrey@dccouncil.us) or by calling 202-724-8053.

COMMITTEE OF GOVERNMENT OPERATIONS

Chairperson Brandon Todd

TUESDAY, FEBRUARY 13, 2018; Room 412	
Time	Agency
10:00 a.m. - End	Office of Public-Private Partnerships

Persons wishing to testify about the performance of any of the foregoing agencies may email: governmentoperations@dccouncil.us or by calling 202-724-6668.

COMMITTEE ON EDUCATION **Chairperson David Grosso**

TUESDAY, FEBRUARY 13, 2018; Room 123	
Time	Agency
10:00 a.m. - End	Deputy Mayor for Education
	District of Columbia Public Charter School Board

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.do/educationhearings> or by calling 202-724-8061.

COMMITTEE ON HUMAN SERVICES **Chairperson Brianne Nadeau**

WEDNESDAY, FEBRUARY 14, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Department of Disability Services
	Office of Disability Rights

Persons wishing to testify about the performance of any of the foregoing agencies may email: humanservices@dccouncil.us or by calling 202-724-8170.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT **Chairperson Mary Cheh**

THURSDAY, FEBRUARY 15, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
11:00 a.m. - End	Department of Energy and the Environment

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin (abenjamin@dccouncil.us) or by calling 202-724-8062.

COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY **Chairperson Charles Allen**

THURSDAY, FEBRUARY 15, 2018; Room 412	
Time	Agency
9:30 a.m. - End	Judicial Nomination Commission
	Criminal Justice Coordinating Council
	Department of Corrections
	Corrections Information Council
	District of Columbia National Guard
	Criminal Code Reform Commission

Persons wishing to testify about the performance of any of the foregoing agencies may email: judiciary@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON EDUCATION **Chairperson David Grosso**

THURSDAY, FEBRUARY 15, 2018; Room 120	
Time	Agency
10:00 a.m. - End	State Board of Education
	Office of the Ombudsman
	Office of the Student Advocate
	Bullying Prevention Task Force

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.do/educationhearings> or by calling 202-724-8061.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT **Chairperson Mary Cheh**

TUESDAY, FEBRUARY 20, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
1:00 p.m. - End	Department of General Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin (abenjamin@dccouncil.us) or by calling 202-724-8062.

COMMITTEE ON FINANCE & REVENUE **Chairperson Jack Evans**

WEDNESDAY, FEBRUARY 21, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
12:00 p.m. - End	Washington Metropolitan Area Transit Authority

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Sarina Loy (sloy@dccouncil.us) or by calling 202-724-8058.

COMMITTEE ON EDUCATION **Chairperson David Grosso**

WEDNESDAY, FEBRUARY 21, 2018; Room 412	
Time	Agency
10:00 a.m. - End	District of Columbia Public Schools (Public Witnesses Only)

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.do/educationhearings> or by calling 202-724-8061.

COMMITTEE ON HUMAN SERVICES **Chairperson Brianne Nadeau**

WEDNESDAY, FEBRUARY 21, 2018; Room 123	
Time	Agency
10:00 a.m. - End	Child and Family Services Agency
	Department of Youth Rehabilitation Services

Persons wishing to testify about the performance of any of the foregoing agencies may email: humanservices@dccouncil.us or by calling 202-724-8170.

COMMITTEE ON HOUSING & NEIGHBORHOOD REVITALIZATION **Chairperson Anita Bonds**

WEDNESDAY, FEBRUARY 21, 2018; Room 120	
Time	Agency
11:00 a.m. - End	Mayor's Office of Returning Citizen Affairs
	Commission on Re-Entry and Returning Citizen Affairs
	District of Columbia Housing Authority
	Office of the Advisory Neighborhood Commissions

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel (omontiel@dccouncil.us) or by calling 202-724-8198.

COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT **Chairperson Elissa Silverman**

THURSDAY, FEBRUARY 22, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Office of Labor Relations and Collective Bargaining
	Department of Human Resources

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Charnisa Royster (croyster@dccouncil.us) or by calling 202-724-8835.

COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY **Chairperson Charles Allen**

THURSDAY, FEBRUARY 22, 2018; Room 412	
Time	Agency
9:30 a.m. - End	Deputy Mayor for Public Safety and Justice
	Office of Neighborhood Safety and Engagement
	Office of Police Complaints
	District of Columbia Sentencing Commission
	Office of Human Rights
	Homeland Security and Emergency Management Agency

Persons wishing to testify about the performance of any of the foregoing agencies may email: judiciary@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON EDUCATION **Chairperson David Grosso**

THURSDAY, FEBRUARY 22, 2018; Room 123	
Time	Agency
10:00 a.m. - End	District of Columbia Public Library

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.do/educationhearings> or by calling 202-724-8061.

COMMITTEE ON GOVERNMENT OPERATIONS **Chairperson Brandon Todd**

THURSDAY, FEBRUARY 22, 2018; Room 120	
Time	Agency
10:00 a.m. - End	Office of Administrative Hearings
	Office of the Inspector General
	Public Access Corporation

Persons wishing to testify about the performance of any of the foregoing agencies may email: governmentoperations@dccouncil.us or by calling 202-724-6668.

COMMITTEE ON HEALTH **Chairperson Vincent Gray**

FRIDAY, FEBRUARY 23, 2018; Room 412	
Time	Agency
10:00 a.m. - End	District of Columbia Health Benefit Exchange Authority
	Department of Health Care Finance

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron (mcameron@dccouncil.us) or by calling 202-654-6179.

COMMITTEE ON HEALTH **Chairperson Vincent Gray**

MONDAY, FEBRUARY 26, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Department of Behavioral Health

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron (mcameron@dccouncil.us) or by calling 202-654-6179.

COMMITTEE ON HOUSING & NEIGHBORHOOD REVITALIZATION	
Chairperson Anita Bonds	
MONDAY, FEBRUARY 26, 2018; Room 412	
Time	Agency
9:30 a.m. - End	Department of Housing and Community Development (Public Witnesses Only)

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel (omontiel@dccouncil.us) or by calling 202-724-8198.

COMMITTEE ON FINANCE & REVENUE	
Chairperson Jack Evans	
MONDAY, FEBRUARY 26, 2018; Room 120	
Time	Agency
10:00 a.m. - End	Events DC
	Destination DC
	Commission on the Arts and Humanities

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Sarina Loy (sloy@dccouncil.us) or by calling 202-724-8058.

COMMITTEE ON EDUCATION	
Chairperson David Grosso	
TUESDAY, FEBRUARY 27, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Office of the State Superintendent

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.do/educationhearings> or by calling 202-724-8061.

COMMITTEE OF THE WHOLE	
Chairman Phil Mendelson	
TUESDAY, FEBRUARY 27, 2018; Room 412	
Time	Agency
10:00 a.m. - 1:00 p.m.	University of the District of Columbia

Persons wishing to testify about the performance of any of the foregoing agencies may email: cow@dccouncil.us or by calling 202-724-8196.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT	
Chairperson Mary Cheh	
TUESDAY, FEBRUARY 27, 2018; Room 123	
Time	Agency
11:00 a.m. - End	Bicycle Advisory Council
	Pedestrian Advisory Council
	District Department of Transportation

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin (abenjamin@dccouncil.us) or by calling 202-724-8062.

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT	
Chairperson Kenyan McDuffie	
TUESDAY, FEBRUARY 27, 2018; Room 120	
Time	Agency
11:00 a.m. - End	Public Service Commission
	Office of the People's Counsel
	Office of Cable Television, Film, Music and Entertainment
	Alcoholic Beverage Regulation Administration

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Chanell Autrey (cautrey@dccouncil.us) or by calling 202-724-8053.

COMMITTEE OF THE WHOLE	
Chairman Phil Mendelson	
WEDNESDAY, FEBRUARY 28, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Metropolitan Washington Airports Authority
	Metropolitan Washington Council of Governments
	Office of Zoning
	Office of Planning

Persons wishing to testify about the performance of any of the foregoing agencies may email: cow@dccouncil.us or by calling 202-724-8196.

COMMITTEE ON FINANCE & REVENUE	
Chairperson Jack Evans	
WEDNESDAY, FEBRUARY 28, 2018; Room 412	
Time	Agency
10:00 a.m. - End	Office of the Chief Financial Officer
	DC Lottery
	Real Property Tax Appeals Commission

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Sarina Loy (sloy@dccouncil.us) or by calling 202-724-8058.

COMMITTEE ON EDUCATION

Chairperson David Grosso

THURSDAY, MARCH 1, 2018; COUNCIL CHAMBER (Room 500)

Time	Agency
10:00 a.m. - End	District of Columbia Public Schools (Government Witnesses Only)

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.do/educationhearings> or by calling 202-724-8061.

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Chairperson Kenyan McDuffie

THURSDAY, MARCH 1, 2018; Room 412

Time	Agency
10:00 a.m. - End	Deputy Mayor for Planning and Economic Development

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Chanell Autrey (cautrey@dccouncil.us) or by calling 202-724-8053.

COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY

Chairperson Charles Allen

THURSDAY, MARCH 1, 2018; Room 120

Time	Agency
9:30 a.m. - End	Metropolitan Police Department
	Fire and Emergency Medical Services Department
	Office of the Attorney General
	Department of Forensic Sciences
	Office of the Chief Medical Examiner

Persons wishing to testify about the performance of any of the foregoing agencies may email: judiciary@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

Chairperson Mary Cheh

FRIDAY, MARCH 2, 2018; COUNCIL CHAMBER (Room 500)

Time	Agency
11:00 a.m. - End	Food Policy Council
	DC Water
	Washington Aqueduct

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin (abenjamin@dccouncil.us) or by calling 202-724-8062.

COMMITTEE OF GOVERNMENT OPERATIONS

Chairperson Brandon Todd

FRIDAY, MARCH 2, 2018; Room 412

Time	Agency
10:00 a.m. - End	Office of Chief Technology Officer
	Office of Partnerships and Grants Services
	Secretary of the District of the Columbia

Persons wishing to testify about the performance of any of the foregoing agencies may email: governmentoperations@dccouncil.us or by calling 202-724-6668.

COMMITTEE ON HOUSING & NEIGHBORHOOD REVITALIZATION

Chairperson Anita Bonds

FRIDAY, MARCH 2, 2018; Room 120

Time	Agency
11:00 a.m. - End	Rental Housing Commission
	Board of Condemnation of Insanitary Buildings
	Board of Real Estate Appraisers
	Real Estate Commission

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel (omontiel@dccouncil.us) or by calling 202-724-8198.

COMMITTEE ON HEALTH

Chairperson Vincent Gray

MONDAY, MARCH 5, 2018; COUNCIL CHAMBER (Room 500)

Time	Agency
10:00 a.m. - End	Deputy Mayor for Health and Human Services
	Not-For-Profit Hospital Corporation
	Not-For-Profit Hospital Board

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron (mcameron@dccouncil.us) or by calling 202-654-6179.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

Chairperson Mary Cheh

MONDAY, MARCH 5, 2018; Room 412

Time	Agency
11:00 a.m. - End	Department of Parks and Recreation

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin (abenjamin@dccouncil.us) or by calling 202-724-8062.

COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT **Chairperson Elissa Silverman**

WEDNESDAY, MARCH 7, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Department of Employment Services (Public Witnesses Only)
	Workforce Investment Council (Public Witnesses Only)
	Deputy Mayor for Greater Economic Opportunity (Public Witnesses Only)

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Charnisa Royster (croyster@dccouncil.us) or by calling 202-724-7772.

COMMITTEE ON GOVERNMENT OPERATIONS **Chairperson Brandon Todd**

WEDNESDAY, MARCH 7, 2018; Room 412	
Time	Agency
10:00 a.m. - End	Executive Office of the Mayor
	Office of the City Administrator
	Office of the Senior Advisor
	Mayor's Office of Legal Counsel
	Serve DC

Persons wishing to testify about the performance of any of the foregoing agencies may email: governmentoperations@dccouncil.us or by calling 202-724-6668.

COMMITTEE ON HOUSING & NEIGHBORHOOD REVITALIZATION **Chairperson Anita Bonds**

WEDNESDAY, MARCH 7, 2018; Room 123	
Time	Agency
11:00 a.m. - End	Housing Finance Agency
	Department of Housing and Community Development (Government Witnesses Only)
	Housing Production Trust Fund
	Office of the Tenant Advocate

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel (omontiel@dccouncil.us) or by calling 202-724-8198.

COMMITTEE OF THE WHOLE **Chairman Phil Mendelson**

WEDNESDAY, MARCH 7, 2018; Room 120	
Time	Agency
10:00 a.m. - End	District of Columbia Auditor
	New Columbia Statehood Commission
	Contract Appeals Board
	Office of Contracting and Procurement
	District Retiree Health Contribution
	District of Columbia Retirement Board/Funds

Persons wishing to testify about the performance of any of the foregoing agencies may email: cow@dccouncil.us or by calling 202-724-8196.

COMMITTEE OF THE WHOLE **Chairman Phil Mendelson**

THURSDAY, MARCH 8, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - 5:00 p.m.	Office of Budget and Planning
	Department of Consumer and Regulatory Affairs

Persons wishing to testify about the performance of any of the foregoing agencies may email: cow@dccouncil.us or by calling 202-724-8196.

JOINT HEARING WITH COMMITTEE ON HUMAN SERVICES AND COMMITTEE ON HOUSING AND NEIGHBORHOOD REVITALIZATION **Chairperson Brianne Nadeau**
Chairperson Anita Bonds

THURSDAY, MARCH 8, 2018; Room 412	
Time	Agency
10:00 a.m. - End	Department of Human Services
	Interagency Council on Homelessness

Persons wishing to testify about the performance of any of the foregoing agencies may email: humanservices@dccouncil.us or by calling 202-724-8170.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT **Chairperson Mary Cheh**

THURSDAY, MARCH 8, 2018; Room 120	
Time	Agency
11:00 a.m. - End	Department of Motor Vehicles
	Department of Public Works

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin (abenjamin@dccouncil.us) or by calling 202-724-8062.

COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT **Chairperson Elissa Silverman**

FRIDAY, MARCH 9, 2018; COUNCIL CHAMBER; Room 500	
Time	Agency
10:00 a.m. - End	Department of Employment Services (Government Witnesses Only)
	Workforce Investment Council (Government Witnesses Only)
	Deputy Mayor for Greater Economic Opportunity (Government Witnesses Only)

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Charnisa Royster (croyster@dccouncil.us) or by calling 202-724-7772.

COMMITTEE ON GOVERNMENT OPERATIONS **Chairperson Brandon Todd**

FRIDAY, MARCH 9, 2018; Room 412	
Time	Agency
10:00 a.m. - End	Office on Women's Policy and Initiatives
	Office of African American Affairs
	Office of African Affairs
	Office of Asian and Pacific Islander Affairs
	Office of Latino Affairs
	Office of Gay, Lesbian, Bisexual, Transgender & Questioning Affairs
	Office of Religious Affairs
	Office of Veterans' Affairs

Persons wishing to testify about the performance of any of the foregoing agencies may email: governmentoperations@dccouncil.us or by calling 202-724-6668.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HOUSING AND NEIGHBORHOOD REVITALIZATION
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, NW, Washington, DC 20004

COUNCILMEMBER ANITA BONDS, CHAIRPERSON
COMMITTEE ON HOUSING AND NEIGHBORHOOD REVITALIZATION

ANNOUNCES A PUBLIC HEARING OF THE COMMITTEE

on

Bill 22-0591, “Anna Cooper House TOPA Exemption Amendment Act of 2017”

on

Friday, February 23, 2018, at 1:00 PM
John A. Wilson Building, Room 120
1350 Pennsylvania Avenue, NW
Washington, DC 20004

On Friday, February 23, 2018, Councilmember Anita Bonds, Chairperson of the Committee on Housing & Neighborhood Revitalization, will hold a public hearing on Bill 22-0591, “Anna Cooper House TOPA Exemption Amendment Act of 2017”. The hearing will take place in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 1:00 p.m.

B22-0591, the “Anna Cooper House TOPA Exemption Amendment Act of 2017”, exempts property, known as the Anna Cooper House and owned by SOME (So Others Might Eat) Inc., located at 1338 R Street, N.W., from the Tenant Opportunity to Purchase Act of 1980. This property provides affordable long-term housing to its residents. SOME, Inc. needs to do an extensive rehab of the Anna Cooper House. Financially, doing a tax credit financing structure would be the best stewardship of District resources. Without generating tax credits as part of the preservation, the rehab would require millions more in HPTF dollars. Completing a tax credit financing structure would require the sale of Anna Cooper House by SOME to an LLC that SOME controls. This sale, which would have no practical implications in terms of management, mission, etc., would trigger the District’s TOPA. This bill seeks to exempt this specific development from the TOPA trigger.

Those who wish to testify are requested to telephone the Committee on Housing and Neighborhood Revitalization, at (202) 724-8198, or email omontiel@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any), by close of business on February 22, 2018. Persons wishing to testify are encouraged to **submit 15 copies of written testimony**. Oral testimony should be limited to three minutes for individuals and five minutes for organizations.

If you are unable to testify at the public hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee on

Housing and Neighborhood Revitalization, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 112, Washington, D.C. 20004. The record will close at 5:00 p.m. on March 9, 2018.

**COUNCIL OF THE DISTRICT OF COLUMBIA
 NOTICE OF PUBLIC HEARINGS
 FISCAL YEAR 2019 PROPOSED BUDGET AND FINANCIAL PLAN,
 FISCAL YEAR 2019 BUDGET SUPPORT ACT OF 2018,
 FISCAL YEAR 2019 LOCAL BUDGET ACT OF 2018
 FISCAL YEAR 2019 FEDERAL BUDGET ACT OF 2018, AND
 COMMITTEE MARK-UP SCHEDULE
 1/25/2018**

SUMMARY

March 21, 2018	Mayor Transmits the Fiscal Year 2019 Proposed Budget and Financial Plan
March 23, 2018	Committee of the Whole Public Briefing on the Mayor's Fiscal Year 2019 Proposed Budget and Financial Plan
March 26, 2018 to April 26, 2018	Committee Public Hearings on the "Fiscal Year 2019 Local Budget Act of 2018." (The Committees may also simultaneously receive testimony on the sections of the Fiscal Year 2019 Budget Support Act that affect the agencies under each Committee's purview)
April 27, 2018	Committee of the Whole Public Hearing on the "Fiscal Year 2019 Local Budget Act of 2018", "Fiscal Year 2019 Federal Budget Act of 2018" and "Fiscal Year 2019 Budget Support Act of 2018."
May 2-4, 2018	Committee Mark-ups and Reporting on Agency Budgets for Fiscal Year 2019
May 8, 2018	Budget Work Session 10:00 a.m.
May 15, 2018	Committee of the Whole and Council consideration of the "Fiscal Year 2019 Local Budget Act of 2018", "Fiscal Year 2019 Federal Portion Budget Request Act of 2018" and the "Fiscal Year 2019 Budget Support Act of 2018"
May 29, 2018	Council consideration of the "Fiscal Year 2019 Local Budget Act of 2018" and the "Fiscal Year 2019 Federal Portion Budget Request Act of 2018"

The Council of the District of Columbia hereby gives notice of its intention to hold public hearings on the FY 2019 Proposed Budget and Financial Plan, the "Fiscal Year 2019 Local Budget Act of 2018", "Fiscal Year 2019 Federal Portion Budget Request Act of 2018" and the "Fiscal Year 2019 Budget Support Act of 2018". The hearings will begin Monday, March 26, 2018 and conclude on Thursday, April 26, 2018 and will take place in the Council Chamber (Room 500), Room 412, Room 120, or Room 123 of the John A. Wilson Building; 1350 Pennsylvania Avenue, N.W.; Washington, DC 20004.

The Committee mark-ups will begin Wednesday, May 2, 2018 and conclude on Friday, May 4, 2018 and will take place in the Council Chamber (Room 500) of the John A. Wilson Building; 1350 Pennsylvania Avenue, N.W.; Washington, DC 20004.

Persons wishing to testify are encouraged, but not required, to submit written testimony in advance of each hearing to the corresponding committee office. If a written statement cannot be provided prior to the day of the hearing, please have at least 15 copies of your written statement available on the day of the hearing for immediate distribution to the Council. The hearing record will close two business days following the conclusion of each respective hearing. Persons submitting written statements for the record should observe this deadline. For more information about the Council's budget oversight hearings and mark-up schedule please contact the committee of interest.

PUBLIC HEARING SCHEDULE

COMMITTEE OF THE WHOLE

Chairman Phil Mendelson

FRIDAY, MARCH 23, 2018; COUNCIL CHAMBER (Room 500)	
Time	Subject
10:00 a.m. - End	Committee of the Whole Public Briefing on the Mayor's Fiscal Year 2019 Proposed Budget and Financial Plan

COMMITTEE OF THE WHOLE

Chairman Phil Mendelson

MONDAY, MARCH 26, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:30 a.m. - End	Metropolitan Washington Council of Governments Office of Zoning Office of Planning

Persons wishing to testify about the performance of any of the foregoing agencies may email: cow@dccouncil.us or by calling 202-724-8196.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

Chairperson Mary Cheh

MONDAY, MARCH 26, 2018; Room 412	
Time	Agency
11:00 a.m. - End	Department of General Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin (abenjamin@dccouncil.us) or by calling 202-724-8062.

COMMITTEE OF THE WHOLE

Chairman Phil Mendelson

TUESDAY, MARCH 27, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Council of the District of Columbia District of Columbia Auditor New Columbia Statehood Commission Contract Appeals Board Office of Contracting and Procurement District of Columbia Retirement Board/Funds District Retiree Health Contribution

Persons wishing to testify about the performance of any of the foregoing agencies may email: cow@dccouncil.us or by calling 202-724-8196.

COMMITTEE ON HEALTH

Chairperson Vincent Gray

TUESDAY, MARCH 27, 2018; Room 412	
Time	Agency
10:00 a.m. - End	Deputy Mayor for Health and Human Services Not-For-Profit Hospital Corporation Not-For-Profit Hospital Board

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron (mcameron@dccouncil.us) or by calling 202-654-6179.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

Chairperson Mary Cheh

TUESDAY, MARCH 27, 2018; Room 123	
Time	Agency
11:00 a.m. - End	Department of Energy and the Environment

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin (abenjamin@dccouncil.us) or by calling 202-724-8062.

COMMITTEE ON HUMAN SERVICES

Chairperson Brianne Nadeau

WEDNESDAY, MARCH 28, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Department of Disability Services Office of Disability Rights

Persons wishing to testify about the performance of any of the foregoing agencies may email: humanservices@dccouncil.us or by calling 202-724-8170.

COMMITTEE ON EDUCATION

Chairperson David Grosso

WEDNESDAY, MARCH 28, 2018; Room 412	
Time	Agency
10:00 a.m. - End	District of Columbia Public Schools (Public Witnesses Only)

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.do/educationhearings> or by calling 202-724-8061.

COMMITTEE ON GOVERNMENT OPERATIONS

Chairman Brandon Todd

WEDNESDAY, MARCH 28, 2018; Room 123	
Time	Agency
10:00 a.m. - End	Office of Asian and Pacific Islander Affairs
	Office of Latino Affairs
	Office of Veterans' Affairs
	Office of African American Affairs

Persons wishing to testify about the performance of any of the foregoing agencies may email: governmentoperations@dccouncil.us or by calling 202-724-6668.

COMMITTEE OF THE WHOLE

Chairman Phil Mendelson

WEDNESDAY, MARCH 28, 2018; Room 120	
Time	Agency
10:00 a.m. - End	University of the District of Columbia

Persons wishing to testify about the performance of any of the foregoing agencies may email: cow@dccouncil.us or by calling 202-724-8196.

COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY

Chairperson Charles Allen

THURSDAY, MARCH 29, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
9:30 a.m. - End	Deputy Mayor for Public Safety and Justice
	Office of Neighborhood Safety and Engagement
	Metropolitan Police Department
	Criminal Justice Coordinating Council
	Office of Police Complaints

Persons wishing to testify about the performance of any of the foregoing agencies may email: judiciary@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON HOUSING & NEIGHBORHOOD REVITALIZATION

Chairperson Anita Bonds

THURSDAY, MARCH 29, 2018; Room 412	
Time	Agency
11:00 a.m. - End	District of Columbia Housing Authority
	Mayor's Office on Returning Citizen Affairs
	Office of the Advisory Neighborhood Commissions

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel (omontiel@dccouncil.us) or by calling 202-724-8198.

COMMITTEE ON EDUCATION

Chairperson David Grosso

THURSDAY, MARCH 29, 2018; Room 123	
Time	Agency
10:00 a.m. - End	Deputy Mayor for Education
	District of Columbia Public Charter School Board

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.do/educationhearings> or by calling 202-724-8061.

COMMITTEE OF THE WHOLE

Chairman Phil Mendelson

THURSDAY, MARCH 29, 2018; Room 120	
Time	Agency
9:30 a.m. - 5:00 p.m.	Office of Budget and Planning
	Department of Consumer and Regulatory Affairs

Persons wishing to testify about the performance of any of the foregoing agencies may email: cow@dccouncil.us or by calling 202-724-8196.

COMMITTEE ON HEALTH

Chairperson Vincent Gray

MONDAY, APRIL 9, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Department of Health

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron (mccameron@dccouncil.us) or by calling 202-654-6179.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

Chairperson Mary Cheh

MONDAY, APRIL 9, 2018; Room 412	
Time	Agency
10:00 a.m. - End	District Department of Transportation

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin (abenjamin@dccouncil.us) or by calling 202-724-8062.

COMMITTEE ON FINANCE & REVENUE

Chairperson Jack Evans

WEDNESDAY, APRIL 11, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Events DC
	Destination DC
	Commission on the Arts and Humanities

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Sarina Loy (sloy@dccouncil.us) or by calling 202-724-8058.

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Chairperson Kenyan McDuffie

WEDNESDAY, APRIL 11, 2018; Room 412	
Time	Agency
10:00 a.m. - End	Department of Small and Local Business Development
	Department of Insurance, Securities and Banking
	Department of For-Hire Vehicles

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Chanell Autrey (cautrey@dccouncil.us) or by calling 202-724-8053.

COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Chairperson Elissa Silverman

WEDNESDAY, APRIL 11, 2018; Room 123	
Time	Agency
10:00 a.m. - End	Office of Labor Relations and Collective Bargaining
	Department of Human Resources
	Office of Risk Management

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Charnisa Royster (croyster@dccouncil.us) or by calling 202-724-7772.

COMMITTEE ON EDUCATION

Chairperson David Grosso

WEDNESDAY, APRIL 11, 2018; Room 120	
Time	Agency
10:00 a.m. - End	State Board of Education
	Office of the Ombudsman
	Office of the Student Advocate

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.do/educationhearings> or by calling 202-724-8061.

COMMITTEE ON HUMAN SERVICES

Chairperson Brianne Nadeau

THURSDAY, APRIL 12, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Department of Human Services

Persons wishing to testify about the performance of any of the foregoing agencies may email: humanservices@dccouncil.us or by calling 202-724-8170.

COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY

Chairperson Charles Allen

THURSDAY, APRIL 12, 2017; Room 412	
Time	Agency
9:30 a.m. - End	Fire and Emergency Medical Services Department
	Office of Unified Communications
	Homeland Security and Emergency Management Agency

Persons wishing to testify about the performance of any of the foregoing agencies may email: judiciary@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

Chairperson Mary Cheh

THURSDAY, APRIL 12, 2018; Room 123	
Time	Agency
11:00 a.m. - End	Department of Motor Vehicles
	Department of Parks and Recreation

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin (abenjamin@dccouncil.us) or by calling 202-724-8062.

COMMITTEE ON HOUSING & NEIGHBORHOOD REVITALIZATION

Chairperson Anita Bonds

FRIDAY, APRIL 13, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
11:00 a.m. - End	Department of Housing and Community Development (Public Witnesses Only)

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel (omontiel@dccouncil.us) or by calling 202-724-8198.

COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY

Chairperson Charles Allen

FRIDAY, APRIL 13, 2018; Room 123	
Time	Agency
10:30 a.m. - 5:00 p.m.	Office of the Attorney General
	Office of Victim Services and Justice Grants
	Board Ethics and Government Accountability
	District of Columbia Board of Elections
	Office of Campaign Finance

Persons wishing to testify about the performance of any of the foregoing agencies may email: judiciary@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON GOVERNMENT OPERATIONS

Chairman Brandon Todd

FRIDAY, APRIL 13, 2018; Room 120	
Time	Agency
10:00 a.m. - End	Office of Administrative Hearings
	Office of the Inspector General

Persons wishing to testify about the performance of any of the foregoing agencies may email: governmentoperations@dccouncil.us or by calling 202-724-6668.

COMMITTEE ON HOUSING & NEIGHBORHOOD REVITALIZATION

Chairperson Anita Bonds

TUESDAY, APRIL 17, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
1:30 p.m. - End	Department of Housing and Community Development (Government Witnesses Only)
	Housing Production Trust Fund
	Housing Finance Agency

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel (omontiel@dccouncil.us) or by calling 202-724-8198.

COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Chairperson Elissa Silverman

WEDNESDAY, APRIL 18, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Department of Employment Services (Public Witnesses Only)
	Workforce Investment Council (Public Witnesses Only)
	Deputy Mayor for Greater Economic Opportunity (Public Witnesses Only)

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Charnisa Royster (croyster@dccouncil.us) or by calling 202-724-7772.

COMMITTEE ON FINANCE & REVENUE

Chairperson Jack Evans

WEDNESDAY, APRIL 18, 2018; Room 412	
Time	Agency
10:00 a.m. - End	Office of the Chief Financial Officer
	DC Lottery
	Real Property Tax Appeals Commission

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Sarina Loy (sloy@dccouncil.us) or by calling 202-724-8058.

COMMITTEE ON HUMAN SERVICES

Chairperson Brianne Nadeau

WEDNESDAY, APRIL 18, 2018; Room 123	
Time	Agency
10:00 a.m. - End	Child and Family Services Agency
	Department of Youth Rehabilitation Services

Persons wishing to testify about the performance of any of the foregoing agencies may email: humanservices@dccouncil.us or by calling 202-724-8170.

COMMITTEE ON EDUCATION

Chairperson David Grosso

WEDNESDAY, APRIL 18, 2018; Room 120	
Time	Agency
10:00 a.m. - End	District of Columbia Public Library

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.do/educationhearings> or by calling 202-724-8061.

COMMITTEE ON EDUCATION

Chairperson David Grosso

THURSDAY, APRIL 19, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	District of Columbia Public Schools (Government Witnesses Only)

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.do/educationhearings> or by calling 202-724-8061.

COMMITTEE ON HEALTH

Chairperson Vincent Gray

THURSDAY, APRIL 19, 2018; Room 412	
Time	Agency
10:00 a.m. - End	District of Columbia Health Benefit Exchange Authority Department of Health Care Finance

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron (mcameron@dccouncil.us) or by calling 202-654-6179.

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Chairperson Kenyan McDuffie

THURSDAY, APRIL 19, 2018; Room 123	
Time	Agency
10:00 a.m. - End	Public Service Commission Office of People's Counsel

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Chanell Autrey (cautrey@dccouncil.us) or by calling 202-724-8053.

COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY

Chairperson Charles Allen

THURSDAY, APRIL 19, 2018; Room 120	
Time	Agency
9:30 a.m. - End	District of Columbia National Guard Office of Human Rights Department of Corrections Corrections Information Council Department of Forensic Sciences Office of the Chief Medical Examiner

Persons wishing to testify about the performance of any of the foregoing agencies may email: judiciary@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

Chairperson Mary Cheh

FRIDAY, APRIL 20, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
11:00 a.m. - End	Department of Public Works

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin (abenjamin@dccouncil.us) or by calling 202-724-8062.

COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Chairperson Elissa Silverman

FRIDAY, APRIL 20, 2018; Room 123	
Time	Agency
10:00 a.m. - End	Department of Employment Services (Government Witnesses Only) Workforce Investment Council (Government Witnesses Only) Deputy Mayor for Greater Economic Opportunity (Government Witnesses Only)

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Charnisa Royster (croyster@dccouncil.us) or by calling 202-724-7772.

COMMITTEE ON HEALTH

Chairperson Vincent Gray

MONDAY, APRIL 23, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Department of Behavioral Health

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron (mcameron@dccouncil.us) or by calling 202-654-6179.

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Chairperson Kenyan McDuffie

TUESDAY, APRIL 24, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
11:00 a.m. - End	Office of Cable Television, Film, Music and Entertainment Alcoholic Beverage Regulation Administration Deputy Mayor for Planning and Economic Development

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Chanell Autry (cautry@dccouncil.us) or by calling 202-724-8053.

COMMITTEE ON EDUCATION

Chairperson David Grosso

TUESDAY, APRIL 24, 2018; Room 412	
Time	Agency
10:00 a.m. - End	Office of the State Superintendent

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.do/educationhearings> or by calling 202-724-8061.

COMMITTEE ON GOVERNMENT OPERATIONS

Chairperson Brandon Todd

TUESDAY, APRIL 24, 2018; Room 123	
Time	Agency
11:00 a.m. - End	Office of the Chief Technology Officer

Persons wishing to testify about the performance of any of the foregoing agencies may email: governmentoperations@dccouncil.us or by calling 202-724-6668.

COMMITTEE ON HOUSING & NEIGHBORHOOD REVITALIZATION

Chairperson Anita Bonds

WEDNESDAY, APRIL 25, 2018; Room 412	
Time	Agency
11:00 a.m. - End	District of Columbia Office on Aging Office of the Tenant Advocate

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel (omontiel@dccouncil.us) or by calling 202-724-8198.

COMMITTEE ON GOVERNMENT OPERATIONS

Chairman Brandon Todd

THURSDAY, APRIL 26, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
11:00 a.m. - End	Executive Office of the Mayor Office of the City Administrator Office of the Senior Advisor Mayor's Office of Legal Counsel Secretary of the District of Columbia

Persons wishing to testify about the performance of any of the foregoing agencies may email: governmentoperations@dccouncil.us or by calling 202-724-6668.

COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Chairperson Elissa Silverman

THURSDAY, APRIL 26, 2017; Room 123	
Time	Agency
10:00 a.m. - End	Office of Employee Appeals Public Employees Relations Board

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Charnisa Royster (croyster@dccouncil.us) or by calling 202-724-7772.

COMMITTEE OF THE WHOLE

Chairman Phil Mendelson

FRIDAY, APRIL 27, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Committee of the Whole Hearing on the "Fiscal Year 2019 Local Budget Act of 2018," "Fiscal Year 2019 Federal Portion Budget Request Act of 2018" and the "Fiscal Year 2019 Budget Support Act of 2018"

COMMITTEE MARK-UP SCHEDULE**WEDNESDAY, MAY 2, 2018; COUNCIL CHAMBER (Room 500)**

Time	Committee
2:00 p.m. - 4:00 p.m.	Committee on Labor and Workforce Development
4:00 p.m. - 6:00 p.m.	Committee on Housing and Neighborhood Revitalization

THURSDAY, MAY 3, 2018; COUNCIL CHAMBER (Room 500)

Time	Committee
10:00 a.m. - 11:00 a.m.	Committee on Government Operations
11:00 a.m. - 12:00 pm.	Committee on Finance and Revenue
12:00 p.m. - 2:00 p.m.	Committee on Business and Economic Development
2:00 p.m. - 4:00 p.m.	Committee on Human Services
4:00 p.m. - 6:00 p.m.	Committee on Health

FRIDAY, MAY 4, 2018; COUNCIL CHAMBER (Room 500)

Time	Committee
10:00 a.m. - 12:00 p.m.	Committee on Transportation and the Environment
12:00 p.m. - 2:00 p.m.	Committee on Education
2:00 p.m. - 4:00 p.m.	Committee on the Judiciary
4:00 p.m. - 6:00 p.m.	Committee of the Whole

**Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
NOTICE OF PUBLIC ROUNDTABLE
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

ANNOUNCES A PUBLIC ROUNDTABLE ON

**PROPOSED RESOLUTION 22-0659, THE “CHILD FATALITY REVIEW
COMMITTEE MS. STACY MILLS CONFIRMATION RESOLUTION OF 2017”**

**PROPOSED RESOLUTION 22-0660, THE “CHILD FATALITY REVIEW COMMITTEE
MS. JACQUELINE FRANCIS CONFIRMATION RESOLUTION OF 2017”**

**PROPOSED RESOLUTION 22-0661, THE “CHILD FATALITY REVIEW COMMITTEE
MS. LASHUNDA HILL CONFIRMATION RESOLUTION OF 2017”**

**PROPOSED RESOLUTION 22-0662, THE “CHILD FATALITY REVIEW COMMITTEE
MS. LANITA WILLIAMS CONFIRMATION RESOLUTION OF 2017”**

**PROPOSED RESOLUTION 22-0663, THE “CHILD FATALITY REVIEW COMMITTEE
DR. CHERYL WILLIAMS CONFIRMATION RESOLUTION OF 2017”**

AND

**PROPOSED RESOLUTION 22-0664, THE “CHILD FATALITY REVIEW COMMITTEE
DR. INEZ REEVES CONFIRMATION RESOLUTION OF 2017”**

**Tuesday, February 6, 2018, 3:00 pm
Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

On Tuesday, February 6, 2018, Councilmember Charles Allen, Chairperson of the Committee on the Judiciary and Public Safety, will convene a public roundtable to consider Proposed Resolution 22-0659, the “Child Fatality Review Committee Ms. Stacy Mills Confirmation Resolution of 2017”; Proposed Resolution 22-0660, the “Child Fatality Review Committee Ms.

Jacqueline Francis Confirmation Resolution of 2017”; Proposed Resolution 22-0661, the “Child Fatality Review Committee Ms. LaShunda Hill Confirmation Resolution of 2017”; Proposed Resolution 22-0662, the “Child Fatality Review Committee Lanita Williams Confirmation Resolution of 2017”; Proposed Resolution 22-0663, the “Child Fatality Review Committee Dr. Cheryl Williams Confirmation Resolution of 2017”; and Proposed Resolution 22-0664, the “Child Fatality Review Committee Dr. Inez Reeves Confirmation Resolution of 2017”.

The roundtable will take place in Room 123 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004, at 3:00 p.m.

PR22-0659 would confirm Stacy Mills to the Child Fatality Review Committee for a term to end April 20, 2018.

PR22-0660 would confirm Jacqueline Francis to the Child Fatality Review Committee for a term to end July 12, 2019.

PR22-0661 would confirm LaShunda Hill to the Child Fatality Review Committee for a term to end July 14, 2020.

PR22-0662 would confirm Lanita Williams to the Child Fatality Review Committee for a term to end April 20, 2018.

PR22-0663 would confirm Dr. Cheryl Williams to the Child Fatality Review Committee for a term to end April 20, 2018.

PR22-0664 would confirm Dr. Inez Reeves to the Child Fatality Review Committee for a term to end April 14, 2020.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the roundtable should contact the Committee via email at judiciary@dccouncil.us or at (202) 727-8232, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Wednesday, January 31**. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses should bring **twenty double-sided copies** of their written testimony and, if possible, also submit a copy of their testimony electronically in advance to judiciary@dccouncil.us.

For witnesses who are unable to testify at the roundtable, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee at judiciary@dccouncil.us. **The record will close at the end of the business day on February 12.**

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT
NOTICE OF PUBLIC ROUNDTABLE**

1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

**CHAIRPERSON ELISSA SILVERMAN
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT**

ANNOUNCES A PUBLIC ROUNDTABLE

on

PR 22-738, “Compensation Collective Bargaining Agreement between the District of Columbia Government and Compensation Units 1 and 2, FY 2018 - FY 2021, Approval Resolution of 2018”

and

PR 22-739, “Changes to District Government Employee Pay Schedules Approval Resolution of 2018”

**Friday, February 9, 2018, 1:00 p.m.
Hearing Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Councilmember Elissa Silverman, Chairperson of the Committee on Labor and Workforce Development, announces a public roundtable before the Committee on PR 22-738, the “Compensation Collective Bargaining Agreement between the District of Columbia Government and Compensation Units 1 and 2, FY 2018 - FY 2021, Approval Resolution of 2018,” and PR22-739, the “Changes to District Government Employee Pay Schedules Approval Resolution of 2018.” The roundtable will be held at 1:00 p.m. on Friday, February 9, 2018, in Room 123 of the John A. Wilson Building.

Those who wish to testify before the Committee are asked to contact Ms. Charnisa Royster at labor@dccouncil.us or (202) 724-7772 by close of business Wednesday, February 7, 2018, to provide their name, address, telephone number, organizational affiliation and title (if any), as well as the language of oral interpretation, if any, they require. Those wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. Those representing organizations will have five minutes to present their testimony, and other individuals will have three minutes to present their testimony; less time will be allowed if there are a large number of witnesses.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Written statements should be submitted by email to Ms. Royster at labor@dccouncil.us or mailed to the Committee on Labor and Workforce Development, Council of the District of Columbia, Suite 115 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 12:00 p.m. on Monday, February 12, 2018.

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Requests

Pursuant to DC Official Code Sec 47-361 et seq. of the Reprogramming Policy Act of 1990, the Council of the District of Columbia gives notice that the Mayor has transmitted the following reprogramming request(s).

A reprogramming will become effective on the 15th day after official receipt unless a Member of the Council files a notice of disapproval of the request which extends the Council's review period to 30 days. If such notice is given, a reprogramming will become effective on the 31st day after its official receipt unless a resolution of approval or disapproval is adopted by the Council prior to that time.

Comments should be addressed to the Secretary to the Council, John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Room 5 Washington, D.C. 20004. Copies of reprogrammings are available in Legislative Services, Room 10.
Telephone: 724-8050

Reprog. 22-102 Request to reprogram \$1,500,000 of Fiscal Year 2018 Local funds budget authority within the Office of the State Superintendent of Education (OSSE) was filed in the Office of the Secretary on January 24, 2018. This reprogramming is needed to support general education costs associated with wards of the state.

RECEIVED: 14 day review begins January 25, 2018

Reprog. 22-103 Request to reprogram \$14,200,000 of Pay-As-You-Go (Paygo) Capital funds budget authority and allotment from the Office of the Deputy Mayor for Planning and Economic Development (DMPED) to the Reverse Pay-As-You-Go (Paygo) Capital project and subsequently to the Local funds budget of DMPED was filed in the Office of the Secretary on January 29, 2018. This reprogramming is needed to fund New Communities projects that are not eligible for capital budget.

RECEIVED: 14 day review begins January 30, 2018

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**NOTICE OF PUBLIC HEARING**

Placard Posting Date: February 2, 2018
Protest Petition Deadline: March 19, 2018
Roll Call Hearing Date: April 2, 2018

License No.: ABRA-100266
Licensee: Latitude 38, LLC
Trade Name: Archipelago
License Class: Retailer's Class "C" Restaurant
Address: 1201 U Street, N.W.
Contact: Owen Thomson: (202) 494-9047

WARD 1

ANC 1B

SMD 1B12

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on April 2, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE

Applicant requests to expand the business into the second floor of the building, thus increasing the Total Occupancy Load of the premises from 94 to 166, and increasing seating from 88 to 148.

HOURS OF OPERATION INSIDE PREMISES

Sunday through Saturday 6 am – 3 am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION INSIDE PREMISES

Sunday 10 am – 2 am, Monday through Thursday 8 am – 2 am, Friday and Saturday 8 am – 3 am

HOURS OF LIVE ENTERTAINMENT INSIDE PREMISES

Sunday 6 pm – 12 am, Monday through Saturday 6 pm – 2 am

HOURS OF OPERATION FOR SIDEWALK CAFÉ

Sunday through Saturday 10 am – 3 am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR SIDEWALK CAFÉ

Sunday through Thursday 10 am – 2 am, Friday and Saturday 10 am – 3 am

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
NOTICE OF PUBLIC HEARING**

Placard Posting Date: February 2, 2018
 Protest Petition Deadline: March 19, 2018
 Roll Call Hearing Date: April 2, 2018
 Protest Hearing Date: May 23, 2018

License No.: ABRA-108846
 Licensee: Catherine's Kitchen, LLC
 Trade Name: Catherine's Kitchen
 License Class: Retailer's Class "C" Restaurant
 Address: 4722 14th Street, N.W.
 Contact: Daryl Denney: 202-722-7079

WARD 4

ANC 4C

SMD 4C02

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on April 2, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **May 23, 2018 at 4:30 pm**.

NATURE OF OPERATION

New Restaurant, serving soul food with Latin and Caribbean influences. The space will have two levels: a 1st floor dining room and a basement. Requesting an Entertainment Endorsement to include Dancing. Total Occupancy Load is 99 with seating for 65. Sidewalk Cafe with 10 seats.

HOURS OF OPERATION INSIDE PREMISES

Sunday through Thursday 9 am – 2 am, Friday and Saturday 9 am – 3 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION INSIDE

Sunday through Thursday 10am – 1:30 am, Friday and Saturday 10 am – 2:30 am

HOURS OF OPERATION FOR SIDEWALK CAFE

Sunday through Thursday 10 am – 1:30 am, Friday and Saturday 10 am – 2:30 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SIDEWALK CAFÉ

Sunday through Thursday 10am – 1 am, Friday and Saturday 10 am – 2 am

HOURS OF LIVE ENTERTAINMENT INSIDE PREMISES

Sunday through Thursday 10am – 1:30 am, Friday and Saturday 10 am – 2:30 am

HOURS OF LIVE ENTERTAINMENT FOR SIDEWALK CAFÉ

Sunday through Saturday 12 pm – 10 pm

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
NOTICE OF PUBLIC HEARING**

Placard Posting Date: February 2, 2018
Protest Petition Deadline: March 19, 2018
Roll Call Hearing Date: April 2, 2018

License No.: ABRA-041370
Licensee: Firehook Bakers Cleveland Park, Inc.
Trade Name: Firehook Bakery
License Class: Retailer’s Class “C” Restaurant
Address: 3411 Connecticut Avenue, N.W.
Contact: Paul L. Pascal: (202) 544-2200

WARD 3 ANC 3C SMD 3C04

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on April 2, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE

Request to add a Summer Garden with 80 seats.

CURRENT HOURS OF OPERATION (INSIDE PREMISES)

Sunday 8am – 10pm
Monday – Thursday 7am – 10pm
Friday – Saturday 7am – 12:30am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION (INSIDE PREMISES)

Sunday 10am – 10pm
Monday – Thursday 8am – 10pm
Friday – Saturday 8am – 12:30am

PROPOSED HOURS OF OPERATION (SUMMER GARDEN)

Sunday 8am – 10pm
Monday – Thursday 7am – 10pm
Friday – Saturday 7am – 12:30am

PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION (SUMMER GARDEN)

Sunday 10am – 10pm
Monday – Thursday 8am – 10pm
Friday – Saturday 8am – 12:30am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: February 2, 2018
Protest Petition Deadline: March 19, 2018
Roll Call Hearing Date: April 2, 2018
Protest Hearing Date: May 23, 2018

License No.: ABRA-108886
Licensee: Rhythm & Eats, LLC
Trade Name: Prather's on the Alley
License Class: Retailer's Class "C" Restaurant
Address: 455 I Street, N.W.
Contact: Matthew Minora, Esq.: 202-625-7700

WARD 6

ANC 6E

SMD 6E05

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing date on April 2, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The Protest Hearing date is scheduled on May 23, 2018 at 1:30 p.m.

NATURE OF OPERATION

A new full-service Restaurant featuring American fare. Seating capacity of 80 inside. Total Occupancy Load of 99. Sidewalk Café with 30 seats. The Restaurant will not include an Entertainment Endorsement, Dancing or Cover Charge.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION INSIDE OF THE PREMISES

Sunday through Thursday 8 am – 2 am, Friday and Saturday 8 am – 3 am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR THE OUTDOOR SIDEWALK CAFÉ

Sunday through Thursday 8 am – 12 am, Friday and Saturday 8 am – 1 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: February 2, 2018
Protest Petition Deadline: March 19, 2018
Roll Call Hearing Date: April 2, 2018

License No.: ABRA-098973
Licensee: Tenley Grill, LLC
Trade Name: Tenley Grill
License Class: Retailer's Class "C" Restaurant
Address: 4611 41st Street, N.W.
Contact: Margarita Lisi: (240) 535-1041

WARD 3 ANC 3E SMD 3E01

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing date on April 2, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE

Applicant requests to change the Hours of Operation and Alcoholic Beverage Sales, Service and Consumption inside of the premises only.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION INSIDE PREMISES

Sunday 10am - 2am, Monday through Thursday 5pm - 2am, Friday and Saturday 5pm - 3am

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION INSIDE PREMISES

Sunday through Thursday 10am - 2am, Friday and Saturday 10am - 3am

**BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, MARCH 21, 2018
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001**

TO CONSIDER THE FOLLOWING: The Board of Zoning Adjustment will adhere to the following schedule, but reserves the right to hear items on the agenda out of turn.

TIME: 9:30 A.M.

WARD FIVE

THIS CASE WAS POSTPONED FROM DECEMBER 7, 2016, FEBRUARY 22, 2017, APRIL 26, 2017, MAY 31, 2017, SEPTEMBER 27, 2017 AND MARCH 14, 2018 AT THE APPLICANT’S REQUEST; THEN ADMINISTRATIVELY RESCHEDULED TO MARCH 21, 2018:

19377 **Application of The Boundary Companies and The Missionary Society of St Paul the Apostle**, pursuant to 11 DCMR Subtitle X, Chapters 9 and 10, for a special exception under the theoretical lot subdivision requirements of Subtitle C § 305.1, and the RA-new residential use requirements of Subtitle U § 421, and a variance from the vehicular access requirements of Subtitle C § 305.3, to construct 12 new buildings with approximately 78 one-family dwelling units in the RA-1 Zone at premises 3015 4th Street N.E. (Square 3648, Lot 915).
ANC 5E

WARD THREE

19697 **Application of Arkadi Gerney and Nancy Meakem**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201 from the rear yard requirements of Subtitle D § 306.1, to construct a rear addition to an existing one-family dwelling in the R-1-A Zone at premises 4220 Fordham Road N.W. (Square 1481, Lot 3).
ANC 3D

WARD TWO

19698 **Application of Richard Hall**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201 from the rear yard requirements of Subtitle D § 1206.2 and the non-conforming structure requirements of Subtitle C § 202.2(b), to construct a second floor rear addition in the R-20 Zone at premises 1959 39th Street N.W. (Square 1310, Lot 33).
ANC 2E

BZA PUBLIC HEARING NOTICE

MARCH 21, 2018

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WARD FIVE

19699
ANC 5B **Application of 1800 Newton St. NE LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the nonconforming use requirements of Subtitle C § 204.9, and under Subtitle C § 703 from the parking requirements for an expansion or change of use of Subtitle C § 705, to convert two existing commercial spaces into two residential units in an existing building in the R-1-B Zone at premises 1800 Newton Street N.E. (Square 4202, Lot 191).

WARD SIX

19703
ANC 6B **Application of Capitol Hill Day School**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use provisions of Subtitle U § 320.1(a) and Subtitle U § 203.1(l), to permit a private school use on the second floor of an existing office building in the RF-3 Zone at premises 218 D Street S.E. (Square 763, Lot 2).

WARD FIVE

19706
ANC 5B **Application of Mary House, Inc**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle U § 421 for a new residential development, and under Subtitle C § 710.3 from the parking location restrictions of Subtitle C § 710, to construct a new 12-unit apartment house and two surface parking spaces in the RA-1 Zone at premises 1005 Bunker Hill Road N.E. (Square 3863, Lot 843).

WARD SIX

19707
ANC 6D **Application of District of Columbia**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle C § 1610.2 from the lot occupancy requirements of Subtitle C § 1603, under Subtitle C § 703 from the minimum vehicle parking requirements of Subtitle C § 701, under Subtitle C § 714.3 from the surface parking screening requirements of Subtitle C § 714.2, and under Subtitle C § 807.2 from the long term bicycle parking requirements of Subtitle C § 802, to construct a new public library in the R-3 Zone at premises 900 Wesley Place S.W. (Square 542, Lot 87).

WARD TWO

19711
ANC 2B **Application of Granite LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle I § 205.5 from the rear yard requirements of Subtitle I § 205.1, to construct an addition to an existing building to establish a museum and conference center with associated office use in the D-6 Zone at premises 1501-1505 Pennsylvania Avenue, N.W. (Square 221, Lots 29, 810, and a portion of a public alley to be closed).

BZA PUBLIC HEARING NOTICE

MARCH 21, 2018

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PLEASE NOTE:

Failure of an applicant or appellant to appear at the public hearing will subject the application or appeal to dismissal at the discretion of the Board.

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial. The public hearing in these cases will be conducted in accordance with the provisions of Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11. Pursuant to Subtitle Y, Chapter 2 of the Regulations, the Board will impose time limits on the testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board.

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person’s interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form.*** This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning’s website at: www.dcoz.dc.gov. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

**Note that party status is not permitted in Foreign Missions cases.*

Do you need assistance to participate?

Amharic

ለመሳተፍ ዕርዳታ ያስፈልግዎታል?

የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም)

ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-

0312 ወይም በኢሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡት በነጻ ነው።

Chinese

您需要有人帮助参加活动吗?

如果您需要特殊便利设施或语言协助服务（翻译或口译），请在见面之前提前五天与 Zee Hill 联系，电话号码 (202) 727-0312，电子邮件

Zelalem.Hill@dc.gov。这些是免费提供的服务。

French

Avez-vous besoin d’assistance pour pouvoir participer ? Si vous avez besoin d’aménagements spéciaux ou d’une aide linguistique (traduction ou interprétation), veuillez contacter Zee Hill au (202) 727-0312 ou à Zelalem.Hill@dc.gov cinq jours avant la réunion. Ces services vous seront fournis gratuitement.

BZA PUBLIC HEARING NOTICE

MARCH 21, 2018

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Korean

참여하시는데 도움이 필요하세요?

특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면, 회의 5일 전에 Zee Hill 씨께 (202) 727-0312로 전화 하시거나 Zelalem.Hill@dc.gov 로 이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

Spanish

¿Necesita ayuda para participar?

Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a Zelalem.Hill@dc.gov cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

Vietnamese

Quý vị có cần trợ giúp gì để tham gia không?

Nếu quý vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

FOR FURTHER INFORMATION, CONTACT THE OFFICE OF ZONING AT (202) 727-6311.

**FREDERICK L. HILL, CHAIRPERSON
LESYLLEÉ M. WHITE, MEMBER
CARLTON HART, VICE-CHAIRPERSON,
NATIONAL CAPITAL PLANNING COMMISSION
A PARTICIPATING MEMBER OF THE ZONING COMMISSION
ONE BOARD SEAT VACANT
CLIFFORD W. MOY, SECRETARY TO THE BZA
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING**

**DISTRICT OF COLUMBIA BOARD OF ETHICS
AND GOVERNMENT ACCOUNTABILITY**

NOTICE OF FINAL RULEMAKING

The Board of Ethics and Government Accountability (Board), pursuant to the authority set forth in Sections 209 and 221(a)(3) of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code §§ 1-1162.09 and 1162.21(a)(3) (2016 Repl.)), hereby gives notice of the adoption of rules to Chapter 57 (Financial Disclosures and Honoraria), of Title 3 (Elections and Ethics) of the District of Columbia Municipal Regulations (DCMR).

The final rules make conforming changes to ensure that the Board's rules are consistent with the Council Financial Disclosure Amendment Act of 2016, effective April 7, 2017 (D.C. Law 21-240), that requires the Chairman and each member of the Council to file a public financial disclosure statement semiannually no later than 11:59 p.m. on May 15 and November 15 of each year. The rulemaking also reproduces language previously adopted by the Ethics Board on June 20, 2014, at 61 DCR 6201, determining that a District government employee who is paid "regardless of pay schedule, at a rate equivalent to an Excepted Service 9 or above, who makes decisions or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or acts in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest" is eligible to be designated by an agency as a "public official."

No comments were received on the proposed rules that were published in the *D.C. Register* on October 20, 2017 at 64 DCR 10555. The Board adopted these final rules at its meeting on December 21, 2017, and they will become effective upon publication in the *D.C. Register*.

Chapter 57, FINANCIAL DISCLOSURES AND HONORARIA, of Title 3 DCMR, ELECTIONS AND ETHICS, is amended as follows:

Section 5700, APPLICABILITY, is amended as follows:

Paragraphs (h) and (i) of Subsection 5700.2 are amended to read as follows:

- (h) A District of Columbia Excepted Service employee, except an employee of the Council, paid at a rate of Excepted Service 9 or above, or its equivalent, who makes decisions or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or acts in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest; and any additional employees designated by rule by the Ethics Board who make decisions or participate substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or

act in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest.

- (i) An employee of the Council paid at a rate equal to or above the midpoint rate of pay for Excepted Service 9.

Subsection 5702.1 and 5702.7 of Section 5702, FILING AND PUBLICATION REQUIREMENTS, is amended to read as follows:

5702.1 The FDS shall be filed electronically at the Board of Ethics and Government Accountability (Board) website. The FDS shall be deemed timely filed electronically as follows:

- (a) For public officials, except the Chairman and each member of the Council, no later than 11:59 pm May 15th of each year for the prior calendar year in which the public official served.
- (b) Reports required by this section for the Chairman and each member of the Council of the District of Columbia shall be filed semiannually no later than 11:59 pm on May 15th and November 15th of each year.

...

5702.7 The Ethics Board shall publish, in the District of Columbia Register, before December 15th of each year, the name of each member of the Council who has:

- (a) Filed a report under this section;
- (b) Sought and received an extension of the deadline filing requirement and the reason for the extension; and
- (c) Not filed a report and the reason for not filing, if known.

Subsections 5704.1, 5704.2, and 5704.3 of Section 5704, CONFIDENTIAL FINANCIAL DISCLOSURE FILINGS BY EMPLOYEES, are amended to read as follows:

5704.1 Confidential Financial Disclosure statements shall be filed as follows:

- (a) Any employee, other than a public official or Council employee, who advises, makes decisions or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, policy-making, regulating, or auditing, or acts in areas of responsibility that may create a conflict of interest or appearance of a conflict of interests, as determined by the appropriate agency head, shall file, before May 15th of each year, with the agency head a report

containing a full and complete statement of the information required by Section 5701.

- (b) Each Council employee who acts in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest, as determined by that employee's personnel authority, shall file a confidential report containing a full and complete statement of the information required by Section 5701 of the Ethics Act with the General Counsel to the Council no later than May 15 of each year.

5704.2 Each personnel authority shall compile a list of all employees required to submit a confidential financial disclosure statement within its agency or the Council and shall supply the list to the Ethics Board by 11:59 p.m. on March 1 of each year. The list required by this subsection shall include the name, title, position, and grade level for each employee. Notice to and designation of required FDS filing employees shall be done in a manner consistent with 6 DCMR § 1810.

5704.3 Upon review of the confidential report, a personnel authority shall immediately forward to the Ethics Board any violation of the Code of Conduct whenever there is reason to believe that such a violation has occurred.

...

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia (District) to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat.744; D.C. Official Code § 1-307.02 (2016 Repl. & 2017 Supp.)), and the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the final adoption of an amendment to Chapter 45 (Medicaid Reimbursement for Federally Qualified Health Centers) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These final rules amend the Medicaid reimbursement methodology for a Federally Qualified Health Center (FQHC). Federal law authorizes Medicaid reimbursement of FQHCs on a Prospective Payment System (PPS) that comports with federal regulations that have been in place since 2001, or an Alternative Payment Methodology (APM) that is based on reasonable costs, subject to certain requirements. The current PPS reimbursement model has been in effect since January 1, 2001. Since that time, the number of FQHCs operating in the District, the variety of services offered, and patients served have increased.

The major components of the reimbursement model include: (1) an APM for primary care services, behavioral health services, preventive, diagnostic, and comprehensive dental services; (2) a limit on reimbursement for administrative costs; (3) an additional payment based upon performance of each FQHC beginning in January 2018; and (4) a new PPS reimbursement model for new providers that enroll in the Medicaid program after the effective date of the corresponding SPA. These rules set forth the standards for participation in the Medicaid program, the standards used to develop the PPS, APM, cost reporting and auditing processes, and establish the requirements for Medicaid reimbursement of FQHCs for Medicaid-reimbursable services that are outside the scope of core services that qualify for APM rates. DHCF projects an increase in aggregate expenditures of approximately \$151,000 in Fiscal Year (FY) 2016, and \$2,507,000 in FY 2017.

An initial Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on August 5, 2016, at 63 DCR 010227. Two (2) sets of comments were received and a number of substantive changes were made. A Notice of Second Emergency and Proposed Rulemaking was adopted on November 19, 2016 and published in the *D.C. Register* on December 2, 2016, at 63 DCR 014902. Two (2) sets of comments were received from FQHC stakeholders and DHCF made a number of substantive changes to the rules in response to the comments. A Notice of Third Emergency and Proposed Rulemaking was adopted on March 16, 2017 and published in the *D.C. Register* on March 31, 2017 at 64 DCR 003175. One (1) set of comments was received and DHCF made a number of substantive changes in order to conform with the State Plan submission and requirements set forth by the U.S Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). A Notice of Fourth Emergency and Proposed Rulemaking was adopted on September 19, 2017 and published in the *D.C Register* on

October 6, 2017 at 64 DCR 009994. Comments were received from the D.C. Primary Care Association (DCPCA) on this most recent rulemaking. DHCF carefully considered all comments received, but no substantive changes were made, as is discussed in the summary below.

Primary Care Services Per Encounter Reimbursement Rate

As in the comments on the third emergency and proposed rules, DCPCA again raised concerns about the scope of primary care services and reimbursement, asserting that “other ambulatory services” must be covered on a per visit basis under § 1902(bb) of the Social Security Act. DCPCA adds that if DHCF is not going to reimburse “other ambulatory services” on a per encounter basis then those visits should not be included in denominator when calculating per encounter rates.

As proposed, DHCF will cover the full scope of services required under § 1902(bb)(1). Services that meet the definition of primary medical, behavioral health, preventive and diagnostic dental or comprehensive dental services will be reimbursed on a per encounter basis. All other services reimbursable under the Medicaid fee schedule that are appropriately provided in a clinic setting and not within these indicated categories, including ambulatory services, will be paid on a fee-for-service basis under the Medicaid fee schedule. DHCF believes this approach is consistent with federal requirements and other state reimbursement approaches.

When calculating the PPS or APM encounter rate, DHCF looks at the costs associated with all eligible FQHC encounters to derive a per encounter rate that reimburses FQHCs for their actual costs. This approach is consistent with federal FQHC reimbursement requirements and comports with the Medicaid reimbursement principles of efficiency and economy. In keeping with these requirements, DHCF is not proposing further changes at this time.

Administration of the MCO Wrap-Around Supplemental Payment

As in prior comments, DCPCA reiterated concerns that the managed care organization (MCO) wrap-around supplemental payment process set forth in these rules places an undue burden of proof for “unmatched” claims on FQHCs. DCPCA recommends a reversion to the prior wrap-around supplemental payment adjudication system or implementation of an alternative process. DCPCA stated that the process for administration of the wrap-around supplemental payment does not comply with their interpretation of the relevant federal statute nor is it consistent with current legal opinion and court decisions at District and Appellate level.

DHCF believes that the rule, as written, complies with the requirements set forth at 42 USC § 1396a(bb)(5)(B) and is consistent with legal guidance from CMS. Under the process set forth in these rules, an FQHC that furnishes services to Medicaid beneficiaries pursuant to a contract with an MCO will be eligible to receive a wrap-around supplemental payment processed and paid by DHCF. DHCF will reimburse a wrap-around supplemental payment to FQHCs for “matched” FQHC claims from MCOs. To ensure that FQHCs can appeal an MCO’s claim denial, DHCF set forth an FQHC appeals process for MCO decisions on claims for reimbursement in § 4519.3. DHCF believes that the wrap-around supplemental payment process paired with the appeals process set forth in these rules will provide a fair, consistent, and timely

approach for administration of the wrap-around supplemental payment. For these reasons, DHCF is not proposing any revisions at this time.

Billing Guidance

Finally, DCPCA requested that DHCF issue further billing guidance on the process for billing of: services provided to dual eligible beneficiaries and qualified Medicare beneficiaries; group behavioral health visits with service dates prior to September 1, 2017; dental services; and substance use disorder treatment delivered to beneficiaries enrolled in managed care. DHCF has remained engaged with FQHCs throughout the policy development process and will continue to do so as the agency begins implementation of the new reimbursement methodology. DHCF will provide additional information on billing, claiming, and other issues to ensure FQHCs are prepared to operate under the new reimbursement methodology.

These rules correspond to a related State Plan amendment (SPA), which was approved by CMS on September 20, 2017 with an effective date of September 1, 2016. The Council of the District of Columbia authorized the SPA in the “Fiscal Year 2016 Budget Support Act of 2015,” effective October 22, 2015 (D.C. Law 21-36; 62 DCR 10905 (August 14, 2015)).

This final rule was adopted on January 24, 2018, and shall become effective on the date of publication of this notice in the *D.C. Register*.

Chapter 45, MEDICAID REIMBURSEMENT FOR FEDERALLY QUALIFIED HEALTH CENTERS of Title 29 DCMR, PUBLIC WELFARE, is deleted in its entirety and replaced with a new Chapter 45 to read as follows:

CHAPTER 45 MEDICAID REIMBURSEMENT FOR FEDERALLY QUALIFIED HEALTH CENTERS

- 4500 General Provisions**
- 4501 Reimbursement**
- 4502 Prospective Payment System**
- 4503 Alternative Payment Methodology For Primary Care Services**
- 4504 Alternative Payment Methodology For Behavioral Health Services**
- 4505 Alternative Payment Methodology For Preventive And Diagnostic Dental Services**
- 4506 Alternative Payment Methodology For Comprehensive Dental Services**
- 4507 Primary Care Services**
- 4508 Behavioral Health Services**
- 4509 Change in the Scope of Services**
- 4510 Allowable Costs**
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- 4512 Reimbursement For New Providers**
- 4513 Reimbursement For Out Of State Providers**
- 4514 Mandatory Reporting Requirements**
- 4515 Performance Payment**
- 4516 Rebasing For APM**
- 4517 Cost Reporting And Record Maintenance**

- 4518 Access to Records
- 4519 Appeals
- 4599 Definitions

4500 GENERAL PROVISIONS

- 4500.1 The rules set forth in this chapter establish the conditions of participation for a Federally Qualified Health Center (FQHC) in the Medicaid program. These rules also establish the reimbursement methodology for services rendered to Medicaid beneficiaries by an FQHC.
- 4500.2 Prior to seeking Medicaid reimbursement each FQHC must:
- (a) Be approved by the federal Health Resources Services Administration (HRSA) and meet the requirements set forth in the applicable provisions of Title XVIII of the Social Security Act and implementing regulations, which shall include but not be limited to meeting the requirements governing federal approval of FQHC Look-Alikes;
 - (b) Be screened and enrolled in the Medicaid program pursuant to the requirements set forth in Chapter 94 of Title 29 of the District of Columbia Municipal Regulations; and
 - (c) Obtain a National Provider Identifier (NPI) for each site operated by an FQHC.
 - (d) Submit the FQHC's Scope of Project approved by the federal Health Resources Services Administration (HRSA).
- 4500.3 Medicaid reimbursable services provided by an FQHC shall be consistent with the Section 1905(a)(2) of the Social Security Act and furnished in accordance with Section 4231 of the State Medicaid Manual.
- 4500.4 Services may be provided at other sites including mobile vans, intermittent sites such as a homeless shelter, a seasonal site, or a beneficiary's place of residence, provided the claims for reimbursement are consistent with the services covered under Section 1905(a)(2) of the Social Security Act and described in Sections 4502 and 4505 - 4508.
- 4500.5 All services provided by an FQHC shall be subject to quality standards, measures and guidelines established by National Committee for Quality Assurance (NCQA), HRSA, CMS and the Department of Health Care Finance (DHCF).
- 4500.6 Services for which an FQHC seeks Medicaid reimbursement pursuant to this Chapter shall be delivered in accordance with the corresponding standards for service delivery, as described in relevant sections of the District of Columbia State

Plan for Medical Assistance and implementing regulations.

4501 REIMBURSEMENT

- 4501.1 Medicaid reimbursement for primary care, behavioral health, and dental services furnished by an FQHC shall be made under:
- (a) A Prospective Payment System (PPS) as described in Section 4502; or
 - (b) An Alternative Payment Methodology (APM) as described in Sections 4503 - 4506.
- 4501.2 Each FQHC that is geographically located in the District of Columbia and enrolled in the District's Medicaid program as of the effective date of the corresponding State Plan Amendment (SPA) that elects to be reimbursed for services under an APM shall sign an agreement with the DHCF.
- 4501.3 The APM referenced in Subsection 4501.2 shall become effective on or after the date of an executed agreement between DHCF and the FQHC, or the effective date of the corresponding State Plan amendment, whichever is later.
- 4501.4 The APM shall comply with Section 1902(bb)(6) of the Social Security Act .
- 4501.5 Any FQHC that elects not to be reimbursed under an APM shall be reimbursed under the PPS methodology described in Section 4502.
- 4501.6 An FQHC may only be reimbursed at the PPS or APM rate for services that are within the scope of services described in Sections 4502, 4505, 4506, 4507, and 4508, in accordance with Section 1905(a)(2) of the Social Security Act.
- 4501.7 If an FQHC seeks Medicaid reimbursement for services covered under the DC Medicaid State Plan, in accordance with Section 1905(a)(2)(B) and (C) of the Social Security Act, that are outside the scope of services described in Sections 4502, 4505, 4506, 4507, and 4508, the FQHC shall be reimbursed at the fee-for-service rate if it meets the following conditions:
- (a) Obtain a separate D.C. Medicaid identification number in accordance with Chapter 94 of Title 29 DCMR;
 - (b) Obtain a separate Healthcare Provider Taxonomy Code;
 - (c) Ensure that all individuals providing the service are authorized to render the service and meet the requirements governing the service; and
 - (d) Be subject to the limitations set forth in the State Plan for Medical Assistance (State Plan) and any governing rules and regulations.

- 4501.8 Each encounter for a Medicaid enrollee who is enrolled in Medicare or another form of insurance (or both) shall be paid an amount that is equal to the difference between the payment received from Medicare and any other payers and the FQHC's payment rate calculated pursuant to these rules.
- 4501.9 Each encounter for a qualified Medicare beneficiary for whom Medicaid is responsible for only cost-sharing payments shall be paid the amount that is equal to the difference between the payment the FQHC received from Medicare and the FQHCs' Medicare prospective payment rate.
- 4501.10 The payment received by an FQHC from Medicare, any other payor and Medicaid shall not exceed the Medicaid reimbursement rate.
- 4501.11 Each FQHC shall ensure that a service that requires multiple procedures, and which may be performed as part of a single course of treatment under general standards of care, shall be completed as a single encounter unless multiple visits are medically required to complete the treatment plan and the medical necessity is documented in the clinical record.
- 4501.12 At the end of each fiscal year, DHCF will review and reconcile the total payments made to each FQHC that elects the APM rate to ensure that the overall per encounter rate is at least equal to the PPS rate for that FQHC for the fiscal year. If the payments are less than the total amount that would be paid under the PPS rate methodology for that FQHC, DHCF will pay the FQHC the difference between the amount paid and the amount the FQHC would have been due under the APM rate methodology for the total number of encounters provided.
- 4501.13 Payments related to yearly reconciliations will be made in accordance with the two-year payment requirement at 42 CFR § 447.45 and 45 CFR § 95, Subpart A.

4502 PROSPECTIVE PAYMENT SYSTEM

- 4502.1 Medicaid reimbursement for services furnished on or after January 1, 2001 by an FQHC shall be at a Prospective Payment System (PPS) rate consistent with the requirements set forth in Section 1902(bb) of the Social Security Act and subject to the following conditions:
- (a) When an FQHC furnishes "other ambulatory services" as defined under Section 1902(bb) of the Social Security Act, DHCF shall reimburse the provider using the fee-for-service rate; and
 - (b) Other ambulatory services shall include services provided by an FQHC to a Medicaid-enrolled beneficiary that meet the following conditions:
 - (1) Not included in the scope of services defined under section 4501.6;

- (2) Not provided in a hospital setting, either on an inpatient or outpatient basis; and
- (3) Is a reimbursable service under the Medicaid State Plan.

4502.2 The PPS rate shall be paid for each encounter with a Medicaid beneficiary when a medical service or services are furnished. The PPS for services rendered beginning on or after January 1, 2001 through and including September 30, 2001, shall be calculated as follows:

- (a) The sum of the FQHC's audited allowable costs for the FYs 1999 and 2000 shall be divided by the total number of patient encounters in FYs 1999 and 2000;
- (b) The amount established in Subsection 4502.2(a) shall be adjusted to take into account any increase or decrease in the scope of services furnished by the FQHC during FY 2001. Each FQHC shall report to DHCF any increase or decrease in the scope of services, including the starting date of the change. The amount of the adjustment shall be negotiated between the parties. The adjustment shall be implemented no later than ninety (90) days after establishment of the negotiated rate; and
- (c) Allowable costs shall include reasonable costs that are incurred by the FQHC in furnishing Medicaid coverable services to Medicaid eligible beneficiaries, as determined by Reasonable Cost Principles set forth in 42 CFR Chapter IV, Sub Chapter B, Part 413 and 45 CFR Part 75 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards.

4502.3 For services furnished beginning FY 2002 and each fiscal year thereafter, an FQHC shall be reimbursed at a rate that is equal to the rate in effect the previous fiscal year, increased by the percentage increase in the Medicare Economic Index, established in accordance with Section 1842(i)(3) of the Social Security Act and adjusted to take into account any increase or decrease in the scope of services furnished by the FQHC during the fiscal year.

4502.4 Each FQHC shall report to DHCF any increase or decrease in the scope of services, including the starting date of the change, consistent with the requirements established in Section 4509.

4502.5 In any case in which an entity first qualifies as an FQHC after FY 2000, the prospective rate for services furnished in the first year shall be equal to the average of the prospective rates paid to other FQHCs located in the same area with a similar caseload, effective on the date of application. For each fiscal year following the first year in which the entity first qualified as an FQHC, the

prospective payment rate shall be computed in accordance with Subsection 4502.3. This section shall not apply to a new provider. Reimbursement for a new provider is set forth in Section 4512.

4502.6 An FQHC that furnishes services that qualify as an encounter to Medicaid beneficiaries pursuant to a contract with a managed care entity, as defined in Section 1932(a)(1)(B) of the Social Security Act, where the payment (including a per member per month (PMPM) payment) from such entity is less than the amount the FQHC would be entitled to receive under Subsections 4502.2 through 4502.5, will be eligible to receive a wrap-around supplemental payment processed and paid by DHCF. The wrap-around supplemental payment shall be made at least every four (4) months and reconciled at least annually. Payments related to yearly reconciliations will be made in accordance with the two-year payment requirement at 42 CFR § 447.45 and 45 CFR § 95, Subpart A.

4502.7 The amount of the wrap-around supplemental payment identified in Subsection 4502.6 shall equal the difference between the payment received from the managed care organization (MCO) as determined on a per encounter basis and the FQHC PPS rate calculated pursuant to this section. In cases where an FQHC has a capitation payment arrangement with an MCO under which it receives a PMPM payment for certain services, the amount payable to the FQHC shall be offset by the capitation payment, but in no case will the payment be less than the PPS rate the FQHC would be entitled to receive on a per encounter basis. The FQHC shall report the aggregate of all capitation payments received in the period covered by each wrap-around supplemental payment submission. This amount shall be offset against total amounts otherwise payable to the provider as part of the annual reconciliation described in Subsection 4502.6.

4503 ALTERNATIVE PAYMENT METHODOLOGY FOR PRIMARY CARE SERVICES

4503.1 The APM rate for primary care services rendered beginning the effective date of the corresponding SPA by an FQHC shall be determined as described in this section. The APM rate shall be applicable to all sites within the District of Columbia for FQHCs operating in multiple locations. The APM rate shall be available for each encounter with a D.C. Medicaid beneficiary for primary care services described in Section 4507 in accordance with Section 1905(a)(2) of the Social Security Act.

4503.2 The APM rate for primary care services shall be calculated by taking the sum of the FQHC's audited allowable costs for primary care services and related administrative and capital costs and dividing it by the total number of eligible primary care visits.

4503.3 For services rendered beginning the effective date of the corresponding SPA through December 31, 2017, the APM rate shall be determined based upon each

FQHC's FY 2013 audited allowable costs.

- 4503.4 An FQHC which has been in operation as an FQHC, or an FQHC look-alike as determined by HRSA, for fewer than five (5) years at the time of audit will receive the lesser of the average APM rate calculated as of the first day of the District fiscal year for similar facilities pursuant to Subsection 4503.2 or the APM rate based on costs reported by the FQHC or FQHC look-alike.
- 4503.5 For services rendered beginning the effective date of the corresponding SPA through December 31, 2017, the APM rate for primary care services shall not be lower than the Medicaid PPS rate in FY 2016. If, an FQHC's APM rate for primary care services is less than the Medicaid PPS rate, the APM rate shall be adjusted up to the Medicaid PPS rate for the applicable time period.
- 4503.6 Except as described in Subsection 4503.4, for services rendered beginning January 1, 2018 through December 31, 2018, each FQHC shall be reimbursed an APM rate (which shall apply to all of the FQHC's sites if the FQHC has more than one (1) site), for each encounter with a D.C. Medicaid beneficiary for primary care services as follows:
- (a) The APM rate for primary care services shall be determined under Subsection 4503.2, except that administrative costs shall not exceed twenty percent (20%) of the total allowable costs for any FQHC that has ten thousand (10,000) or more encounters in a year as reported in the audited cost report.
- 4503.7 Except as described in Subsection 4503.4, the APM rate for primary care services rendered on or after January 1, 2019, shall be determined as described in Subsection 4503.2, except that administrative costs shall not exceed twenty percent (20%) of the total allowable costs for all FQHCs.
- 4503.8 The APM rate established pursuant to Subsection 4503.7 shall be adjusted annually by the percentage increase in the Medicare Economic Index, established in accordance with Section 1842(i)(3) of the Social Security Act, except for the years the APM rate is rebased as described in Section 4516.
- 4503.9 An FQHC that furnishes primary care services that qualify as an encounter to Medicaid beneficiaries pursuant to a contract with a managed care entity, as defined in Section 1932(a)(1)(B) of the Social Security Act, where the payment (including a PMPM payment) from such entity is less than the amount the FQHC would be entitled to receive under this section will be eligible to receive a wrap-around supplemental payment processed and paid by DHCF. The wrap-around supplemental payment shall be made at least every four (4) months and reconciled at least annually. Payments related to yearly reconciliations will be made in accordance with the two-year payment requirement at 42 CFR § 447.45 and 45 CFR § 95, Subpart A.

- 4503.10 The amount of the wrap-around supplemental payment shall equal the difference between the payment received from the MCO as determined on a per encounter basis and the FQHC APM rate calculated pursuant to this section. In cases where an FQHC has a capitation payment arrangement with an MCO under which it receives a PMPM payment for certain services, the amount payable to the FQHC shall be offset by the capitation payment, but in no case will the payment be less than the APM rate the FQHC would be entitled to receive on a per encounter basis. The FQHC shall report their monthly capitation payment amount to DHCF. The FQHC shall report the aggregate of all capitation payments received in the period covered by each wrap-around supplemental payment submission. This amount shall be offset against total amounts otherwise payable to the provider as part of the annual reconciliation described in Subsection 4503.9.
- 4503.11 Reimbursement shall be limited for each beneficiary to one primary care encounter per day. The FQHC shall document each encounter in the beneficiary's medical record.
- 4503.12 The APM rate established pursuant to this section may be subject to adjustment to take into account any change in the scope of services as described in Section 4509.
- 4503.13 Each FQHC shall include the Current Procedural Terminology (CPT) code(s) that correspond to the specific services provided on each claim submitted for reimbursement.
- 4503.14 If an FQHC seeks Medicaid reimbursement for services that are outside the scope of primary care services described in Section 4507 in accordance with Section 1905(a)(2) of the Social Security Act, such as prescription drugs, labor and delivery services, or laboratory and x-ray services that are not office based, the FQHC shall follow the requirements set forth in Subsection 4501.07.

4504 ALTERNATIVE PAYMENT METHODOLOGY FOR BEHAVIORAL HEALTH SERVICES

- 4504.1 The APM rate for behavioral health services rendered beginning the effective date of the corresponding SPA by an FQHC shall be determined as described in this section. The APM rate shall be applicable to all sites within the District of Columbia for FQHCs operating in multiple locations. The APM rate shall be available per encounter with a D.C. Medicaid beneficiary for behavioral health services described in Section 4508.
- 4504.2 Except for reimbursement to certain FQHCs as described in Subsection 4504.5, the APM rate for behavioral health services shall be calculated by taking the sum of the FQHC's audited allowable costs for behavioral health services and related administrative and capital costs and dividing it by the total number of eligible

behavioral health encounters.

- 4504.3 Effective September 1, 2017, the reimbursement rate claimable for each beneficiary attending group therapy behavioral health services shall be equal to the D.C. Medicaid Fee for Service schedule rate for group psychotherapy. The D.C. Medicaid Fee for Service schedule is available online at <http://www.dc-medicaid.com>. FQHCs seeking reimbursement for group psychotherapy shall comply with the requirements set forth under Subsection 4501.7.
- 4504.4 For services rendered beginning the effective date of the corresponding SPA through December 31, 2017, the APM rate shall be determined based upon each FQHC's FY 2013 audited allowable costs.
- 4504.5 An FQHC which has been in operation as an FQHC, or an FQHC look-alike as determined by HRSA for fewer than five (5) years, at the time of audit will receive the lesser of the average APM rate calculated as of the first day of the District fiscal year for similar facilities pursuant to Subsection 4504.2 or the APM rate based on costs reported by the FQHC or FQHC look-alike.
- 4504.6 For services rendered beginning the effective date of the corresponding SPA through December 31, 2017, the APM rate for behavioral services shall not be lower than the Medicaid PPS in FY 2016. If, an FQHC's APM rate for behavioral health services is less than the Medicaid PPS rate, the APM rate shall be adjusted up to the Medicaid PPS rate for the applicable time period.
- 4504.7 Except as described in Subsection 4504.5, for services rendered beginning January 1, 2018 through December 31, 2018, each FQHC shall be reimbursed an APM rate (which shall apply to all of the FQHC's sites if the FQHC has more than one (1) site), for each encounter with a D.C. Medicaid beneficiary for behavioral health services as follows: The APM rate for behavioral health services shall be the amount determined under Subsection 4504.2, except that administrative costs shall not exceed twenty percent (20%) of the total allowable costs for any FQHC that has ten thousand (10,000) or more encounters in a year as reported in the audited cost report.
- 4504.8 Except as described in Subsection 4504.5, the APM rate for behavioral health services rendered on or after January 1, 2019, shall be determined as described in Subsection 4504.2, except that administrative costs shall not exceed twenty percent (20%) of the total allowable costs for all FQHCs.
- 4504.9 The APM rate established pursuant to Subsection 4504.8 shall be adjusted annually by the percentage increase in the Medicare Economic Index, established in accordance with Section 1842(i)(3) of the Social Security Act except for the years the APM rate is rebased as described in Section 4516.
- 4504.10 An FQHC that furnishes behavioral health services that qualify as an encounter to

Medicaid beneficiaries pursuant to a contract with a managed care entity, as defined in Section 1932(a)(1)(B) of the Social Security Act, where the payment (including a PMPM payment) from such entity is less than the amount the FQHC would be entitled to receive under this section will be eligible to receive a wrap-around supplemental payment processed and paid by DHCF. The wrap-around supplemental payment shall be made at least every four months and reconciled at least annually. Payments related to yearly reconciliations will be made in accordance with the two-year payment requirement at 42 CFR § 447.45 and 45 CFR § 95, Subpart A.

- 4504.11 The amount of the wrap-around supplemental payment shall equal the difference between the payment received from the MCO as determined on a per encounter basis and the FQHC APM rate calculated pursuant to this section. In cases where an FQHC has a capitation payment arrangement with an MCO under which it receives a PMPM payment for certain services, the amount payable to the FQHC shall be offset by the capitation payment, but in no case will the payment be less than the APM rate the FQHC would be entitled to receive on a per encounter basis. The FQHC shall report their monthly capitation payment amount to DHCF. The FQHC shall report the aggregate of all capitation payments received in the period covered by each wrap-around supplemental payment submission. This amount shall be offset against total amounts otherwise payable to the provider as part of the annual reconciliation described in Subsection 4504.10.
- 4504.12 For services furnished on or after the effective date of the corresponding SPA, reimbursement shall be limited for each beneficiary to one behavioral service encounter per day. Reimbursement for a Behavioral Health encounter shall not affect an FQHC's ability to claim for group psychotherapy on a fee-for-service basis for the same service day. The FQHC shall document each encounter in the beneficiary's medical record.
- 4504.13 The APM rate established pursuant to this Section may be subject to adjustment to take into account any change in the scope of services as described in Section 4509 in accordance with Section 1905(a)(2) of the Social Security Act.
- 4504.14 Each FQHC shall include the Current Procedural Terminology (CPT) code(s) that correspond to the specific services provided on each claim submitted for reimbursement.
- 4504.15 If an FQHC seeks Medicaid reimbursement for services that are outside the scope of behavioral health services described in Section 4508, such as rehabilitative services, including Mental Health Rehabilitative Services, prescription drugs, or laboratory and x-ray services that are not office-based, the FQHC shall comply with the requirements set forth under Subsection 4501.07.
- 4504.16 Each FQHC that delivers substance abuse services must be certified by the Department of Behavioral Health in accordance with Chapter 63 of Title 22-A of

the District of Columbia Municipal Regulations.

4505 ALTERNATIVE PAYMENT METHODOLOGY FOR PREVENTIVE AND DIAGNOSTIC DENTAL SERVICES

- 4505.1 The APM rate for preventive and diagnostic dental services rendered beginning the effective date of the corresponding SPA by an FQHC shall be determined as described in this section. The APM rate shall be applicable to all sites for FQHCs operating in multiple locations. The APM rate shall be available per encounter with a D.C. Medicaid beneficiary for preventive and diagnostic dental services described in Subsection 4505.5.
- 4505.2 The APM rate for preventive and diagnostic dental services shall be calculated by taking the sum of the FQHC's audited allowable costs for preventative and diagnostic dental services and administrative and capital costs and dividing it by the total number of eligible preventive and diagnostic dental service encounters.
- 4505.3 For services rendered beginning the effective date of the corresponding SPA through December 31, 2017, the APM rate shall be determined based upon each FQHC's FY 2013 audited allowable costs.
- 4505.4 Except as described in Subsection 4505.16, for services rendered beginning January 1, 2018 through December 31, 2018, the APM rate for preventive and diagnostic dental services shall be determined as described in Subsection 4505.2, except that administrative costs shall not exceed twenty percent (20%) of the total allowable costs for any FQHC that has ten thousand (10,000) or more encounters in a year as reported in the audited cost report.
- 4505.5 Except as described in Subsection 4505.16, the APM for preventive and diagnostic dental services rendered on or after January 1, 2019 shall be determined as described in Subsection 4505.2 except that administrative costs shall not exceed twenty percent (20%) of the total allowable costs for all FQHCs, including those with less than ten thousand (10,000) annual encounters.
- 4505.6 The APM rate established pursuant to Subsection 4505.5 shall be adjusted annually by the percentage increase in the Medicare Economic Index, established in accordance with Section 1842(i)(3) of the Social Security Act, except for the years the APM rate is rebased as described in Section 4516.
- 4505.7 Subject to the limitations set forth in the section, covered preventive and diagnostic dental services provided by the FQHC may include the following procedures in accordance with Section 1905(a)(2) of the Social Security Act:
- (a) Diagnostic-American Dental Association (ADA) dental procedure codes (D0100-D0999) representing clinical oral examinations, radiographs, diagnostic imaging, tests and examinations; and

- (b) Preventive-ADA dental procedure codes (D1000-D1999) representing dental prophylaxis, topical fluoride treatment (office procedure), space maintenance (passive appliances and sealants).
- 4505.8 Only procedure codes listed in Subsection 4505.7 that are included on the D.C. Medicaid Fee for Service schedule as covered benefits shall be reimbursed by the Medicaid program. The D.C. Medicaid Fee for Service schedule is available online at <http://www.dc-medicaid.com>.
- 4505.9 An FQHC that furnishes preventive and diagnostic dental services that qualify as an encounter to Medicaid beneficiaries pursuant to a contract with a managed care entity, as defined in Section 1932(a)(1)(B) of the Social Security Act, where the payment (including a PMPM payment) from such entity is less than the amount the FQHC would be entitled to receive under this section will be eligible to receive a wrap-around supplemental payment processed and paid by DHCF. The wrap-around supplemental payment shall be made at least every four months and reconciled at least annually. Payments related to yearly reconciliations will be made in accordance with the two-year payment requirement at 42 CFR § 447.45 and 45 CFR § 95, Subpart A.
- 4505.10 The amount of the wrap-around supplemental payment shall equal the difference between the payment received from the MCO as determined on a per encounter basis and the amount of the FQHC APM rate calculated pursuant to this section. In cases where an FQHC has a capitation payment arrangement with an MCO under which it receives a PMPM payment for certain services, the amount payable to the FQHC shall be offset by the capitation payment, but in no case will the payment be less than the APM rate the FQHC would be entitled to receive on a per encounter basis. The FQHC shall report their monthly capitation payment amount to DHCF. The FQHC shall report the aggregate of all capitation payments received in the period covered by each wrap-around supplemental payment submission. This amount shall be offset against total amounts otherwise payable to the provider as part of the annual reconciliation described in Subsection 4505.9.
- 4505.11 Reimbursement of preventive and diagnostic dental service encounters shall be limited to one encounter per day for each beneficiary. The FQHC shall document each encounter in the beneficiary's dental record.
- 4505.12 If an encounter comprises both a preventive and diagnostic service and a comprehensive dental service as described in Section 4506, the FQHC shall bill the encounter as a comprehensive dental service.
- 4505.13 All preventive and diagnostic dental services shall be provided in accordance with the requirements, including any limitations, as set forth in Section 964 (Dental Services) of Title 29 DCMR.

- 4505.14 Each FQHC shall include the Current Dental Terminology (CDT) code(s) that correspond to the specific services provided on each claim submitted for reimbursement with associated tooth number, quadrant, and arch if applicable for the dental procedure.
- 4505.15 Each provider of preventive and diagnostic dental services, with the exception of children's fluoride varnish treatments, shall be a dentist or dental hygienist, working under the supervision of a dentist, who provide services consistent with the scope of practice authorized pursuant to the District of Columbia Health Occupations Revisions Act (HORA) of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2012 Repl. & 2016 Supp.)), or consistent with the applicable professional practices act within the jurisdiction where services are provided.
- 4505.16 An FQHC, or an FQHC look-alike as determined by HRSA, which has been in operation for fewer than five (5) years at the time of audit will receive the lesser of the average APM rate calculated as of the first day of the District fiscal year for similar facilities pursuant to Subsection 4505.2 or the APM rate based on costs reported by the FQHC, or FQHC look-alike.

4506 ALTERNATIVE PAYMENT METHODOLOGY FOR COMPREHENSIVE DENTAL SERVICES

- 4506.1 The APM rate for comprehensive dental services rendered by the FQHC on or after the effective date of the corresponding SPA by an FQHC shall be determined in accordance with this section.
- 4506.2 The APM rate shall be applicable to all sites for FQHCs operating in multiple locations. The APM rate shall be available for each encounter with a D.C. Medicaid beneficiary for comprehensive dental services described in Subsection 4506.8.
- 4506.3 The APM rate for comprehensive dental services shall be calculated by taking the sum of the FQHC's audited allowable costs for comprehensive dental services and related administrative and capital costs and dividing it by the total number of eligible comprehensive dental service encounters.
- 4506.4 For services rendered beginning on or after the effective date of the corresponding SPA, through December 31, 2017, the APM rate shall be determined based upon each FQHC's FY 2013 audited allowable costs.
- 4506.5 Except as described in Subsection 4506.17, for services rendered from January 1, 2018 through December 31, 2018, the APM rate for comprehensive dental services shall be determined as described in Subsection 4506.3, except that administrative costs shall not exceed twenty percent (20%) of the total allowable costs for any FQHC that has ten thousand (10,000) or more encounters in a year

as reported in the audited cost report.

- 4506.6 Except as described in Subsection 4506.17, the APM for comprehensive dental services rendered on or after January 1, 2019, the twenty percent (20%) administrative cap described in Subsection 4506.5 shall apply in determining the APM rate for all FQHCs, including those with less than ten thousand (10,000) annual encounters.
- 4506.7 The APM rate established pursuant to Subsection 4506.6 shall be adjusted annually by the percentage increase in the Medicare Economic Index, established in accordance with Section 1842(i)(3) of the Social Security Act, except for the years the APM rate is rebased as described in Section 4516.
- 4506.8 Subject to the limitations set forth in this section, covered comprehensive dental services provided by the FQHC may include the following procedures:
- (a) Restorative - ADA dental procedure codes (D2000-D2999) representing amalgam restoration, resin-based composite restorations, crowns (single restorations only), and additional restorative services;
 - (b) Endodontic - ADA dental procedures codes (D3000-D3999) representing pulp capping, pulpotomies, endodontic therapy of primary and permanent teeth, endodontic retreatment, apexification/recalcification procedures, apicoectomy/periradicular services, and other endodontic services;
 - (c) Peridontic - ADA dental procedure codes (D4000-D4999) representing surgical services, including usual postoperative care), nonsurgical periodontal services, and other periodontal services;
 - (d) Prosthodontic - ADA dental procedure codes (D5000-D5899) representing complete and partial dentures treatment including repairs and rebasing, interim prosthesis, and other removable prosthetic services;
 - (e) Maxillofacial Prosthetics - ADA dental procedure code (D5982) representing the surgical stent procedure;
 - (f) Implants Services - ADA dental procedure codes (D6000-D6199) representing Pre-surgical and surgical services, implant-supported prosthetics, and other implant services;
 - (g) Oral and Maxillofacial Surgery - ADA dental procedure codes (D7000-D7999) representing treatment and care related to extractions, alveoloplasty, vestibuloplasty, surgical treatment of lesions, treatment of fractures, repair traumatic wounds including complicated suturing;
 - (h) Orthodontics - ADA dental procedure codes (D8000-D8999) representing

orthodontic treatments and services; and

- (i) Adjunctive General Services - ADA dental procedure codes (D9000-D9999) representing unclassified treatment, anesthesia, professional consultation, professional visits, drugs and miscellaneous.

4506.9 Only procedure codes listed in Subsection 4506.8 that are included on the D.C. Medicaid Fee for Service schedule as covered benefits shall be reimbursed by the Medicaid program. The D.C. Medicaid Fee for Service schedule is available online at <http://www.dc-medicaid.com>.

4506.10 An FQHC that furnishes comprehensive dental services that qualify as an encounter to Medicaid beneficiaries pursuant to a contract with a managed care entity, as defined in Section 1932(a)(1)(B) of the Social Security Act, where the payment (including a PMPM payment) from such entity is less than the amount the FQHC would be entitled to receive under this section will be eligible to receive a wrap-around supplemental payment processed and paid by DHCF. The wrap-around supplemental payment shall be made at least every four (4) months and reconciled at least annually. Payments related to yearly reconciliations will be made in accordance with the two-year payment requirement at 42 CFR § 447.45 and 45 CFR § 95, Subpart A.

4506.11 The amount of the wrap-around supplemental payment shall equal the difference between the payment received from the managed care entity as determined on a per encounter basis and the FQHC APM rate calculated receive pursuant to this section. In cases where an FQHC has a capitation payment arrangement with an MCO under which it receives a PMPM payment for certain services, the amount payable to the FQHC shall be offset by the capitation payment, but in no case will the payment be less than the APM rate the FQHC would be entitled to receive on a per encounter basis. The FQHC shall report their monthly capitation payment amount to DHCF. The FQHC shall report the aggregate of all capitation payments received in the period covered by each wrap submission. This amount shall be offset against total amounts otherwise payable to the provider as a part of the annual reconciliation described in Subsection 4506.10.

4506.12 Reimbursement of comprehensive dental service encounters shall be limited to one encounter per day for each beneficiary. The FQHC shall document each encounter in the beneficiary's dental record.

4506.13 If an encounter comprises both a preventive and diagnostic service as described in Section 4505 and a comprehensive dental service, the FQHC shall bill the encounter as a comprehensive dental service.

4506.14 All comprehensive dental services shall be provided in accordance with the requirements, including any limitations, as set forth in Section 964 (Dental Services) of Title 29 DCMR.

- 4506.15 Each FQHC shall include the CDT code(s) that correspond to the specific services provided on each claim submitted for reimbursement with associated tooth number, quadrant, surface, and arch if applicable for the dental procedure.
- 4506.16 Each provider of comprehensive dental services, with the exception of children's fluoride varnish treatments, shall be a dentist or dental hygienist, working under the supervision of a dentist, who provide services consistent with the scope of practice authorized pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2012 Repl. & 2016 Supp.)), or consistent with the applicable professional practices act within the jurisdiction where services are provided.
- 4506.17 An FQHC, or an FQHC look-alike as determined by HRSA, which has been in operation for fewer than five (5) years at the time of audit will receive the lesser of the average APM rate calculated as of the first day of the District fiscal year for similar facilities pursuant to Subsection 4506.3 or the APM rate based on costs reported by the FQHC, or FQHC look-alike.

4507 PRIMARY CARE SERVICES

- 4507.1 Covered primary care services provided by the FQHC shall be limited to the following services:
- (a) Health services related to family medicine, internal medicine, pediatrics, obstetrics (excluding services related to birth and delivery), and gynecology which include but are not limited to:
- (1) Health management services and treatment for illness, injuries or chronic conditions (examples of chronic conditions include diabetes, high blood pressure, etc.) including but not limited to health education and self-management training;
 - (2) Services provided pursuant to the Early and Periodic Screening, Diagnostic and Treatment benefit for Medicaid eligible children under the age of twenty-one (21);
 - (3) Preventive fluoride varnish for children, provided the service is furnished during a well-child visit by a physician or pediatrician who is acting within the scope of practice authorized pursuant to District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2012 Repl. & 2016 Supp.)) ("HORA").
 - (4) Preventive and diagnostic services, including but not limited to the

following:

- (i) Prenatal and postpartum care rendered at an FQHC, excluding labor and delivery;
- (ii) Lactation consultation, education and support services if provided by a certified nurse mid-wife licensed in accordance with HORA and certified by the International Board of Lactation Consultant Examiners (IBLCE) or a registered lactation consultant certified by IBLCE;
- (iii) Physical exams;
- (iv) Family planning services;
- (v) Screenings and assessments, including but not limited to, visual acuity and hearings screenings, and nutritional assessments and referrals;
- (vi) Risk assessments and initial counseling regarding risks for clinical services;
- (vii) PAP smears, breast exams and mammography referrals when provided as part of an office visit; and
- (viii) Preventive health education.

4507.2 Primary care services set forth in this Subsection 4507.1(a) shall be delivered by the following health care professionals who are licensed in accordance with HORA:

- (a) A physician;
- (b) An Advanced Practiced Registered Nurse (APRN);
- (c) A physician assistant working under the supervision of physician; or
- (d) A nurse-mid-wife.

4508 BEHAVIORAL HEALTH SERVICES

4508.1 Covered behavioral health services provided by an FQHC shall be limited to ambulatory mental health and substance abuse evaluation, treatment and management services identified by specific Current Procedural Terminology (CPT) codes. Such codes include psychiatric diagnosis, health and behavioral health assessment and treatment, individual and family therapy, and

pharmacologic management. DHCF shall issue a transmittal to the FQHCs which shall include the specific CPT codes including any billing requirements for covered behavioral health services.

4508.2 Covered behavioral health services set forth in this section shall be delivered by the following health care professionals who shall be licensed in accordance with the HORA and certified by the Department of Behavioral Health when required by District Law:

- (a) A physician, including a psychiatrist;
- (b) An APRN;
- (c) A psychologist;
- (d) A licensed independent clinical social worker;
- (e) A licensed independent social worker (LISW);
- (f) A graduate social worker, working under the supervision of an LISW;
- (g) A licensed professional counselor;
- (h) A certified addiction counselor;
- (i) A licensed marriage and family therapist; and
- (j) A licensed psychologist associate, working under the supervision of a psychologist or psychiatrist.

4509 CHANGE IN THE SCOPE OF SERVICES

4509.1 An FQHC may apply for an adjustment to its PPS rate or its APM rate (in any of the following four (4) service categories: (1) primary care; (2) behavioral health, (3) preventive and diagnostic dental services; and (4) comprehensive dental services) during any fiscal year after the effective date of the corresponding SPA, based upon a change in the scope of the services provided by the FQHC subject to the requirements set forth in the section.

4509.2 For services furnished on or after the effective date of these rules, a change in the scope of services shall only relate to services furnished on or after the effective date of the corresponding SPA and shall consist of a change in the type, intensity duration or amount of service as described below:

- (a) Type: for FQHCs adopting either the PPS or APM payment rate, the addition of a new service not previously provided by the FQHC must be

consistent with the services described in Section 4505 – 4508 in accordance with Section 1905(a)(2) of the Social Security Act;

- (b) Intensity: for FQHCs adopting the either the PPS or APM payment rate, a change in quantity or quality of a service demonstrated by an increase or decrease in the total quantity of labor and materials consumed by an individual patient during an average encounter or a change in the types of patients served;
- (c) Duration: for FQHCs adopting the either the PPS or APM payment rate, a change in the average length of time it takes FQHC providers to complete an average patient visit due to changing circumstances such as demographic shifts or the introduction of disease management programs;
- (d) Amount: for FQHCs adopting either the PPS or APM payment rate, an increase or decrease in the amount of services that an average patient receives in a Medicaid-covered visit such as additional outreach or case management services or improvements to technology or facilities that result in better services to the FQHC's patients.

4509.3 A change in the cost of a service, in and of itself, is not considered a change in the scope of services.

4509.4 A change in the scope of services shall not be based on a change in the number of encounters, or a change in the number of staff that furnish the existing service.

4509.5 DHCF shall review the costs related to the change in the scope of services. Rate changes based on a change in the scope of services provided by an FQHC shall be evaluated in accordance with the Medicare reasonable cost principles set forth in 42 CFR Chapter IV, Sub Chapter B, Part 413 and 45 CFR Part 75 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards.

4509.6 The adjustment to the PPS rate shall only be granted if the change in scope of services results in at least a five percent (5%) increase or decrease in the FQHC's allowable costs in the core service category for the fiscal year in which the change in scope of service became effective. The PPS rate adjustment for a change in scope shall be determined as the current PPS rate multiplied by the percentage change in the allowable cost attributable to the change in scope. The percentage change shall be calculated as follows:

- (a) The total allowable cost including the change in scope for a twelve (12) month period, minus the total allowable cost stated in the FQHC's prior year's cost report;
- (b) Divided by the total allowable cost stated in the FQHC's prior year's cost

report; and

(c) Multiplied by one hundred percent (100%).

- 4509.7 Subject to the limitation set forth in Subsection 4509.8, the adjustment to the APM rate shall be determined by dividing the total allowable cost plus the incremental allowable cost attributable to a change in the scope, by the total number of encounters including the encounters affected by the scope change during the corresponding time period.
- 4509.8 The adjustment to the APM rate shall only be granted if the change in scope of services results in at least a five percent (5%) increase or decrease in the FQHC's allowable costs in the core service category for the fiscal year in which the change in scope of service became effective. This percentage shall be calculated by comparing the FQHC's APM rate at the beginning of the fiscal year in question with the cost per encounter as calculated by a completed Medicaid cost report using data from the same fiscal year.
- 4509.9 For services furnished on or after the effective date of the corresponding SPA, an FQHC shall submit a written notification to DHCF within ninety (90) days after a change of the scope of service, and the FQHC shall file a cost report demonstrating the increase in cost per encounter no later than 90 days after the close of one year of operation in which the scope change occurred. The FQHC shall submit documentation in support of the request, including the HRSA approved Scope of Project documenting the need for the change.
- 4509.10 DHCF shall provide a written notice of its determination to the FQHC within one hundred eighty (180) days of receiving all information related to the request described in Subsections 4509.9.
- 4509.11 If approved, the PPS or APM rate calculated pursuant to Sections 4502 or 4503 - 4506 shall be adjusted to reflect the adjustment for the change in the scope of service. The adjustment shall be effective on the first day of the first full month after DHCF has approved the request. There shall be no retroactive adjustment.
- 4509.12 DHCF shall review or audit the subsequently filed annual cost report to verify the costs that have a changed scope. Based upon that review DHCF may adjust the rate in accordance with the requirements set forth in this section.

4510 ALLOWABLE COSTS

- 4510.1 The standards established in this section are to provide guidance in determining whether certain cost items will be recognized as allowable costs incurred by a FQHC in furnishing primary care, behavioral health, diagnostic and preventive dental services, and comprehensive dental services regardless of the applicable payment methodology. In the absence or specific instructions or guidelines, each

FQHC shall follow the Medicare reasonable cost principles set forth in 45 CFR § 75 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards and 42 CFR § 413 Principles of Reasonable Cost Reimbursement and instructions set forth in the Medicare Provider Reimbursement Manual.

4510.2 Allowable costs, to the extent they are reasonable, necessary and related to patient care shall include but are not limited to the following:

- (a) Compensation for the services rendered by each health care professional listed in Subsections 4507.2, 4508.2, 4505.15 and 4506.16 and other supporting health care professionals including but not limited to registered nurses, licensed practical nurses, nurse aides, medical assistants, physician's assistants, technicians, etc.;
- (b) Compensation for services for supervising health care professionals described in Subsections 4507.2, 4508.2, 4505.15 and 4506.16;
- (c) Costs of services and supplies incident to the provision of services as described in (f) of this subsection;
- (d) Administrative and capital costs that are incurred in furnishing primary care, behavioral health services, diagnostic and preventive dental services, and comprehensive dental services, including clinic administration, subject to the limitation set forth in this section;
- (e) Enabling services that support an individual's management of his or her health and social service needs or improve the FQHC's ability to treat the individual, including:
 - (1) Health education and promotion services including assisting the individual in developing a self-management plan, executing the plan through self-monitoring and management skills, educating the individual on accessing care in appropriate settings and making healthy lifestyle and wellness choices; connecting the individual to peer and/or recovery supports including self-help and advocacy groups; and providing support for improving an individual's social network. These services shall be provided by health educators, with or without specific degrees in this area, family planning specialists, HIV specialists, or other professionals who provide information about health conditions and guidance about appropriate use of health services;
 - (2) Translation and interpretation services during an encounter at the FQHC. These services are provided by staff whose full time or dedicated time is devoted to translation and/or interpretation

- services or by an outside licensed translation and interpretation service provider. Any portion of the time of a physician, nurse, medical assistant, or other support and administrative staff who provides interpretation or translation during the course of his or her other billable activities shall not be included;
- (3) Referrals to providers of medical services (including specialty referral when medically indicated) and other health-related services (including substance abuse and mental health services). Such services shall not be reimbursed separately as enabling services where such referrals are provided during the course of other billable treatment activities;
 - (4) Eligibility assistance services designed to assist individuals in establishing eligibility for and gaining access to Federal, State and District programs that provide or financially support the provision of medical related services;
 - (5) Health literacy;
 - (6) Outreach services to identify potential patients and clients and/or facilitate access or referral of potential health center patients to available health center services, including reminders for upcoming events, brochures and social services;
 - (7) Care coordination, which consists of services designed to organize person-centered care activities and information sharing among those involved in the clinical and social aspects of an individual's care to achieve safer and more effective healthcare and improved health outcomes. These services shall be provided by individuals trained as, and with specific titles of care coordinators, case managers, referral coordinators, or other titles such as nurses, social workers, and other professional staff who are specifically allocated to care coordination during assigned hours but not when these services are an integral part of their other duties such as providing direct patient care;
 - (8) Staff cost related to quality improvement, data analytics, and compliance; and
 - (9) Training for health care professionals for the provision of health care services.:-
- (f) Incidental services and supplies that are integral, although incidental, to the diagnostic or treatment components of the services described in Subsections 4505.7, 4506.8, 4507.1(a), and 4508.1 which shall include but

are not limited to the following:

- (1) Lactation consultation, education and support services that are provided by health care professionals described in Subsection 4507.1(4)(ii);
- (2) Medical services ordinarily rendered by an FQHC staff person such as taking patient history, blood pressure measurement or temperatures, and changing dressings;
- (3) Medical supplies, equipment or other disposable products such as gauze, bandages, and wrist braces;
- (4) Administration of drugs or medication treatments, including administration of contraceptive treatments, that are delivered during a primary care visit, not including the cost of the drugs and medications;
- (5) Immunizations;
- (6) Electrocardiograms;
- (7) Office-based laboratory screenings or tests performed by FQHC employees in conjunction with an encounter, which shall not include lab work performed by an external laboratory or x-ray provider. These services include but are not limited to stool testing for occult blood, dipstick urinalysis, cholesterol screening, and tuberculosis testing for high-risk beneficiaries; and
- (8) Hardware and software systems, including implementation services, used to facilitate patient record-keeping and related services to support implementation.

4510.3 For the purposes of determining allowable and reasonable costs in the purchase of goods and services from a related party, each FQHC shall identify all related parties.

4510.4 A related party is any individual, organization or entity who currently or within the previous five (5) years has had a business relationship with the owner or operator of an FQHC, either directly or indirectly, or is related by marriage of birth to the owner or operator of the FQHC, or who has a relationship arising from common ownership or control.

4510.5 The cost claimed on the cost report for services, facilities and supplies furnished by a related party shall not exceed the lower of:

- (a) The cost incurred by the related party; or
 - (b) The price of comparable services, facilities, or supplies generally available.
- 4510.6 Administrative and capital costs shall be allocated and included in determining the total allowable costs for primary care services and behavioral health services.
- 4510.7 Administrative and general overhead costs shall consist of overhead facility costs as described in Subsection 4510.8 and administrative costs as described in Subsection 4510.9.
- 4510.8 Capital and facility costs shall include but not be limited to:
 - (a) Rent;
 - (b) Insurance;
 - (c) Interest on mortgages or loans;
 - (d) Utilities;
 - (e) Depreciation on buildings;
 - (f) Depreciation on equipment;
 - (g) Maintenance, including janitorial services;
 - (h) Building security services; and
 - (i) Real estate and property taxes.
- 4510.9 Administrative costs shall include but not be limited to:
 - (a) Administrative Salaries (*i.e.*, salary expenditures related to the administrative work of a FQHC);
 - (b) Fringe benefits and payroll taxes of personnel described in paragraph (a) of this subsection;
 - (c) Depreciation on office equipment;
 - (d) Office supplies;
 - (e) Legal expenses;

- (f) Accounting expenses;
- (g) Training costs of administrative personnel for the provision of health care services;
- (h) Telephone expense; and
- (i) Hardware and software, including implementation costs, not related to patient record keeping.

4510.10 Administrative costs shall be subject to a ceiling of twenty percent (20%) as described in Sections 4503, 4504, 4505 and 4506. Costs in excess of the ceiling shall not be included in allowable costs.

4511 EXCLUSIONS FROM ALLOWABLE COSTS

4511.1 The costs that shall be excluded from allowable costs for purposes of calculating the APM rate shall include, but not be limited to, the following:

- (a) Cost of services that are outside the scope of services covered under Section 1905(a)(2) of the Social Security Act and described in Sections 4505 - 4508;
- (b) Graduate Medical Education costs; and
- (c) Expenses incurred by the FQHC that are unrelated to the delivery of primary care, behavioral health and dental services as defined in Sections 4505 - 4508, which shall include but are not limited to the following:
 - (1) Staff educational costs, including student loan reimbursements, except for training and staff development, required to enhance job performance;
 - (2) Marketing and public relations expenses;
 - (3) Community services that are provided as part of a large scale effort, such as a mass scale community wide immunization program or any other community wide service
 - (4) Environmental activities;
 - (5) Research;
 - (6) Transportation costs except as provided for in Section 4510;
 - (7) Indirect costs allocated to unallowable direct health service costs;

- (8) Entertainment including costs for office parties and other social functions, retirement gifts, meals, and lodging;
- (9) Board of Director fees;
- (10) Federal, state and local income taxes;
- (11) Excise taxes;
- (12) All costs related to physicians and other professional's private practices;
- (13) Donations, services and goods and space, except for those that are allowable pursuant to the Office of Management and Budget Circular No. A-122 and the Medicare Provider Reimbursement Manual;
- (14) Fines and penalties;
- (15) Bad debts, including losses arising from uncollectible accounts receivable and other claims, related collection and legal costs;
- (16) Advertising, except for recruitment of personnel, procurement of goods and services, and disposal of medical equipment and supplies;
- (17) Contributions to a contingency reserve or any similar provision made for an event, the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of the event taking place;
- (18) Over-funding of contributions to self-insurance funds that do not represent payments based on current liabilities;
- (19) Fundraising expenses;
- (20) Goodwill;
- (21) Political contributions, lobbying expenses or other related expenses;
- (22) Costs attributable to the use of a vehicle or other company equipment for personal use;
- (23) Other personal expenses not related to patient care for the core

services; and

(24) Charitable contributions.

- 4511.2 Costs reimbursed or otherwise paid for by locally funded grants or other locally funded sources, shall be offset against expenses in determining allowable cost. Such offset does not apply to local grants funded with federal dollars.
- 4511.3 An FQHC shall identify each grant by name and funding source in the supplemental data submitted with the cost report.
- 4511.4 Revenues related to the following categories shall be offset against expense.
- (a) Investment Income: Investment income on restricted and unrestricted funds which are commingled with other funds must be applied together against, but should not exceed, the total interest expense included in allowable costs;
 - (b) Refunds and rebates for expenses;
 - (c) Rental income for building and office space;
 - (d) Related organization transactions pursuant to 42 CFR § 413.17;
 - (e) Sale of drugs to other than patient; and
 - (f) Vending Machines.
- 4511.5 Enabling services described in Subsection 4510.2 shall not include any services that may be or are included as a part of a patient encounter, administrative, facility or other reimbursable cost described in these rules. The costs of enabling services shall be reasonable as determined in accordance with the Medicare reasonable cost principles set forth in 42 CFR § 413.

4512 REIMBURSEMENT FOR NEW PROVIDERS

- 4512.1 Each new provider seeking Medicaid reimbursement as an FQHC shall meet all of the requirements set forth in Section 4500.
- 4512.2 Reimbursement for services furnished by a new provider shall be determined in accordance the PPS methodology set forth in this section.
- 4512.3 The PPS rate for services furnished during the first year of operation shall be calculated as of the first day of the District's fiscal year in which the FQHC commences operations, and shall be equal to the average of the PPS rates paid to other FQHCs located in the same geographical area with a similar caseload.

- 4512.4 After the first year of operation, the FQHC shall submit a cost report to DHCF. DHCF shall audit the cost report in accordance with the standards set forth in Sections 4510 and 4511 and establish a PPS for each of the following four categories:
- (a) Primary care services covered under Section 1905(a)(2) of the Social Security Act as set forth in Section 4507;
 - (b) Behavioral health services covered under Section 1905(a)(2) of the Social Security Act as set forth in Section 4508;
 - (c) Preventive and diagnostic dental services covered under Section 1905(a)(2) of the Social Security Act as set forth in Subsection 4505.7; and
 - (d) Comprehensive dental services covered under Section 1905(a)(2) of the Social Security Act as set forth in Subsection 4506.7.
- 4512.5 The PPS shall be calculated for each category described in Subsections 4512.4(a) through 4512.4(d) by taking the sum of the FQHC's audited allowable cost for the applicable category, including related administrative and capital costs, and dividing it by the total number of eligible encounters for that category.
- 4512.6 The PPS rate described in Subsection 4512.5 shall remain in effect until all provider rates are rebased in accordance with Section 4516. After rebasing the FQHC shall have the option of electing an APM rate in accordance with the procedures set forth in Section 4501.
- 4512.7 In addition to the PPS rate described in this section, the FQHC shall be entitled to receive a supplemental wrap-around payment as described in Subsections 4502.6 through 4502.7.
- 4512.8 Each new FQHC provider seeking Medicaid reimbursement shall:
- (a) Obtain a separate National Provider Identification number; and
 - (b) Be screened and enrolled in the Medicaid program pursuant to the requirements set forth in Chapter 94 of Title 29 DCMR.
- 4512.9 Each new FQHC shall only seek Medicaid reimbursement for services provided consistent with the services described in Sections 4505 – 4508 in accordance with Section 1905(a)(2) of the Social Security Act.
- 4512.10 If an FQHC discontinues operations, either as a facility or at one of its sites, the FQHC shall notify DHCF in writing at least ninety days (90) prior to

discontinuing services.

4512.11 The new provider will be allowed one encounter on the same day for each of the categories described in Subsection 4512.4(a), (b), and either (c) or (d), consistent with the requirements set forth under Subsections 4505.12 and 4506.13.

4513 REIMBURSEMENT FOR OUT OF STATE PROVIDERS

4513.1 A FQHC located outside of the District of Columbia that seeks reimbursement for services furnished to District of Columbia Medicaid beneficiaries shall comply with the requirements set forth under Subsection 4500.2 and shall be reimbursed at the PPS rate, as determined by the State Medicaid Program in the state in which the FQHC is geographically located..

4513.2 For Medicaid beneficiaries that are enrolled out of state, the FQHC shall seek reimbursement from the state in which the beneficiary is enrolled. The FQHC shall not seek reimbursement from DHCF.

4514 MANDATORY REPORTING REQUIREMENTS

4514.1 Each FQHC shall report to DHCF, annually, on the following two (2) measure sets:

- (a) HRSA UDS “Quality of Care” and “Health Outcomes and Disparities” measures which may be located at the HRSA Bureau of Primary Care website at <https://www.bphc.hrsa.gov/datareporting/reporting/index.html>; and
- (b) The performance measures set forth in the table below:

FQHC Performance Measures				
Measure Number/ Name	Measurement Domain	NQF #	Steward	Description
1.Extended After Hours	Patient-Centered Access	N/A	DHCF	FQHC offers extended hours beyond the traditional 8am-5pm business hours.

<p>2. 24/7 Access Policy</p>	<p>Patient-Centered Access</p>	<p>N/A</p>	<p>DHCF</p>	<p>Make access to care available 24/7. At a minimum, 24/7 access includes the availability of clinical services and advice at times that assure accessibility and meet the needs of the population to be served, and access to clinical telephonic advice when the FQHC is closed. When the FQHC is closed, 24/7 access includes the provision of telephone access to an individual with qualification and training (consistent with licensing requirements in the District) to exercise professional judgment in assessing a FQHC patient's need for emergency medical care, and the ability to direct a patient on how to seek emergency care. A patient's need for emergency care might arise from an emergent physical, oral, behavioral and/or other health need. If the patient's needs are not immediate, the individual responding to the patient via the FQHC's telephone access line shall also have the capacity to refer patients to a physician or to a licensed or certified independent practitioner that delivers health care services within the FQHC or outside the FQHC, if needed, for further assessment and future care.</p>
<p>3. Adults' Access to Preventive/ Ambulatory Health Services</p>	<p>Patient-Centered Access</p>	<p>N/A</p>	<p>NCQA</p>	<p>The percentage of members twenty (20) years and older who had an ambulatory or preventive care visit.</p> <p>Numerator: Number of ambulatory or preventive care visits during the measurement year</p> <p>Denominator: Members age twenty (20) years and older as of December 31 of the measurement year</p>
<p>4. Follow-up After Hospital Discharge</p>	<p>Transitions of Care</p>	<p>N/A</p>	<p>Minnesota Community Measurement</p>	<p>Percentage of patients with selected clinical conditions (heart failure, pneumonia, ischemic vascular disease and Chronic obstructive pulmonary disease) that have follow-up telephonic/ electronic contact from the FQHC within three (3) calendar days of discharge or a follow-up face-to-face visit with a health care provider (physician, physician assistant, nurse practitioner, nurse, care-coordinator) within seven (7) calendar days of hospital discharge.</p>
<p>5. Follow-up After Hospitalization for Mental Illness</p>	<p>Transitions of Care</p>	<p>0576</p>	<p>NCQA</p>	<p>For discharges of patients age six (6) and older who were hospitalized for treatment of selected mental health disorders, the percentage that had an outpatient visit, an intensive outpatient encounter, or partial hospitalization with a mental health practitioner. Two rates are reported:</p> <ul style="list-style-type: none"> • The percentage of discharges for which the patient received follow-up within thirty (30) calendar days of discharge. • The percentage of discharges for which the patient received follow-up within seven (7) calendar days of discharge.

6. Timely Transmission of Transition Record	Transitions of Care	0648	American Medical Association-Physician Consortium for Performance Improvement	The percentage of patients, regardless of age, discharged from an inpatient facility (e.g., hospital inpatient or observation, skilled nursing facility, or rehabilitation facility) to their home or any other site of care for whom a transition record was transmitted to the facility or primary physician or other health care professional designated for follow-up care within twenty-four (24) hours of discharge.
7. Plan All-Cause Readmission	Utilization	1768	NCQA	For FQHC patients eighteen (18) years of age and older, the number of acute inpatient stays during the measurement year that were followed by an acute readmission for any diagnosis within thirty (30) calendar days and the predicted probability of an acute readmission. Data is reported in the following categories: <ol style="list-style-type: none"> 1. Count of Index Hospital Stays (denominator) 2. Count of thirty (30)-Day Readmissions (numerator) 3. Average adjusted Probability of Readmission
8. Potentially Preventable Hospitalization	Utilization	N/A	AHRQ	Percentage of inpatient admissions among FQHC participants for specific ambulatory care conditions that may have been prevented through appropriate outpatient care.
9. Low-Acuity Non-Emergent Emergency Department Visits	Utilization	N/A	DHCF	Percentage of avoidable low-acuity non-emergent ED visits.

- 4514.2 DHCF will notify FQHCs of the performance measures, measure specifications, and any changes through transmittals issued to the FQHCs no later than ninety (90) calendar days prior to October 1st each year.
- 4514.3 The measurement year for measures outlined in Subsection 4514.1(b) shall begin October 1, 2017 of and end on September 30, 2018, repeating annually, unless otherwise specified by DHCF.
- 4514.4 For measures described in Subsection 4514.1(a), each FQHC shall submit measures to DHCF once HRSA has approved the FQHC’s final report. The final report must be sent to DHCF no later than September 1st of each year, beginning September 1, 2017.

4515 PERFORMANCE PAYMENT

- 4515.1 Beginning October 1, 2017, each FQHC that elects the APM rate and meets the standards outlined in Subsection 4515.2 may be eligible to participate in the FQHC performance payment program.
- 4515.2 To participate in the performance payment program, a FQHC must have elected

the APM rate and must submit the following to DHCF by September 1, 2018 and annually thereafter:

- (a) Letter of Intent to participate in the performance payment program;
- (b) Most current HRSA-approved quality improvement plan and any annual updates. In subsequent years, if the FQHC has not updated the HRSA-approved plan, then the FQHC shall provide DHCF with written notification that there have been no changes to the quality improvement plan; and
- (c) Annual performance data reporting measures described in Subsection 4514.1(a).

4515.3 DHCF shall notify the FQHC if all requirements have been met no later than fifteen (15) business days after the receipt of the required materials.

4515.4 The performance payment program's baseline year will be the first year in which FQHC performance is measured to benchmark improvement in future years. The baseline year for FQHCs that elect to participate in the performance payment program shall begin October 1, 2017 and end on September 30, 2018. For FQHCs that elect to participate in the performance payment program after the initial baseline year, their first baseline year will begin on October 1st of the first year that an FQHC elects to participate in the performance program and end on September 30th.

4515.5 The measurement year (MY) is any year following an FQHC meeting the participation requirements described in Subsection 4515.2 and the completion of the baseline year; the first MY under the FQHC performance payment program will begin on October 1, 2018.

4515.6 Assessments and benchmarks will be based on comparing data collected in the baseline year to data collected during the first measurement year. During subsequent years, benchmarks will be based on performance during the prior measurement year.

4515.7 FQHCs shall be assessed based on either the attainment or the improvement of a defined threshold. If a FQHC did not attain its goal, then DHCF shall assess whether the FQHC improved from the previous measurement year. The following guidelines are set forth below:

- (a) For measures #3 through 9, as described in Subsection 4514.1(b), a FQHC must achieve above the seventy-fifth (75th) percentile from the previous measurement year;
- (b) For measures #1 and 2, as described in Subsection 4514.1(b), the

improvement benchmark will only be assessed on attainment of the goal. Specifically, whether the FQHC has provided DHCF with documentation demonstrating they have met the specifications outlined in the measures;

- (c) For measures # 3 through 9 as described in Subsection 4514.1(b), where improvement can be measured, the improvement benchmark will be a statistically significant improvement in the performance of a measure as compared to the prior year's performance. A statistically significant improvement has a probability of 0.05 that the improvement was not due to random error. DHCF shall perform the appropriate statistical analysis (*e.g.*, t-test) to determine that the performance between measurement years is a result that cannot be attributed to chance.

4515.8 DHCF shall provide written notification of the attainment and individualized improvement thresholds to each participating FQHC no later than one hundred and eighty (180) calendar days after the conclusion of the previous MY after all performance measures are received and validated.

4515.9 A FQHC may opt to aggregate its beneficiary population with another FQHC's population for the purposes of calculating attainment of a performance measure or improvement on any of the required measures described in Subsection 4514.1(b) subject to the following terms and conditions:

- (a) Each FQHC must notify DHCF of their selection of the aggregation option no later than September 1st prior to the baseline or new measurement year;
- (b) FQHCs opting to aggregate their populations together must do so for calculation of all measures during a given baseline or measurement year;
- (c) Each FQHC shall report data that is identifiable for the FQHC's individual performance, along with the aggregated data;
- (d) A FQHC shall elect the option to aggregate annually and may change their selection, including opting against pooling or opting to pool with a different FQHC, on an annual basis; and
- (e) When a FQHC has opted to aggregate beneficiaries, performance is measured for the aggregated FQHCs throughout the duration of the performance period unless one of the aggregated entities withdraws from the FQHC program during the performance period. If one of the FQHCs that has opted to aggregate beneficiaries withdraws before the performance period is complete, the remaining FQHC's performance will be measured based on the remaining FQHC's beneficiaries.

4515.10 For MY2019, beginning on October 1, 2018, the amount of the performance bonus funding pool available for payment shall be the difference between all of the District's FQHCs' uncapped administrative cost and the District's FQHCs'

capped administrative cost reflected in 2013 audited cost reports.

- 4515.11 For MY2020 and future years, the amount of the performance bonus funding pool shall be the amount available in the previous year pool, adjusted annually by the percentage increase in the Medicare Economic Index, established in accordance with Section 1842(i)(3) of the Social Security Act.
- 4515.12 DHCF shall notify the FQHCs of the performance bonus funding pool amount no later than ninety (90) calendar days prior to October 1, 2018, and annually thereafter ninety (90) calendar days before October 1st.
- 4515.13 The available funds in the annual performance bonus funding pool will be allocated to each participating FQHC that qualifies for a performance award as described in Subsection 4515.14.
- 4515.14 A participating FQHC's performance payment shall be the FQHC's maximum annual bonus payment as described in Subsection 4515.15, multiplied by the FQHC's annual performance percentage using the methodology described in Subsection 4515.17.
- 4515.15 Each participating FQHC's maximum annual bonus payment shall be the FQHC's market share determined in accordance with Subsection 4515.16, multiplied by the annual performance bonus funding pool, plus any additional allocation calculated pursuant to Subsection 4515.16(c).
- 4515.16 The market share shall be calculated as follows:
- (a) In cases where there are no statistical outliers, the market share for a participating FQHC shall be the number of the FQHC's unique Medicaid beneficiaries that received primary care services from the FQHC during the baseline or previous measurement year, divided by the total number of Medicaid beneficiaries who received primary care services from the participating FQHCs during the baseline or previous measurement year;
 - (b) In cases where there is a statistical outlier, the market share calculation shall be determined as follows:
 - (1) DHCF shall apply a cap for FQHCs whose market share is considered a statistical outlier. A statistical outlier is any FQHC that has a market share less than the lower bound or exceeding the upper bound. The upper-bound and lower-bound outlier shall be determined in the following manner:
 - (i) Calculate the quartiles of the number of unique Medicaid beneficiaries that received primary care services from the FQHC. The quartiles are the three (3) points that divide the

- data set into four (4) equal groups, each group comprising a quarter (1/4) of the data. The first quartile is defined as the middle number, otherwise known as the median, between the smallest number and the median of the data set. The second quartile is the median of the data. The third quartile is the middle value between the median and the highest value of the data set;
- (ii) Calculate the interquartile range (IQR) by subtracting the first quartile from the third quartile;
 - (iii) Multiply the IQR by one point five (1.5) to obtain the IQR factor;
 - (iv) Add the third quartile to the IQR factor to calculate the upper bound; and
 - (v) Subtract the IQR factor from first quartile to calculate the lower bound.
- (2) If an FQHC is a statistical outlier because its total number of beneficiaries exceeds the upper bound, the FQHC's market share will be the median of the upper bound number and the FQHC's actual number of unique Medicaid beneficiaries that received primary care services in the baseline or previous measurement year divided by the total number of Medicaid beneficiaries who received primary care services from the participating FQHCs during the baseline or previous measurement year;
 - (3) If an FQHC is a statistical outlier because its number of beneficiaries is less than the lower bound, the outlier FQHC's market share will be the lower bound number, divided by the total number of Medicaid beneficiaries who received primary care services from the participating FQHCs during the baseline or previous measurement year; and
 - (4) For FQHCs that are not statistical outliers participating during a measurement year when there are statistical outliers, the non-outlier FQHC's market share shall be calculated in same manner as described in subparagraph (a); and
- (c) If there is an upper bound outlier, and there are remaining performance payment pool after all funds have been disseminated according to market share, the remaining additional funds shall be proportionally allocated to the non-outlier FQHCs based on the number of that FQHCs primary care beneficiaries divided by the total number of non-outlier FQHC

beneficiaries.

4515.17 To determine the FQHC’s annual performance percentage for each year, DHCF shall score each participating FQHC’s performance in three measurement domains. This scoring will be determined as follows:

- (a) A maximum of one hundred (100) points will be awarded to each FQHC across the three (3) measurement domains (*i.e.*, patient-centered care access (measures 1-3), transitions of care (measures 4-6), and utilization (measures 7-9) as described in Subsection 4514.1(b).
- (b) Each measure in the domain is assigned points by dividing the total points by the number of measures in each domain. Points for each domain for the first three (3) MYs are described in the table set forth in Subsection 4515.17(c). Future point distribution for measurement attainment or improvement will be provided by DHCF to FQHCs by a transmittal on an annual basis ninety (90) calendar days before October 1.
- (c)

FQHC Performance Measure Point Distribution Methodology			
	MY 2019	MY 2020	MY 2021
Total Patient-Centered Access Domain Points <i>(allowed points per measure)</i>	20 <i>(10)</i>	15 <i>(7.5)</i>	10 <i>(5)</i>
Total Clinical Process Domain Points	30 <i>(7.5)</i>	25 <i>(6.25)</i>	20 <i>(5)</i>
Total Utilization Domain Points	50 <i>(16.67)</i>	60 <i>(20)</i>	70 <i>(23.3)</i>
Total	100	100	100

- (d) Points for each measure shall be awarded in cases where an FQHC meets either the attainment or improvement benchmark based on the prior measurement year’s performance as described below:
 - (1) An FQHC shall receive the allowed points per measure as described in Subsection 4515.17(c) if they submit documentation for the Extended Hours and 24/7 Access measures (*e.g.*, ten (10) points in MY2019 for each of these measures);
 - (2) An FQHC shall receive points if they have met or exceeded the seventy-fifth (75th) percentile attainment benchmark.

- (3) An FQHC performing below the attainment benchmark may be able to receive the allowed points per measure as described in Subsection 4515.17(c) for each measure if it has met its improvement threshold described in Subsection 4515.7(c).
- (4) If an FQHC neither attains nor improves performance on a given measure, zero points will be awarded for that measure.
- (e) The annual performance percentage for each qualifying FQHC shall be calculated using the following methodology:
 - (1) Sum points awarded for each measure in the domain to determine the domain totals;
 - (2) Sum domain totals to determine total performance points;
 - (3) Divide total performance points by the maximum allowed points to determine the annual performance percentage.

4515.18 If participating FQHCs have aggregated beneficiaries together for determination of performance, the award percentage for the aggregated entities shall be applied to each FQHC's maximum bonus amount to determine the FQHC's performance award individually.

4515.19 Beginning with MY2019, and annually thereafter, performance payments shall be calculated and distributed no later than 180 calendar days after the conclusion of each measurement year once all performance measures are received and have been validated.

4516 REBASING FOR APM

4516.1 No later than January 1, 2018 and every three (3) years thereafter, the cost and financial data used to determine the APM rate shall be updated based upon audited cost reports that reflect costs that are two (2) years prior to the base year and in accordance with the methodology set forth in Sections 4503, 4504, 4505, and 4506.

4517 COST REPORTING AND RECORD MAINTENANCE

4517.1 Each FQHC shall submit to DHCF a Medicaid cost report, prepared based on the accrual basis of accounting, in accordance with Generally Accepted Accounting Principles. In addition, FQHCs are required to submit their audited financial statements and any supplemental statements as required by DHCF no later than one hundred and fifty days (150) days after the end of each FQHC's fiscal year, unless DHCF grants an extension or the FQHC discontinues participation in the Medicaid program as a FQHC. In the absence of audited financial statements, the

FQHC may submit unaudited financial statements prepared by the FQHC.

- 4517.2 Each FQHC shall also submit to DHCF its FQHC Medicare cost report that is filed with its respective Medicare fiscal intermediary, if submission of the Medicare cost report is required by the federal Centers for Medicare and Medicaid Services.
- 4517.3 Each FQHC shall maintain adequate financial records and statistical data for proper determination of allowable costs and in support of the costs reflected on each line of the cost report. The financial records shall include the FQHC's accounting and related records including the general ledger and books of original entry, all transactions documents, statistical data, lease and rental agreements and any other original documents which pertain to the determination of costs.
- 4517.4 Each FQHC shall maintain the records pertaining to each cost report for a period of not less than ten (10) years after filing of the cost report. If the records relate to a cost reporting period under audit or appeal, records shall be retained until the audit or appeal is completed.
- 4517.5 DHCF reserves the right to audit each FQHC's Medicaid cost reports and financial reports at any time. DHCF may review or audit the cost reports to determine allowable costs in the base rate calculation or any rate adjustment as set forth in these rules.
- 4517.6 If a provider's cost report has not been submitted to DHCF within hundred and fifty (150) days after the end of the FQHC's fiscal year as set forth in Subsection 4517.1, or within the deadline granted pursuant to an extension, DHCF reserves the right not to adjust the FQHC's APM rate or PPS rate for services as described in Subsections 4502.3, 4503.7, 4504.8, 4505.4 and 4506.4.
- 4517.7 Each FQHC shall submit to DHCF a copy of the annual HRSA Uniform Data System (UDS) report within thirty (30) calendar days of the filing.

4518 ACCESS TO RECORDS

- 4518.1 Each FQHC shall grant full access to all records during announced and unannounced audits and reviews by DHCF personnel, representatives of the U.S. Department of Health and Human Services, and any authorized agent(s) or official(s) of the federal or District of Columbia government.

4519 APPEALS

- 4519.1 For appeals of DHCF Payment Rate Calculations, Scope of Service Adjustments or Audit Adjustments for FQHCs the following applies:

(a) At the conclusion of any required audit, payment rate or scope of service

adjustment, the FQHC shall receive a notice that includes a description of each audit finding, payment rate or scope of service adjustment and the reason for any adjustment to allowable costs or to the payment rate;

- (b) An FQHC may request an administrative review of payment rate calculations, scope of service adjustments or audit adjustments. The FQHC may request administrative review within thirty (30) calendar days of receiving the Notice of Audit Findings by sending a written request for administrative review to the Office of Rates, Reimbursement and Financial Analysis, DHCF;
- (c) The written request for administrative review shall identify the specific audit adjustment, payment rate calculation, or scope of service adjustment to be reviewed, and include an explanation of why the FQHC believes the adjustment or calculation to be in error, the requested relief, and supporting documentation;
- (d) DHCF shall mail a formal response to the FQHC no later than sixty (60) calendar days from the date of receipt of the written request for administrative review;
- (e) Within thirty (30) calendar days of receipt of DHCF's written determination relative to the administrative review, the FQHC may appeal the determination by filing a written request for appeal with the Office of Administrative Hearings (OAH);
- (f) The filing of an appeal with OAH shall not stay DHCF's action to adjust the FQHCs payment rate;
- (g) Resolution of payment rate, scope of service adjustment, or audit adjustment in favor of an FQHC shall be applied consistent with the process as described below:
 - (1) The resolution of audit findings in favor of an FQHC will be applied retroactively to the date the initial adjustment was to have taken effect;
 - (2) The resolution of scope of service adjustments in favor of an FQHC shall be prospective only, beginning the first day of the month following resolution of the scope of services adjustment; and
 - (3) The resolution of payment rate adjustments shall be retroactive to the date when DHCF received a completed request for administrative review.

4519.2 For FQHC appeals of DHCF decisions on fee-for-service claims the following applies:

- (a) An FQHC may request a formal review of a decision made on a fee-for-service claim. To be eligible for a formal review, the FQHC must make the request within three-hundred and sixty-five (365) calendar days of receiving notice of the decision;
- (b) The written request for formal review shall include an explanation of the problem, the requested relief, supporting documentation and meet any additional standards DHCF or its designee may require. Written requests for formal review must be sent to the addresses provided in the DC MMIS Provider Billing Manual;
- (c) DHCF or its designee shall render a written decision on a request for a formal review within forty-five (45) calendar days of a completed request for review; and
- (d) Nothing in this rule waives or modifies the requirements for the timely filing of Medicaid provider claims set forth in 29 DCMR §§ 900, *et seq.*

4519.3 For FQHC appeals of MCO decisions on claims for reimbursement the following applies:

- (a) Effective July 1, 2017, for dates of services after April 1, 2017, an FQHC may request administrative reconsideration from DHCF in order to challenge an MCO's denial, nonpayment or underpayment of a claim. To be eligible for administrative reconsideration, the FQHC shall:
 - (1) Exhaust the MCO appeal process for the MCO that issued the denial, nonpayment or underpayment; and
 - (2) Receive a final written notice of determination (WND) from the MCO, or provide documentation that the timeframe for the MCO to render a final WND has expired without decision; and
- (b) Requests for administrative reconsideration shall be made to DHCF by mail, email, fax, or in person to DHCF's Appeals Coordinator within thirty (30) calendar days of the date of the final WND from the MCO. If no final WND was provided, the request shall be made within thirty (30) calendar days of the date that the MCO was due to render its final WND. Requests for administrative reconsideration shall include the following minimum information and documentation:
 - (1) MCO name;

- (2) MCO ID;
 - (3) A copy of the final WND indicating that the FQHC has exhausted all available appeal opportunities with the MCO, or documentation indicating the deadline for the MCO to render a final WND has expired;
 - (4) An original fee-for-service equivalent claim for reimbursement which shall include:
 - (i) Date of Service;
 - (ii) Healthcare Common Procedure Coding System/Current Procedural Terminology code;
 - (iii) Payment amount at issue;
 - (iv) Medicaid ID of the enrollee; and
 - (v) Name and Date of Birth of enrollee; and
 - (5) A written statement by the FQHC describing why the MCO's decision should not be upheld, including any supporting documentation; and
- (c) DHCF will notify the MCO when a FQHC request for administrative reconsideration has been filed to allow the MCO the opportunity to share supporting documentation;
 - (d) DHCF reserves the right to request additional information and/or supporting documentation from the FQHC and/or the MCO, as appropriate, to assist in its determination. Failure to respond to agency requests for additional information and/or supporting documentation within the timeframe provided will not prevent DHCF from rendering a written decision;
 - (e) DHCF shall render a written decision within forty-five (45) calendar days of receiving a complete request for administrative reconsideration. If new information is provided to DHCF that warrants an extension in the amount of time it will take the agency to render a decision, the agency reserves the right to extend its review period by no more than ten (10) calendar days. The FQHC shall be notified if such an extension is required;

- (f) The written decision shall constitute the final determination on the subject claim. The written decision by DHCF shall include the following minimum information:
 - (1) Basis for decision; and
 - (2) Supporting documentation or findings, if appropriate; and
- (g) If DHCF determines that the decision of the MCO was improper, then DHCF will direct the MCO to make proper payment to the provider no later than thirty (30) calendar days of its written decision. Once payment is made, the FQHC can follow protocol in making a request to DHCF for wrap payment;
- (h) If DHCF determines that the decision of the MCO was proper, but that the FQHC is still due reimbursement or payment, DHCF shall make the appropriate payment no later than thirty (30) calendar days of its written decision;
- (i) If DHCF determines that the decision of the MCO was proper and the FQHC is not due reimbursement or payment, DHCF shall deny reimbursement; and
- (j) Nothing in this rule waives or modifies the requirements for the timely filing of Medicaid provider claims set forth in 29 DCMR §§ 900, *et seq.*

4599 DEFINITIONS

4599.1 For purposes of this chapter, the following terms shall have the meanings ascribed:

Alternative Payment Methodology - A reimbursement model other than a Prospective Payment System Rate for services furnished by an FQHC which meets the requirements set forth in Section 1902(bb)(6) of the Social Security Act.

Capitation payment - A payment an MCO makes periodically to an FQHC on behalf of a beneficiary enrolled with the FQHC pursuant to a contract between the MCO and FQHC. In exchange for the payment, the FQHC agrees to provide or arrange for the provision of the service(s) covered under the contract regardless of whether the particular beneficiary receives services during the covered period.

Encounter - A face-to-face visit between a Medicaid beneficiary and a qualified FQHC health care professional as described in Subsections 4507.2, 4508.2, 4505.15 and 4506.16, who exercises independent judgment when

providing services for a primary care, behavioral health service or dental service as described under the State Plan in accordance Section 1905(a)(2) of the Social Security Act. An encounter may also include a visit between a Medicaid beneficiary receiving healthcare services and a provider via telemedicine in accordance with District requirements.

FQHC look-alike - A private, charitable, tax-exempt non-profit organization or public entity that is approved by the federal Centers for Medicaid and Medicare Services and authorized to provide Federally Qualified Health Center Services.

New Provider – An FQHC that enrolls in the District’s Medicaid Program after the effective date of the corresponding SPA or after the date that the rates are rebased.

Per Member Per Month (PMPM) payments – A single payment per month by an MCO to an FQHC to cover multiple visits.

Prospective Payment System Rate – The rate paid for services furnished in a particular fiscal year that is not dependent on actual cost experience during the same year in which the rate is in effect.

Single course of treatment – A process or sequence of services that are furnished at the same time or at the same visit.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in Section 104 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.04 (2016 Repl.)); Mayor's Order 99-68, dated April 28, 1999; Sections 9 and 14 of the Legalization of Marijuana for Medical Treatment Amendment Act of 2010, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code §§ 7-1671.08(d) and 7-1671.13 (2012 Repl.)); Section 4902 of the Department of Health Functions Clarification Act of 2011, effective October 1, 2001 (D.C. Law 14-28; D.C. Official Code § 7-731 (2012 Repl.)); and Mayor's Order 2011-71, dated April 13, 2011, hereby gives notice of her intent to adopt the following amendments to Chapter 36 (Department of Health (DOH) Infractions) of Title 16 (Consumers, Commercial Practices, and Civil Infractions) of the District of Columbia Municipal Regulations (DCMR).

The amendments prescribe civil fines for violations of the law governing the registration, general operation, advertising, record keeping, and reporting for medical marijuana cultivation centers, and for violations of the law with respect to the prohibited and restricted activities. The amendments will amend Subsection 3601.1, add new Sections 3670 through 3674 to Chapter 36 of Title 16 DCMR, and reserve Section 3675 of the same.

The Director intends to adopt these rules as final in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, and upon completion of the thirty (30) day Council period of review if the Council does not act earlier to adopt a resolution approving the rules.

Chapter 36, DEPARTMENT OF HEALTH (DOH) INFRACTIONS, of Title 16 DCMR, CONSUMERS, COMMERCIAL PRACTICES, AND CIVIL INFRACTIONS, is amended as follows:

Section 3601, HEALTH PRACTICE INFRACTIONS, is amended as follows:

Subsection 3601.1 is amended to read as follows:

- 3601.1 Violation of the following provisions shall be a Class 1 infraction:
- (a) Section 501 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.01) (practicing a health occupation for which a license is required without the requisite license); and
 - (b) Section 1002 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1210.02) (unless authorized to practice a health occupation under D.C. Official Code Title 3, Chapter 12, a person shall not represent to the public

by title, description of services, methods, or procedures, or otherwise that the person is authorized to practice the health occupation in the District).

A new Section 3670, CULTIVATION CENTER REGISTRATION VIOLATIONS, is added to read as follows:

3670 CULTIVATION CENTER REGISTRATION VIOLATIONS

3670.1 Violation of any of the following provisions shall be a Class 2 infraction:

- (a) 22-C DCMR § 5500.3 (A cultivation center registered under the Act shall not use or display a trade name, corporate name, or sign bearing the words “pharmacy,” “apothecary,” “drug store,” or other phrase that implies that the practice of any health profession occurs on the premises).

3670.2 Violation of any of the following provisions shall be a Class 3 infraction:

- (a) 22-C DCMR § 100.2 (No person shall possess, use, administer, or dispense marijuana in any form for the purpose of a medical use unless the person is registered with the District of Columbia government under the Legalization of Marijuana for Medical Treatment Initiative of 1999 (the “Act”));
- (b) 22-C DCMR § 5103.2 (A cultivation center that has not timely renewed its registration shall not be permitted to sell medical marijuana with an expired registration);
- (c) 22-C DCMR § 5303.1 (A registration for a cultivation center shall be returned to the Director if the dispensary or cultivation center fails to open for business within one hundred twenty (120) days after the registration has been issued); and
- (d) 22-C DCMR § 5303.2 (A registration for cultivation center shall be returned to the Director if the cultivation center fails to operate for any reason for more than one hundred twenty (120) consecutive days after it has opened for business).

3670.3 Violation of any of the following provisions shall be a Class 4 infraction:

- (a) 22-C DCMR § 5106.2 (Failure of manager to provide manager training certificate to the Department within thirty (30) days of registration);
- (b) 22-C DCMR § 5110.1 (All persons required to register with the Department shall receive and wear a nontransferable uniform registration ID card from the Department on their person, while working in a restricted access area at a cultivation center);

- (c) 22-C DCMR § 5500.1 (Failure to obtain approval for change of corporate or trade name); and
- (d) 22-C DCMR § 5501 (Failure to notify Department of individual ownership, corporate and partnership changes).

A new Section 3671, CULTIVATION CENTER GENERAL OPERATION VIOLATIONS, is added to read as follows:

3671 CULTIVATION CENTER GENERAL OPERATION VIOLATIONS

3671.1 Violation of any of the following provisions shall be a Class 1 infraction:

- (a) 22-C DCMR § 5602.2 (A registered cultivation center shall not be open to the public);
- (b) 22-C DCMR § 5603.1 (A registered cultivation center shall keep all medical marijuana located on the premises in a separate storage area which is securely closed and locked during all hours when the establishment is prohibited from operating or is closed. The storage area shall have a volumetric intrusion detection device(s) installed and connected to the facility intrusion detection system);
- (c) 22-C DCMR § 5603.2 (A cultivation center shall be required to install and use a safe for overnight storage of any processed marijuana, transaction records, and cash on the registered premises);
- (d) 22-C DCMR § 5604.1 (In the absence of an owner, a cultivation center shall have a Department approved manager present at the registered premises during the hours that the cultivation center is open);
- (e) 22-C DCMR § 5605.1 (A cultivation center shall destroy or dispose of unused or surplus medical marijuana and its by-products by providing it to MPD for destruction);
- (f) 22-C DCMR § 5605.2 (All unused or surplus medical marijuana and its by-products shall be weighed and documented and submitted to MPD on a form provided by MPD prior to being delivered to MPD by the cultivation center for destruction);
- (g) 22-C DCMR § 5605.4 (A cultivation center shall report stolen or lost marijuana within twenty-four (24) hours of becoming aware by calling 911 or contacting Police in the cultivation center's Police District);
- (h) 22-C DCMR § 5607.2 (All medical marijuana sold or otherwise distributed by a cultivation center shall be packaged and labeled in a manner that

advises the purchaser that it contains marijuana, specifies the amount of marijuana in the product, and that the marijuana is intended for medical use solely by the patient to whom it is sold, and that any re-sale or re-distribution of the medical marijuana to a third person is prohibited);

- (i) 22-C DCMR § 5607.7 (The label shall not contain any of the following information: (a) Any false or misleading statement or design; or (b) Any seal, flag, crest, coat of arms, or other insignia likely to mislead the qualified patient to believe that the product has been endorsed, made, or used by the District government);
- (j) 22-C DCMR § 5607.10 (A cultivation center or dispensary shall not use the word(s) “candy” or “candies” on the product, packaging, or labeling of any medical marijuana product);
- (k) 22-C DCMR § 5607.11 (A cultivation center or dispensary shall not place any content, image, or labeling that specifically targets individuals under the age of twenty-one (21), including but not limited to, cartoon characters or similar images, on the product, packaging, or a container holding medical marijuana);
- (l) 22-C DCMR § 5607.12 (A cultivation center that produces edible marijuana products or marijuana-infused products shall ensure that all edible marijuana products or marijuana-infused products offered for sale: (a) Are labeled clearly and unambiguously as medical marijuana; (b) Are not presented in packaging or with labeling that is appealing to children; and (c) Have packaging designed or constructed to be significantly difficult for children under five (5) years of age to open, but not normally difficult for adults to use properly);
- (m) 22-C DCMR § 5607.13 (A cultivation center or dispensary shall not use or allow the use of any content, image, or labeling on a medical marijuana product that is offered for sale if the container does not precisely and clearly indicate the nature of the contents or that in any way may deceive a customer as to the nature, composition, quantity, age, or quality of the product);
- (n) 22-C DCMR § 5607.14 (Packaging of edible medical marijuana products or medical marijuana-infused products shall not bear any: (a) Resemblance to the trademarked, characteristic or product-specialized packaging of any commercially available candy, snack, baked good or beverage; (b) Statement, artwork or design that could reasonably mislead any person to believe that the package contains anything other than an edible medical marijuana product or medical marijuana-infused products; or (c) Seal, flag, crest, coat of arms, or other insignia that could reasonably mislead any person to believe that the product has been endorsed, manufactured, or used by any state, county or municipality or any agency thereof);

- (o) 22-C DCMR § 5608.1 (The production of any ingestible product containing medical marijuana distributed by a dispensary shall be prepared at a cultivation center facility that meets all requirements of a retail food establishment, including any Department licensing and/or certification requirements; and shall comply with all District of Columbia health regulations relating to the production, preparation, and sale of prepared food items);
- (p) 22-C DCMR § 5608.3 (Marijuana-infused products that are especially appealing to children are prohibited);
- (q) 22-C DCMR § 5608.4 (Marijuana-infused edible products such as, but not limited to, gummy candies, lollipops, cotton candy, or brightly colored products, are prohibited);
- (r) 22-C DCMR § 5608.5 (A cultivation center shall not process or transfer a marijuana item that by its shape, design or flavor is likely to appeal to minors, including but not limited to products that are modeled after non-cannabis products primarily consumed by and marketed to children; or products in the shape of an animal, vehicle, person or character. Also, a cultivation center shall not process or transfer a marijuana item that is made by applying cannabinoid concentrates or extracts to commercially available candy or snack food items; or that contains dimethyl sulfoxide (DMSO));
- (s) 22-C DCMR § 5609.1 (Medical marijuana shall be subject to testing for quality assurance and safety purposes);
- (t) 22-C DCMR § 5610.1 (A cultivation center shall be required to operate and maintain in good working order a twenty-four (24) hour, seven (7) days a week, a closed circuit television (CCTV) surveillance system on the premises);
- (u) 22-C DCMR § 5610.2 (A cultivation center shall install, maintain, and use a professionally monitored robbery and burglary alarm system);
- (v) 22-C DCMR § 5617.1 (A cultivation center shall be required for security purposes to have sufficient lighting outside of the registered business each day between sunset and sunrise that adequately illuminates the cultivation center and its immediate surrounding area);
- (w) 22-C DCMR § 5619.1 (Medical marijuana shall only be handled in designated limited access areas of the cultivation center. A cultivation center shall permit only those persons registered with the Department to enter limited access areas);

- (x) 22-C DCMR § 5619.2 (Limited access areas shall only be those areas identified on cultivation center application);
- (y) 22-C DCMR § 5619.5 (It shall be a violation for registered or non-registered persons to be in limited access areas without registration identification visually displayed); and
- (z) 22-C DCMR § 5621.2 (A cultivation center or its contracted agent shall not transport medical marijuana within the District of Columbia without an original transport permit. A cultivation center shall permit only an employee, director, officer, member, incorporator, or agent registered with the Department or its contracted agent to transport medical marijuana to a registered dispensary).

3671.2 Violation of any of the following provisions shall be a Class 2 infraction:

- (a) 22-C DCMR § 5604.7 (A registered cultivation center shall notify the Department within seven (7) calendar days of discovering any manager's arrest or conviction for any crime other than minor traffic violations);
- (b) 22-C DCMR § 5607.3 (The label shall include all ingredients contained in the product, in order from most abundant to least abundant. The label for ingestible items shall identify potential food allergy ingredients, including milk, eggs, fish, shellfish, tree nuts, peanuts, wheat and soybeans. The product shall be packaged in a sealed container that cannot be opened without obvious damage to the packaging);
- (c) 22-C DCMR § 5607.4 (The label shall contain the following warning: "There may be health risks associated with the ingestion or use of this product. Please consult your physician if you have any questions or concerns.");
- (d) 22-C DCMR § 5607.5 (All medical marijuana shall be labeled with a list of all chemical additives);
- (e) 22-C DCMR § 5610.3 (A cultivation center shall notify the Department within twenty-four (24) hours of any incident triggering an alarm, and file a written report);
- (f) 22-C DCMR § 5617.2 (Outdoor lighting shall be hooded or oriented so as to deflect light away from adjacent properties. (Willful conduct demonstrated; for example, repeated occurrences));
- (g) 22-C DCMR § 5618.2 (A cultivation center shall be staffed with at least two (2) persons when employees are present inside of the cultivation center);

- (h) 22-C DCMR § 5620.1 (A cultivation center is forbidden from using any of the following substances or techniques: (a) Synthetic pesticides; (b) Fertilizer or composted plant and animal material that contains a substance prohibited by this section; (c) Sewage sludge; (d) Synthetic growth regulators; (e) Synthetic allopathic veterinary drugs; (f) Synthetic processing substances, aids and ingredients, and food additives and processing aids; (g) Equipment, packaging materials and storage containers, or bins that contain synthetic fungicide, preservative or fumigant; (h) Any pesticide, fungicide, fertilizer, rodenticides, or drugs banned by the Department of Agriculture or Food and Drug Administration; or (i) Any other substances or techniques deemed unlawful by the Department); and
- (i) 22-C DCMR § 5620.2 (A cultivation center shall not harvest medical marijuana before the plant is sixty (60) days old starting from the day the seed or clone is planted).

3671.3 Violation of any of the following provisions shall be a Class 3 infraction:

- (a) 22-C DCMR § 5608.2 (Marijuana-infused products that require cooking or baking by the consumer are prohibited);
- (b) 22-C DCMR § 5613.1 (A cultivation center shall surrender its registration within three (3) calendar days of discontinuing its operation);
- (c) 22-C DCMR § 5616.3 (A cultivation center shall post a sign provided by the Department at all areas of ingress and egress to limited access areas, which reads: “Access to this area is restricted to persons registered with the Department visibly displaying a registration identification card.”);
- (d) 22-C DCMR § 5619.3 (A dispensary shall post a sign provided by the Department at all areas of ingress and egress); and
- (e) 22-C DCMR § 5619.4 (Persons registered by the Department shall wear their registrations at all times while in limited access areas).

3671.4 Violation of any of the following provisions shall be a Class 4 infraction:

- (a) 22-C DCMR C § 5610.3 (A cultivation center shall maintain for three (3) years the reports of any incident triggering an alarm, and shall make those reports available during inspection).

3671.5 Violation of any of the following provisions shall be a Class 5 infraction:

- (a) 22-C DCMR § 5617.2 (Outdoor lighting shall be hooded or oriented so as to deflect light away from adjacent properties. (Single occurrence, with no evidence of willful conduct)).

A new Section 3672, CULTIVATION CENTER PROHIBITED AND RESTRICTED ACTIVITIES, is added to read as follows:

3672 CULTIVATION CENTER PROHIBITED AND RESTRICTED ACTIVITIES

3672.1 Violation of any of the following provisions shall be a Class 1 infraction:

- (a) 22-C DCMR § 5701.1 (A cultivation center shall not be permitted to sell medical marijuana to qualified patients or caregivers);
- (b) 22-C DCMR § 5701.2 (Unlawful for a cultivation center to sell or distribute medical marijuana to a person or entity other than a dispensary registered in the District of Columbia);
- (c) 22-C DCMR § 5701.3 (It shall be unlawful for a cultivation center to sell medical marijuana from plants not grown at a registered location in the District of Columbia);
- (d) 22-C DCMR § 5703.2 (A cultivation center shall not be permitted to deliver medical marijuana to any premises other than the specific registered premises of the dispensary where the medical marijuana is to be sold);
- (e) 22-C DCMR § 5704.1 (A cultivation center shall be permitted to possess and cultivate up to the number of living marijuana plants permitted under the Legalization of Marijuana for Medical Treatment Initiative of 1999 at any one (1) time for the sole purpose of producing medical marijuana in a form permitted under this subtitle);
- (f) 22-C DCMR § 5705.1 (A cultivation center shall not permit the consumption of medical marijuana at the registered premises in any form. The cultivation center shall dispense or distribute medical marijuana in a closed container that shall not be opened after sale, or the contents consumed, on the premises where sold);
- (g) 22-C DCMR § 5705.2 (It shall be a violation for a cultivation center to have on the registered premises any medical marijuana or marijuana paraphernalia that shows evidence of the medical marijuana having been consumed or partially consumed);
- (h) 22-C DCMR § 5708.1 (It shall be a violation of this subtitle for a cultivation center, or a director, officer, member, incorporator, agent, or employee of a cultivation center to provide financial compensation, an office, or anything of value to an authorized practitioner who recommends the use of medical marijuana. (Single occurrence with evidence of willful conduct; or repeat

occurrences demonstrating willful conduct)); and

- (i) 22-C DCMR § 5710.1 (A cultivation center shall not permit medical marijuana or paraphernalia to be visible from any public or other property not owned by the cultivation center).

3672.2 Violation of the following provision shall be a Class 2 infraction:

- (a) 22-C DCMR § 5702.1 (No driver of a commercial or public vehicle in the District of Columbia shall have in his or her possession, while in or on the vehicle, any opened or unsealed package containing medical marijuana);
- (b) 22-C DCMR § 5706.1 (A cultivation center shall not require, directly or indirectly, a dispensary to purchase any type of medical marijuana or other commodity in order to purchase any other medical marijuana product);
- (c) 22-C DCMR § 5707.2 (A person under twenty-one (21) years of age shall not be employed by a cultivation center to grow or cultivate medical marijuana); and
- (d) 22-C DCMR § 5708.1 (It shall be a violation of this subtitle for a cultivation center, or a director, officer, member, incorporator, agent, or employee of a cultivation center to provide financial compensation, an office, or anything of value to an authorized practitioner who recommends the use of medical marijuana. (Single occurrence, with no evidence of willful conduct)).

A new Section 3673, CULTIVATION CENTER ADVERTISING VIOLATIONS, is added to read as follows:

3673 CULTIVATION CENTER ADVERTISING VIOLATIONS

3673.1 Violation of any of the following provisions shall be a Class 2 violation:

- (a) 22-C DCMR § 5800.2 (Advertisements relating to medical marijuana shall not be displayed on the exterior of any window or on the exterior or interior of any door. (Willful conduct demonstrated; for example, repeated occurrences));
- (b) 22-C DCMR § 5800.3 (No sign advertising medical marijuana on the exterior or visible from the exterior of any registered establishment or elsewhere in the District shall be illuminated at any time. (Willful conduct demonstrated; for example, repeated occurrences));
- (c) 22-C DCMR § 5801.1 (A registered cultivation center shall not use any picture or illustration that depicts a child or immature person, or objects (such as toys), suggestive of the presence of a child, and any statement,

design, device, picture, or illustration designed to be especially appealing to children or immature persons); and

- (d) 22-C DCMR C § 5801.2 (A statement that is known by the cultivation center to be false or misleading with respect to advertised price charged to the qualified patient, ingredients of medical marijuana, source of manufacturer, or statements as to health benefits, shall be prohibited).

3673.2 Violation of any of the following provisions shall be a Class 4 violation:

- (a) 22-C DCMR § 5800.1 (Advertisements relating to the prices of medical marijuana shall not be displayed in the window of a registered establishment);
- (b) 22-C DCMR § 5800.2 (Advertisements relating to medical marijuana shall not be displayed on the exterior of any window or on the exterior or interior of any door. (Single occurrence, with no evidence of willful conduct)); and
- (c) 22-C DCMR § 5800.3 (No sign advertising medical marijuana on the exterior or visible from the exterior of any registered establishment or elsewhere in the District shall be illuminated at any time. (Single occurrence, with no evidence of willful conduct)).

A new Section 3674, CULTIVATION CENTER RECORDS AND REPORTING VIOLATIONS, is added to read as follows:

3674 CULTIVATION CENTER RECORDS AND REPORTING VIOLATIONS

3674.1 Violation of any of the following provisions shall be a Class 1 violation:

- (a) 22-C DCMR § 5900.1 (Each registered cultivation center shall keep and maintain upon the registered premises true, complete, legible, and current books and records. (Willful conduct demonstrated; for example, repeated occurrences));
- (b) 22-C DCMR § 5901.1 (With each sale of medical marijuana, the cultivation center shall cause to be made in duplicate an invoice of the sale. (Willful conduct demonstrated; for example, repeated occurrences));
- (c) 22-C DCMR § 5901.2 (With each sale, the invoice shall be prepared in duplicate, and shall be consecutively numbered. (Willful conduct demonstrated; for example, repeated occurrences));
- (d) 22-C DCMR § 5901.3 (All invoices and delivery slips shall be systematically filed and maintained for a period of four (4) years from date

of delivery. (Willful conduct demonstrated; for example, repeated occurrences));

- (e) 22-C DCMR § 5903.2 (Registration holders subject to this section shall, on or before the thirtieth (30th) day of July and January, furnish to the Department on a form to be prescribed by the Department a statement showing the required information. (Willful conduct demonstrated; for example, repeated occurrences));
- (f) 22-C DCMR § 5906.1 (The books and records referred to in this chapter, including the original and duplicate invoices, shall be open to inspection by the Department or its designated agent, and the OTR, during the establishment's approved hours of operation. (Willful conduct demonstrated; for example, repeated occurrences)); and
- (g) 22-C DCMR § 5906.2 (A cultivation center shall keep and maintain all books and records referred to in this chapter on the registered premises for a period of four (4) years after the latest transaction recorded in those books and records. (Willful conduct demonstrated; for example, repeated occurrences)).

3674.2 Violation of the following provisions shall be a Class 2 violation:

- (a) 22-C DCMR § 5900.1 (Each registered cultivation center shall keep and maintain upon the registered premises true, complete, legible, and current books and records. (Single occurrence, with no evidence of willful conduct));
- (b) 22-C DCMR § 5901.1 (With each sale of medical marijuana, the cultivation center shall cause to be made in duplicate an invoice of the sale. (Single occurrence, with no evidence of willful conduct));
- (c) 22-C DCMR § 5901.2 (With each sale, the invoice shall be prepared in duplicate, and shall be consecutively numbered. (Single occurrence, with no evidence of willful conduct));
- (d) 22-C DCMR § 5901.3 (All invoices and delivery slips shall be systematically filed and maintained for a period of four (4) years from date of delivery. (Single occurrence, with no evidence of willful conduct));
- (e) 22-C DCMR § 5903.2 (Registration holders subject to this section shall, on or before the thirtieth (30th) day of July and January, furnish to the Department on a form to be prescribed by the Department a statement showing the required information. (Single occurrence, with no evidence of willful conduct));

- (f) 22-C DCMR § 5906.1 (The books and records referred to in this chapter, including the original and duplicate invoices, shall be open to inspection by the Department or its designated agent, and the OTR, during the establishment's approved hours of operation. (Single occurrence, with no evidence of willful conduct)); and
- (g) 22-C DCMR § 5906.2 (A cultivation center shall keep and maintain all books and records referred to in this chapter on the registered premises for a period of four (4) years after the latest transaction recorded in those books and records. (Single occurrence, with no evidence of willful conduct)).

3674.3 Violation of the following provision shall be a Class 4 violation:

- (a) 22-C DCMR § 5907.1 (A dispensary shall notify the Mayor within ten (10) days after a registered director, officer, member, incorporator, agent, employee, or manager ceases to work at, manage, own, or otherwise be associated with the operation. The director, officer, member, incorporator, agent, employee, or manager shall surrender his or her identification card to the Mayor within ten (10) days of ceasing to work at, manage, own, or otherwise be associated with the operation).

A new Section 3675 is added and RESERVED.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to Phillip Husband, General Counsel, Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 6th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 8:00 a.m. and 4:00 p.m. at the address listed above, or by contacting Angli Black, Paralegal Specialist, at Angli.Black@dc.gov, (202) 442-5977.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in Section 104 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42, D.C. Official Code § 2-1801.04 (2016 Repl.)); Mayor's Order 99-68, dated April 28, 1999; Sections 9 and 14 of the Legalization of Marijuana for Medical Treatment Amendment Act of 2010, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code §§ 7-1671.08(d) and 7-1671.13 (2012 Repl.)), and Mayor's Order 2011-71, dated April 13, 2011, hereby gives notice of her intent to adopt the following amendments to Chapter 36 (Department of Health (DOH) Infractions) of Title 16 (Consumers, Commercial Practices, and Civil Infractions) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking prescribes civil fines for violations of the law governing the registration, general operation, advertising, record keeping, and reporting for medical marijuana dispensaries, and for violations of the law with respect to the prohibited and restricted activities. These amendments will add new Sections 3664, 3665, 3666, 3667, 3668 to Chapter 36 of Title 16 DCMR, and reserve Section 3669 of the same.

The Director intends to adopt these rules in final, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, and upon completion of the thirty (30) day Council period of review if the Council does not act earlier to adopt a resolution approving the rules.

Chapter 36, DEPARTMENT OF HEALTH (DOH) INFRACTIONS, of Title 16 DCMR, CONSUMERS, COMMERCIAL PRACTICES, AND CIVIL INFRACTIONS, is amended as follows:

Section 3664, MEDICAL MARIJUANA DISPENSARY REGISTRATION VIOLATIONS, is added to read as follows:

3664 MEDICAL MARIJUANA DISPENSARY REGISTRATION VIOLATIONS

3664.1 Violation of any of the following provisions shall be a Class 1 infraction:

- (a) 22-C DCMR § 100.2 (No person shall possess, use, administer, or dispense marijuana in any form for the purpose of a medical use unless the person is registered with the District of Columbia government under the Legalization of Marijuana for Medical Treatment Initiative of 1999 (the "Act")).

3664.2 Violation of any of the following provisions shall be a Class 2 infraction:

- (a) 22-C DCMR § 5500.3 (A dispensary registered under the Act shall not use or display a trade name, corporate name, or sign bearing the words "pharmacy," "apothecary," "drug store," or other phrase that implies that the practice of any health profession occurs on the premises).

- 3664.3 Violation of any of the following provisions shall be a Class 3 infraction:
- (a) 22-C DCMR § 5103.2 (A dispensary that has not timely renewed its registration shall not be permitted to sell medical marijuana with an expired registration);
 - (b) 22-C DCMR § 5303.1 (A registration for a dispensary shall be returned to the Director of the Department of Health (the “Department”) if the dispensary fails to open for business within one hundred twenty (120) days after the registration has been issued); and
 - (c) 22-C DCMR § 5303.2 (A registration for a dispensary shall be returned to the Director if the dispensary fails to operate for any reason for more than one hundred twenty (120) consecutive days after it has opened for business).

- 3664.4 Violation of any of the following provisions shall be a Class 4 infraction:
- (a) 22-C DCMR § 5106.2 (Failure of manager to provide manager training certificate to the Department within thirty (30) days of registration);
 - (b) 22-C DCMR § 5110.1 (All persons required to register with the Department shall receive and wear a nontransferable uniform registration ID card from the Department on their person, while working in a restricted access area at a dispensary);
 - (c) 22-C DCMR § 5500.1 (Failure to notify Department of change of corporate or trade name);
 - (d) 22-C DCMR § 5500.6 (Failure of a dispensary to notify registered qualified patients of a trade name change within ten (10) days of being notified by Department of approval); and
 - (e) 22-C DCMR § 5501 (Failure to notify Department of corporate and partnership changes).

Section 3665, MEDICAL MARIJUANA DISPENSARY GENERAL OPERATION VIOLATIONS, is added to read as follows:

3665 MEDICAL MARIJUANA DISPENSARY GENERAL OPERATION VIOLATIONS

- 3665.1 Violation of any of the following provisions shall be a Class 1 infraction:
- (a) 22-C DCMR § 5602.1 (Sales cannot be transacted between 9:00 p.m. and 7:00 a.m.);

- (b) 22-C DCMR § 5603.1 (A registered dispensary shall keep all medical marijuana located on the premises in a separate storage area which is securely closed and locked during all hours when the establishment is prohibited from operating or is closed. The storage area shall have a volumetric intrusion detection device(s) installed and connected to the facility intrusion detection system);
- (c) 22-C DCMR § 5603.2 (A dispensary shall be required to install and use a safe for overnight storage of any processed marijuana, transaction records, and cash on the registered premises);
- (d) 22-C DCMR § 5604.1 (In the absence of an owner, a dispensary shall have a Department approved manager present at the registered premises during the hours that the dispensary is open);
- (e) 22-C DCMR § 5605.1 (A dispensary shall destroy or dispose of unused or surplus medical marijuana and its by-products by providing it to MPD for destruction);
- (f) 22-C DCMR § 5605.2 (All unused or surplus medical marijuana and its by-products shall be weighed and documented and submitted to MPD on a form provided by MPD prior to being delivered to MPD by the dispensary for destruction);
- (g) 22-C DCMR § 5605.4 (A dispensary shall report stolen or lost marijuana within twenty-four (24) hours of becoming aware by calling 911 or contacting Police in the business District);
- (h) 22-C DCMR § 5607.1 (All medical marijuana sold or otherwise distributed by a dispensary shall be packaged and appropriately labeled);
- (i) 22-C DCMR § 5607.7 (The label shall not contain any of the following information: (a) Any false or misleading statement or design; or (b) Any seal, flag, crest, coat of arms, or other insignia likely to mislead the qualified patient to believe that the product has been endorsed, made, or used by the District government);
- (j) 22-C DCMR § 5607.10 (A dispensary shall not use the word(s) “candy” or “candies” on the product, packaging, or labeling of any medical marijuana product);
- (k) 22-C DCMR § 5607.11 (A dispensary shall not place any content, image, or labeling that specifically targets individuals under the age of twenty-one (21), including but not limited to, cartoon characters or similar images, on the product, packaging, or a container holding medical marijuana);

- (l) 22-C DCMR § 5607.13 (A dispensary shall not use or allow the use of any content, image, or labeling on a medical marijuana product that is offered for sale if the container does not precisely and clearly indicate the nature of the contents or that in any way may deceive a customer as to the nature, composition, quantity, age, or quality of the product);
- (m) 22-C DCMR § 5607.14 (Packaging of edible medical marijuana products or medical marijuana-infused products shall not bear any resemblance to the trademarked, characteristic or product-specialized packaging of any commercially available candy, snack, baked good or beverage; statement, artwork or design that could reasonably mislead any person to believe that the package contains anything other than an edible medical marijuana product or medical marijuana-infused products; or seal, flag, crest, coat of arms, or other insignia that could reasonably mislead any person to believe that the product has been endorsed, manufactured, or used by any state, county or municipality or any agency thereof);
- (n) 22-C DCMR § 5608.1 (The production of any ingestible product containing medical marijuana distributed by a dispensary shall be prepared at a cultivation center facility that meets all requirements of a retail food establishment, including any Department licensing and/or certification requirements; and shall comply with all District of Columbia health regulations relating to the production, preparation, and sale of prepared food items);
- (o) 22-C DCMR § 5608.3 (Marijuana-infused products that are especially appealing to children are prohibited);
- (p) 22-C DCMR § 5608.4 (Marijuana-infused edible products such as, but not limited to, gummy candies, lollipops, cotton candy, or brightly colored products, are prohibited);
- (q) 22-C DCMR § 5609.1 (Medical marijuana shall be subject to testing for quality assurance and safety purposes);
- (r) 22-C DCMR § 5610.1 (A dispensary shall be required to operate and maintain in good working order a twenty-four (24) hour, seven (7) days a week, a closed circuit television (CCTV) surveillance system on the premises);
- (s) 22-C DCMR § 5610.2 (A dispensary shall install, maintain, and use a professionally monitored robbery and burglary alarm system);
- (t) 22-C DCMR § 5612.1 (A dispensary shall refuse to sell or deliver medical marijuana to any person who does not have a valid registration card and

government issued photo identification);

- (u) 22-C DCMR § 5617.1 (A dispensary shall be required for security purposes to have sufficient lighting outside of the registered business each day between sunset and sunrise that adequately illuminates the dispensary and its immediate surrounding area);
- (v) 22-C DCMR § 5619.1 (Medical marijuana shall only be handled in designated limited access areas. A dispensary shall permit only those persons registered with the Department to enter limited access areas);
- (w) 22-C DCMR § 5619.2 (Limited access areas shall only be those areas identified on cultivation center application);
- (x) 22-C DCMR § 5619.5 (It shall be a violation for non-registered persons to be in limited access areas); and
- (y) 22-C DCMR § 6300.1 (A registered dispensary shall devote two percent (2%) of its annual gross revenue to provide medical marijuana on a sliding scale to qualifying patients determined eligible pursuant to § 1300.4 of this subchapter. (Conduct is flagrant, fraudulent, or willful).

3665.2 Violation of any of the following provisions shall be a Class 2 infraction:

- (a) 22-C DCMR § 5604.7 (A registered dispensary shall notify the Department within seven (7) calendar days of discovering any manager's arrest or conviction for any crime other than minor traffic violations);
- (b) 22-C DCMR § 5607.3 (The label shall include all ingredients contained in the product, in order from most abundant to least abundant. The label for ingestible items shall identify potential food allergy ingredients. The product shall be packaged in a sealed container that cannot be opened without obvious damage to the packaging);
- (c) 22-C DCMR § 5607.4 (The label shall contain the following warning: "There may be health risks associated with the ingestion or use of this product. Please consult your physician if you have any questions or concerns.");
- (d) 22-C DCMR § 5607.5 (All medical marijuana shall be labeled with a list of all chemical additives);
- (e) 22-C DCMR § 5607.8 (A dispensary shall not alter, obliterate or destroy the label affixed to a container containing marijuana);
- (f) 22-C DCMR § 5607.9 (A dispensary shall place the original marijuana

container in a separately sealed, appropriately labeled container for customer transport purposes);

- (g) 22-C DCMR § 5607.17 (A dispensary shall obtain approval prior to using a label to be used in the sale of marijuana);
- (h) 22-C DCMR § 5610.3 (A dispensary shall notify the Department within twenty-four (24) hours of any incident triggering an alarm, and file a written report);
- (i) 22-C DCMR § 5617.2 (Outdoor lighting shall be hooded or oriented so as to deflect light away from adjacent properties. (When willful conduct is demonstrated; for example, repeated occurrences)); and
- (j) 22-C DCMR § 5618.1 (A dispensary shall be staffed with at least two (2) persons during its hours of operations).

3665.3 Violation of any of the following provisions shall be a Class 3 infraction:

- (a) 22-C DCMR § 5601.1 (A dispensary shall post a notice regarding sales only to those persons having a valid registration card and government issued photo identification);
- (b) 22-C DCMR § 5608.2 (Marijuana-infused products that require cooking or baking by the consumer are prohibited);
- (c) 22-C DCMR § 5613.1 (A dispensary shall surrender its registration within three (3) calendar days of discontinuing its operation);
- (d) 22-C DCMR § 5616.1 (A dispensary shall post the required signs provided by the Department, in the manner required by the Department);
- (e) 22-C DCMR § 5619.3 (A dispensary shall post a sign provided by the Department at all areas of ingress and egress);
- (f) 22-C DCMR § 5619.4 (Persons registered by the Department shall wear their registrations at all times while in limited access areas); and
- (g) 22-C DCMR § 6300.1 (A registered dispensary shall devote two percent (2%) of its annual gross revenue to provide medical marijuana on a sliding scale to qualifying patients determined eligible pursuant to § 1300.4 of this subchapter. (Single occurrence, with no evidence of flagrant, fraudulent, or willful conduct)).

3665.4 Violation of any of the following provisions shall be a Class 4 infraction:

- (a) 22-C DCMR § 5610.3 (A dispensary shall maintain for three (3) years the reports of any incident triggering an alarm, and shall make those reports available during inspection).

3665.5 Violation of any of the following provisions shall be a Class 5 infraction:

- (a) 22-C DCMR § 5617.2 (Outdoor lighting shall be hooded or oriented so as to deflect light away from adjacent properties. (Single occurrence, with no evidence of willful conduct).

Section 3666, MEDICAL MARIJUANA DISPENSARY PROHIBITED AND RESTRICTED ACTIVITIES, is added to read as follows:

3666 MEDICAL MARIJUANA DISPENSARY PROHIBITED AND RESTRICTED ACTIVITIES

3666.1 Violation of any of the following provisions shall be a Class 1 infraction:

- (a) D.C. Official Code § 3-1210.02 (Unless authorized to practice a health occupation under D.C. Official Code Title 3, Chapter 12, a person shall not represent to the public by title, description of services, methods, or procedures, or otherwise that the person is authorized to practice the health occupation in the District);
- (b) 22-C DCMR § 5700.1 (Unlawful to receive or purchase medical marijuana from a source other than a cultivation center registered in the District of Columbia);
- (c) 22-C DCMR § 5700.2 (A dispensary shall not offer for sale, sell or solicit an order outside the registered premises);
- (d) 22-C DCMR § 5700.3 (A dispensary shall not receive or purchase medical marijuana from a person other than a cultivation center registered in the District);
- (e) 22-C DCMR § 5703.1 (A dispensary shall not transport or deliver medical marijuana);
- (f) 22-C DCMR § 5705.1 (A dispensary shall not permit the consumption of medical marijuana at the registered premises in any form. The dispensary shall dispense or distribute medical marijuana in a closed container that shall not be opened after sale, or the contents consumed, on the premises where sold);
- (g) 22-C DCMR § 5705.2 (It shall be a violation for a dispensary to have on the registered premises any medical marijuana or marijuana paraphernalia that

shows evidence of the medical marijuana having been consumed or partially consumed);

- (h) 22-C DCMR § 5707.3 (A person under the age of eighteen (18) shall be precluded from purchasing medical marijuana from a dispensary unless he or she is a qualified patient and is in the presence of a parent or guardian);
- (i) 22-C DCMR § 5708.1 (It shall be a violation of this subtitle for a dispensary, or a director, officer, member, incorporator, agent, or employee of a dispensary to provide financial compensation, an office, or anything of value to an authorized practitioner who recommends the use of medical marijuana. (When willful conduct is demonstrated; for example, repeated occurrences));
- (j) 22-C DCMR § 5709.1 (A dispensary shall not provide a qualified patient or caregiver more than four (4) ounces of dried medical marijuana, or the equivalent of four (4) ounces of dried marijuana in a form other than dried, either at one (1) time or within a thirty (30) day period);
- (k) 22-C DCMR § 5709.2 (A dispensary shall dispense medical marijuana and distribute paraphernalia only to a qualifying patient or caregiver, if the qualifying patient is registered to receive medical marijuana from that dispensary); and
- (l) 22-C DCMR § 5710.1 (A dispensary shall not permit medical marijuana or paraphernalia to be visible from any public or other property not owned by the dispensary).

3666.2 Violation of the following provision shall be a Class 2 infraction:

- (a) 22-C DCMR § 5707.1 (A person under twenty-one (21) years of age shall not be employed by a dispensary to sell or dispense medical marijuana); and
- (b) 22-C DCMR § 5708.1 (It shall be a violation of this subtitle for a dispensary, or a director, officer, member, incorporator, agent, or employee of a dispensary to provide financial compensation, an office, or anything of value to a physician who recommends the use of medical marijuana. (Single occurrence, with no evidence of willful conduct)).

Section 3667, MEDICAL MARIJUANA DISPENSARY ADVERTISING VIOLATIONS, is added to read as follows:

3667 MEDICAL MARIJUANA DISPENSARY ADVERTISING VIOLATIONS

3667.1 Violation of any of the following provisions shall be a Class 2 violation:

- (a) 22-C DCMR § 5800.2 (Advertisements relating to medical marijuana shall not be displayed on the exterior of any window or on the exterior or interior of any door. (When willful conduct is demonstrated; for example, repeated occurrences));
- (b) 22-C DCMR § 5800.3 (No sign advertising medical marijuana on the exterior or visible from the exterior of any registered establishment or elsewhere in the District shall be illuminated at any time. (When willful conduct is demonstrated; for example, repeated occurrences);
- (c) 22-C DCMR § 5801.1 (A registered dispensary shall not use any picture or illustration that depicts a child or immature person, or objects (such as toys), suggestive of the presence of a child, and any statement, design, device, picture, or illustration designed to be especially appealing to children or immature persons);
- (d) 22-C DCMR § 5801.2 (A statement that is known by the dispensary to be false or misleading with respect to advertised price charged to the qualified patient, ingredients of medical marijuana, source of manufacturer, or statements as to health benefits, shall be prohibited); and
- (e) 22-C DCMR § 5801.3 (A statement that encourages the use or purchase of medical marijuana without a registration card shall be prohibited).

3667.2 Violation of any of the following provisions shall be a Class 4 violation:

- (a) 22-C DCMR § 5800.1 (Advertisements relating to the prices of medical marijuana shall not be displayed in the window of a registered establishment);
- (b) 22-C DCMR § 5800.2 (Advertisements relating to medical marijuana shall not be displayed on the exterior of any window or on the exterior or interior of any door. (Single occurrence, with no evidence of willful conduct); and
- (c) 22-C DCMR § 5800.3 (No sign advertising medical marijuana on the exterior or visible from the exterior of any registered establishment or elsewhere in the District shall be illuminated at any time. (Single occurrence, with no evidence of willful conduct)).

Section 3668, MEDICAL MARIJUANA DISPENSARY RECORDS AND REPORTING VIOLATIONS, is added to read as follows:

3668 MEDICAL MARIJUANA DISPENSARY RECORDS AND REPORTING VIOLATIONS

3668.1 Violation of any of the following provisions shall be a Class 1 violation:

- (a) 22-C DCMR § 5902.1 (Each registered dispensary shall keep and maintain upon the registered premises true, complete, and current books and records which include invoices that adequately and fully reflect all purchases and sales of medical marijuana made to and by the dispensary. (When willful conduct is demonstrated; for example, repeated occurrences));
- (b) 22-C DCMR § 5902.2 (Records shall include and distinctly show the specifications of 17 DCMR § 5902.2(a)-(h). (When willful conduct is demonstrated; for example, repeated occurrences));
- (c) 22-C DCMR § 5902.3 (All invoices and delivery slips shall be systematically filed and maintained for a period of four (4) years from the date of delivery and shall show a true, accurate, legible, and complete statement of terms and conditions on which each purchase was made. (When willful conduct is demonstrated; for example, repeated occurrences));
- (d) 22-C DCMR § 5904.2 (On or before the thirtieth (30th) day of July and January, the dispensary shall furnish to the Department on a form to be prescribed by the Department a dispensary report under oath containing the specifications of 17 DCMR §§ 5904.2(a)-(k). (When willful conduct is demonstrated; for example, repeated occurrences));
- (e) 22-C DCMR § 5906.1 (The books and records referred to in this chapter, including the original and duplicate invoices, shall be open to inspection by the Department or its designated agent, and the OTR, during the establishment's approved hours of operation. (When willful conduct is demonstrated; for example, repeated occurrences));
- (f) 22-C DCMR § 5906.3 (A dispensary shall keep and maintain all books and records referred to in this chapter on the registered premises for a period of four (4) years after the latest transaction recorded in those books and records. (When willful conduct is demonstrated; for example, repeated occurrences)); and
- (g) 22-C DCMR § 6300.2 (Not later than February 15th of each calendar year, each registered dispensary in the District of Columbia shall submit to the Director statements regarding the sliding scale program as specified by 17 DCMR §§ 6300.2(a)-(c). (When willful conduct is demonstrated; for example, repeated occurrences)).

3668.2

Violation of any of the following provisions shall be a Class 2 violation:

- (a) 22-C DCMR § 5902.1 (Each registered dispensary shall keep and maintain upon the registered premises true, complete, and current books and records which include invoices that adequately and fully reflect all purchases and

- sales of medical marijuana made to and by the dispensary. (Single occurrence, with no evidence of willful conduct));
- (b) 22-C DCMR § 5902.2 (Records shall include and distinctly show the specifications of 17 DCMR §§ 5902.2(a)-(h). (Single occurrence, with no evidence of willful conduct));
 - (c) 22-C DCMR § 5902.3 (All invoices and delivery slips shall be systematically filed and maintained for a period of four (4) years from the date of delivery and shall show a true, accurate, legible, and complete statement of terms and conditions on which each purchase was made. (Single occurrence, with no evidence of willful conduct));
 - (d) 22-C DCMR § 5904.2 (On or before the thirtieth (30th) day of July and January, the dispensary shall furnish to the Department on a form to be prescribed by the Department a dispensary report under oath containing the specifications of 17 DCMR §§ 5904.2(a)-(k). (Single occurrence, with no evidence of willful conduct));
 - (e) 22-C DCMR § 5906.1 (The books and records referred to in this chapter, including the original and duplicate invoices, shall be open to inspection by the Department or its designated agent, and the OTR, during the establishment's approved hours of operation. (Single occurrence, with no evidence of willful conduct));
 - (f) 22-C DCMR § 5906.3 (A dispensary shall keep and maintain all books and records referred to in this chapter on the registered premises for a period of four (4) years after the latest transaction recorded in those books and records. (Single occurrence, with no evidence of willful conduct)); and
 - (g) 22-C DCMR § 6300.2 (Not later than February 15th of each calendar year, each registered dispensary in the District of Columbia shall submit to the Director statements regarding the sliding scale program as specified by 17 DCMR §§ 6300.2(a)-(c). (Single occurrence, with no evidence of willful conduct)).

3668.3

Violation of the following provision shall be a Class 4 violation:

- (a) 22-C DCMR § 5907.1 (A dispensary shall notify the Mayor within ten (10) days after a registered director, officer, member, incorporator, agent, employee, or manager ceases to work at, manage, own, or otherwise be associated with the operation. The director, officer, member, incorporator, agent, employee, or manager shall surrender his or her identification card to the Mayor within ten (10) days of ceasing to work at, manage, own, or otherwise be associated with the operation).

A new Section 3669 is added and RESERVED.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to Phillip Husband, General Counsel, Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 8:00 a.m. and 4:00 p.m. at the address listed above, or by contacting Angli Black, Paralegal Specialist, at Angli.Black@dc.gov, (202) 442-5977.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FIFTH PROPOSED RULEMAKINGRM46-2015-01-E, IN THE MATTER OF THE INVESTIGATION INTO THE PUBLIC SERVICE COMMISSION'S RULES GOVERNING THE LICENSURE AND BONDING OF ELECTRIC SUPPLIERS IN THE DISTRICT OF COLUMBIA;

AND

FORMAL CASE NO. 1130, IN THE MATTER OF THE INVESTIGATION INTO MODERNIZING THE ENERGY DELIVERY SYSTEM FOR INCREASED SUSTAINABILITY

1. The Public Service Commission of the District of Columbia ("Commission"), pursuant to authority under the Retail Competition and Consumer Protection Act of 1999, effective May 9, 2000 (D.C. Law 13-107; D.C. Official Code §§ 34-1501-1520 (2012 Repl.)) ("1999 Act"), hereby gives notice of its intent to adopt Chapter 46 (Licensure of Electricity Suppliers) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations ("DCMR").

2. Chapter 46 establishes the rules governing the licensure and bonding of Electricity Suppliers in the District of Columbia, pursuant to the Retail Electric Competition and Consumer Protection Act of 1999 as codified in Sections 34-1501 through 1520 of the D.C. Official Code. Currently, the requirements for licensing Electricity Suppliers are set forth in *Formal Case No. 945*, Order No. 11796.¹ Bonding requirements for Electricity Suppliers are set forth in *Formal Case No. 945*, Order No. 11862.²

3. On February 6, 2015, the Commission, pursuant to D.C. Official Code §§ 34-1501 – 1520 (2012 Repl.), gave notice of the proposed adoption of new rules at 62 *DCR* 001712 to combine the licensing and bonding requirements into a single chapter.³ This NOPR also included the following attachments: (A) Supplier Application; (B) Notice of Application (C) Form of Customer Payments Bond-Surety Bond, (D) Form of Integrity Bond for Electric Suppliers other than Aggregators and Brokers-Surety Bond; and (E) Form of Integrity Bond for Aggregators and Brokers-Surety Bond.

4. On February 17, 2017, the Commission published a Second Proposed Rulemaking with revisions to certain provisions in the first NOPR.⁴ The Second NOPR superseded the First

¹ See *Formal Case 945, Phase II, in the Matter of the Investigations into Electric Service Market Competition and Regulatory Practices* ("FC 945"), Order No. 11796, rel. September 18, 2000.

² See *FC 945*, Order No. 11862, rel. December 18, 2000.

³ See 62 *DCR* 001712 (February 6, 2015).

⁴ See 64 *DCR* 001818 (February 17, 2017).

NOPR. In the Second NOPR, the following sections were revised based upon comments filed: 1) 4602.9; 2) 4602.11; 3) 4602.12; 4) 4602.13; 5) 4602.16; 6) 4603.1; 7) 4606.1; 8) 4607.1(a); and 9) 4699.1 (g) and (h).

5. On August 11, 2017, the Commission published a Third NOPR.⁵ The Third NOPR superseded the Second NOPR. The Third NOPR included the following attachments: (1) Supplier Application; (2) Form of Customer Payments Bond-Surety Bond; (3) Form of Integrity Bond for Electric Suppliers and Marketers Integrity Bond-Surety Bond; and (4) Form of Integrity Bond for Aggregators and Brokers Integrity Bond-Surety Bond.⁶ In the Third NOPR, the following sections were revised to reflect consistency with the Natural Gas Supplier Rules, where appropriate, comments and reply comments, and Commission internal review: 1) §§ 4601.2 (h) (1), (2), (3); 2) § 4603.5; 3) § 4603.9; 4) § 4603.10; 5) § 4603.11; 6) § 4603.12; 7) § 4603.16; 8) § 4604.1; 9) § 4608.1(a); and 10) § 4609.2(x).

6. On November 3, 2017, the Commission published a Fourth NOPR.⁷ The Fourth NOPR superseded the Third NOPR. The following sections were revised in response to parties' comments and Commission internal review: 1) § 4603.11; 2) § 4603.13; and 3) § 4608.1(a). The forms attached to these rules, Attachments A – D, were also revised for accuracy and made to be applicable specifically to Electric Suppliers.

7. This Fifth NOPR supersedes the previous Fourth NOPR published on November 3, 2017 at 64 DCR 011527. Like the prior four NOPR's this fifth NOPR combines the licensing and bonding requirements in a single chapter. This Fifth NOPR includes the following attachments: (1) Supplier Application; (2) Form of Customer Payments Bond-Surety Bond; (3) Form of Integrity Bond for Electric Suppliers and Marketers Integrity Bond-Surety Bond; and (4) Form of Integrity Bond for Aggregators and Brokers Integrity Bond-Surety Bond. In this Fifth NOPR, the following sections have substantive changes: (1) § 4603.11; (2) § 4608.1; (3) § 4609.2(v); (4) § 4699.1, the definitions for Residential Customers and Small Commercial Customers were revised; and (5) Attachment A (Supplier Application), Question 5 Affiliates, or Predecessor(s), engaged in the Sale or Transmission of electricity at Wholesale or Retail to the Public, the names of the individual states were removed. Also, in this NOPR, the following sections have non-substantive changes: (1) § 4607.1; (2) Attachment A, Question 1 a. and c; (3) Attachment A, Question 6; (4) Attachment A Question 15; (5) Attachment A, Question 16 j., k. and l; (6) Attachment A, Affidavit of General Compliance; (7) Attachment B, Form of Customer Payments Bond-Surety Bond; (8) Attachment C Form of Integrity Bond for Electric Suppliers

⁵ See 64 DCR 007984 (August 11, 2017).

⁶ The Notice of Application attachment was removed and not included in the Third NOPR.

⁷ See 64 DCR 011527.

and Marketers Integrity Bond-Surety Bond; and (9) Attachment D Form of Integrity Bond for Aggregators and Brokers Integrity Bond-Surety Bond.⁸

Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended to add a new Chapter 46 as follows:

CHAPTER 46 LICENSURE OF ELECTRICITY SUPPLIERS

- 4600 APPLICABILITY**
- 4601 LICENSING REQUIREMENTS**
- 4602 COMMISSION ASSESSMENT AND FEES**
- 4603 LICENSING PROCEDURES**
- 4604 ELECTRICITY SUPPLIER EDUCATION WORKSHOP**
- 4605 BOND REQUIREMENTS FOR ELECTRICITY SUPPLIERS COLLECTING DEPOSITS OR PREPAYMENTS (“CUSTOMER PAYMENTS BOND”)**
- 4606 BOND REQUIREMENTS FOR FINANCIAL INTEGRITY (“INTEGRITY BOND”)**
- 4607 PRIVACY PROTECTION POLICY**
- 4608 COMMISSION REPORTING REQUIREMENTS**
- 4609 COMMISSION ACTION REGARDING A LICENSEE**
- 4610 SANCTION AND ENFORCEMENT**
- 4699 DEFINITIONS**

4600 APPLICABILITY

4600.1 **Application.** These rules apply to a Person who engages in the business of an Electricity Supplier in the District of Columbia.

4600.2 **Purpose.** These rules provide uniform requirements for obtaining any form of an Electricity Supplier License in the District of Columbia, describe the administrative procedures available to the Applicants and Licensees, outline the grounds for Commission action regarding a Licensee, and describe the sanctions that may be imposed by the Commission.

4600.3 **Restrictions.** No Person shall present itself as a licensed retail Electricity Supplier, perform the duties of an Electricity Supplier, accept Deposits or prepayments from retail customers, contract with retail customers or arrange for contracts for retail customers, prior to receipt of a license from the Commission.

⁸ The Commission notes that these proposed rules may be amended in the future depending on actions taken in Formal Case 1130, In the Matter of the Investigation into Modernizing the Energy Delivery System for Increased Sustainability (MEDSIS proceeding).

4601 LICENSING REQUIREMENTS

4601.1 **Persons Subject to Licensing Requirements.** Any Person who engages in the business of an Electricity Supplier in the District of Columbia shall hold an Electricity Supplier License issued by the Commission.

4601.2 **Application Information Requirements for Electricity Suppliers.** An Application for an Electricity Supplier License and an Application for renewal of an Electricity Supplier License shall include the following information, in a manner and form specified by the Commission:

- (a) Proof of technical and managerial competence;
- (b) Proof of compliance with all applicable requirements of the Federal Energy Regulatory Commission, and any Independent System Operator, or Regional Transmission Operator to be used by the Applicant;
- (c) A sworn verification that the Applicant is currently in compliance with, and will comply with all, applicable federal and District of Columbia environmental laws and regulations;
- (d) Proof of compliance with the Bonding Requirements set forth in §§ 4605 and 4606;
- (e) Proof that the Applicant has registered with the Department of Consumer and Regulatory Affairs and the Department of Finance and Revenue to do business in the District of Columbia;
- (f) A sworn verification that the Applicant is currently in compliance with, and will comply with, all applicable taxes;
- (g) A sworn verification that the Applicant is currently in compliance with, and will comply with all of the requirements of the Retail Electric Competition and Consumer Protection Act of 1999 (Act) and all orders and regulations of the Commission issued under the Act;
- (h) If the Applicant was a previously licensed supplier in the District but has surrendered that license under a former name or in this current applicant's name, the Applicant must:
 - (1) Submit a sworn verification that it has paid all previously outstanding Commission and the Office of the People's Counsel (OPC) imposed assessments and Commission penalties;
 - (2) If prior assessments and penalties remain unpaid, submit a date certain when those assessments and any penalties will be paid; and

- (3) If the Applicant fails to comply with either directive, its application will not be considered;
- (i) Applicant's website address;
 - (j) A sample copy of each of the Electricity Supplier's electricity supply Customer contracts (e.g., fixed, variable) and a sample bill;
 - (k) The name and contact information for the Electricity Supplier's designated contact Person for Customer complaints;
 - (l) The Trade name(s) or d/b/a (doing business as name(s) if the Applicant will be using either while doing business as an Electricity Supplier in the District of Columbia;
 - (m) Any other information required by the Commission.

4602 COMMISSION ASSESSMENT AND FEES

- 4602.1 The Licensee or the Electricity Supplier shall pay an assessment for the costs and expenses of the Commission and OPC as required by D.C. Official Code § 34-912 (b) and any penalties assessed pursuant to D.C. Official Code § 34-1508.
- 4602.2 The Licensee or the Electricity Supplier shall pay any additional fees imposed by the Commission pursuant to the Commission's rules, regulations, or orders. Renewal Applications may not be approved if the Licensee or Electricity Supplier owes any outstanding assessment and/or fee to the Commission, OPC, or both.

4603 LICENSING PROCEDURES

- 4603.1 **Scope.** These procedures apply to an Application for an Electricity Supplier License before the Commission and the review of an Electricity Supplier License.
- 4603.2 **Form.** An Application for a Electricity Supplier License shall be made to the Commission in writing on the applicable form provided by the Commission (See the form set out in Attachment A); be verified by oath or affirmation; and be accompanied by an Application fee of four hundred dollars (\$400.00).
- 4603.3 **Number of copies; Service.** Each Applicant shall file a signed and verified original and an electronic version of their application and attachments.
- 4603.4 **Change in Application Information.** The Applicant shall immediately inform the Commission of any change in the information provided in the Application during the pendency of the Application process.

- 4603.5 **Notice of Incomplete Application (Deficiency Letter).** The Commission shall review the submitted Application for completeness within fifteen (15) days of receipt of the Application and inform the Applicant if the Application is either complete or incomplete. If the Application is complete, the Commission shall notify the Applicant in writing that the Application is complete and has been accepted for filing. If the Application is incomplete, the Commission shall notify the Applicant in writing of the deficiencies in the Application. The Applicant shall have ten (10) days, or such additional time as the Commission may designate if it extends the time period for good cause shown, to provide the information requested in the deficiency letter. Once the deficiency has been cured by the Applicant, the Commission will notify the Applicant in writing that the Application is now complete and has been accepted for filing. If the Applicant does not provide the information to the Commission within ten (10) days or within the alternative time period set by the Commission, the Application shall be deemed dismissed without prejudice. An Applicant may submit a new Application at any time.
- 4603.6 **Comments and Objections Regarding Filed Application.** All persons interested in filing an objection or a comment regarding the filed Application or the licensure of an Applicant may submit written comments or objections to the Commission Secretary and to the Applicant no later than twenty (20) days after the Application has been posted on the Commission's website. An Applicant may file reply comments no later than ten (10) days after objections or comments are filed with the Commission Secretary. The Commission may waive this filing deadline at its discretion.
- 4603.7 **Review of Complete Application.** Upon determining that an Application is complete, the Commission shall conduct an appropriate investigation of the information provided by the Applicant in the complete Application and of any objections or comments received on the Application. Within fifteen (15) days after the comment period has expired, the Commission shall conclude its investigation and issue a Licensing Order approving or denying the Application if no objections or comments are filed. If an objection to licensure or comments is filed, the Commission shall conclude its investigation and issue a Licensing Order approving or denying the Application within sixty (60) days after the comments or objection period has expired. In the event that the Commission denies a License to an Applicant, the Commission shall state in writing its reasons for such denial and file its determination with the Commission Secretary. A copy of the Commission's determination shall also be served on the Applicant and OPC.
- 4603.8 **Licensee's Update Information.** A licensed Electricity Supplier shall comply with any information update requirements or supplemental information requirements established by Commission rules or in Commission orders.
- 4603.9 **Term of Electricity Supplier License.** An Electricity Supplier License is valid until revoked by the Commission or surrendered by the Licensed Electricity

Supplier. An Electricity Supplier is subject to review every five (5) years after the date on which the license was issued or was last reviewed. Not less than forty-five (45) days before the five-year anniversary of the date on which the licensee was issued or was last reviewed; an Electricity Supplier shall file an application for review with the Commission pursuant to the licensing requirements and procedures set forth in Sections 4601 and 4603. The Commission shall complete its review of the application within thirty (30) days after its filing. Licensed Electricity Suppliers shall submit an application for review not less than forty-five (45) days before five years after the effective date of this chapter.

4603.10 **Transfer of Electricity Supplier License.** An Electricity Supplier License is not transferable without the prior approval of the Commission. To obtain the approval of the Commission, a Licensee shall file a Transfer Application in a format similar to an application for an Electricity Supplier License (see Attachment A) with the Commission Secretary. After receiving the Transfer Application, the Commission shall give public notice of the Transfer Application by posting the transfer Application on its website. All Persons interested in filing an objection or a comment regarding the filed Transfer Application may submit written comments or objections to the Commission's Secretary no later than thirty (30) days after the posting of the Application on the Commission's website. The Licensee may file reply comments no later than seven (7) days after objections or comments are filed. The Commission may waive this filing deadline at its discretion. Within thirty (30) days after the comment period has expired, the Commission shall issue an order approving or denying the Transfer Application if no objections or comments are filed. If an objection to a Transfer Application or a comment is filed, the Commission shall conclude its investigation and issue an order approving or denying the Transfer Application within sixty (60) days after the comments or objection period has expired. In the event that the Commission denies a Transfer Application, the Commission shall state in writing its reasons for such denial and file its determination with the Commission Secretary. A copy of the Commission's determination shall also be served on the Licensee and on OPC.

4603.11 **Solicitation of Customers.** A Licensee, both new and existing, who has not initially started serving Customers shall notify the Commission within three (3) business days before the Licensee begins soliciting or marketing to Customers directly or through an authorized representative in the District of Columbia. This is a one-time initial notice prior to the Licensee beginning its marketing to or soliciting of District consumers. The notice shall include the name of the licensed Electricity Supplier's designated contact person for pricing information if the Licensee is serving Customers and the URL address of the Electricity Supplier's website. All door-to-door sales representatives and agents shall be required to present a company photo identification to Customers as part of the solicitation process. In addition, the Licensee is required to maintain a record of the identity of each sales representative and marketing agent or representative active in the

District, including the company photo identification, and make it available upon request to the Commission. The Electricity Supplier shall maintain the photo identification record for a period of six (6) months after the representative or agent has been employed or marketing on the Electricity Supplier's behalf.

- 4603.12 **Electronic Solicitation.** For the purpose of monitoring compliance with 15 DCMR Chapter 3 regarding electronic solicitation on the Licensee's website, each Licensee who contracts electronically with Customers shall provide the Commission with screenshots of their online enrollment web pages upon request.
- 4603.13 **Serving Customers.** A Licensee shall do the following before it begins to serve Customers in the District of Columbia:
- (a) Notify the Commission and OPC of the estimated start date when it will begin to serve Customers in the District of Columbia; and
 - (b) File an affidavit attesting that all sales and marketing and regulatory personnel including independent contractors and vendors performing marketing or sales activities on the Licensees' behalf have received reasonable training on the relevant provisions of Chapters 3 and 46 of Title 15 DCMR before they begin soliciting Customers in the District of Columbia.
- 4603.14 **Cessation of Business in the District of Columbia or Cessation of Business to a Customer Class.** A Licensee shall provide to the Commission at least sixty (60) days prior written notice of the Licensee's intention to cease providing electricity:
- (a) All Customers in the District of Columbia; or
 - (b) All Customers within a specified Customer class. Upon receipt of such notice, the Commission may order the Licensee to provide such further notice to Customers or to the public as the Commission deems necessary, and/or take such other action that the Commission deems appropriate.
- 4603.15 **Electric Company and Licensee Responsibilities in the Event of Default.** In the event of a default, the Licensee and the Electric Company shall abide by the Electric Company's Electricity Supplier Coordination Tariff. Also, a Defaulted Licensee using consolidated billing services remains obligated to provide the Electric Company with information necessary to allow the Electric Company to continue consolidated billing through the conclusion of the billing cycle in which the default occurred. The Defaulted Licensee using consolidated billing services is prohibited from issuing bills to persons who were Customers at the time of the default unless specifically authorized by the Commission. A request to authorize a Defaulted Licensee to bill directly may be made to the Commission by the Defaulted Licensee or the Electric Company. In order that a Defaulted Licensee's

charges may be included in the Electric Company's consolidated billing services, a Defaulted Licensee and the Electric Company shall abide by the Electric Company's Electricity Supplier Coordination Tariff.

- 4603.16 **Required Notices Upon Default.** Upon default, a Licensee shall immediately notify its Customers of its default by the preferred method that each Customer has selected to receive notifications and send written notice by electronic mail to the Electric Company and to file notice with the Commission notifying them of its default. Upon receipt of notice of a Licensee's default from the defaulting Licensee or from the Regional Transmission Organization, the Electric Company shall immediately provide the defaulting Licensee's Customers Standard Offer Service (SOS) in accordance with the SOS Administrator's Retail Electric Service Tariff, unless or until a Customer notifies the SOS Provider that the Customer has selected a new Electricity Supplier.
- 4603.17 **Accuracy of Information.** Any Applicant who knowingly or in reckless disregard submits misleading, incomplete, or inaccurate information to the Commission during the Application Process may have its Application rejected, its Electricity Supplier License suspended or revoked or be otherwise penalized in accordance with applicable law and the provisions of the Commission's rules in Section 4610.
- 4603.18 **Filing of Electronic Data Interchange Trading Partner Agreement and Supplier Coordination Agreement.** Every Licensee shall execute and file with the Commission Secretary a copy of the Electronic Data Interchange Trading Partner Agreement and Supplier Coordination Agreement entered into with the Electric Company within ten (10) days of execution of such agreements.
- 4603.19 **Proprietary and Confidential Information.** In its Application, the Applicant may designate as confidential information documents provided in response to Sections 4d and 14 of the Application related to the ownership of the Applicant (to the extent such information is not already public) and financial information. If an interested person requests the release of this information, the Applicant shall have the burden of proving the confidential nature of the information. The Commission will notify the Applicant of any request for release of this information and will permit the Applicant to respond to the request through a written motion filed with the Commission prior to the Commission's determination on the request. The Commission may order the release of information if an Applicant does not meet its burden of proving that the information is confidential pursuant to 15 DCMR § 150 (Confidential or Proprietary Information).
- 4604 ELECTRICITY SUPPLIER EDUCATION WORKSHOP**
- 4604.1 **Electricity Supplier Education Workshop.** Within one hundred eighty (180) days of approval of a license Application or within one year of the effective date

of this chapter whichever is later, each Licensee's Regulatory Contact or Licensee's representative responsible for the Licensee's compliance with the Commission's rules shall complete the Electricity Supplier Education Workshop sponsored by the Commission. Successful completion of the workshop by the Licensee shall be evidenced by a certificate issued by the Commission. Thereafter, each Licensee shall certify annually that its Regulatory Contact or representative responsible for the Licensee's compliance with the Commission's rules has completed the Electricity Supplier Education Workshop sponsored by the Commission or is otherwise knowledgeable with respect to the Commission's Electricity Supplier rules.

4605 BOND REQUIREMENTS FOR ELECTRICITY SUPPLIERS COLLECTING DEPOSITS OR PREPAYMENTS ("CUSTOMER PAYMENTS BOND")

4605.1 Applicability.

Any Electricity Supplier that states on its Application that it intends to charge Deposits or collect Prepayments or that does in fact require a Deposit or collects any Prepayment, shall post a Customer Payments Bond with the Commission, in addition to any Integrity Bond that may be required or submitted and shall submit the certification described in this section. Any Electricity Supplier that states on its Application that it does not intend to charge Deposits or collect Prepayments and that does not in fact require a Deposit or collect any Prepayment will not be required to post a Customer Payments Bond or provide the certification described below. Any Licensee that actually charges a Deposit or collects a Prepayment without posting the required Customer Payments Bond may be subject to suspension, revocation, or other action against its license, as well as be held liable for restitution to any Customers who paid such Deposits or Prepayments. Any Licensee requiring, charging, collecting or holding Deposits, or Prepayments may not request a return of a current Customer Payments Bond (as defined in this chapter) or waiver of the requirements for a future Customer Payments Bond, unless and until the Licensee returns the Deposits or Prepayments to its Customers or provides the services to which the Deposit or Prepayments is applied.

4605.2 Procedure for Determining Amount of a Customer Payments Bond.

- (a) **Initial Bond:** Before accepting any Deposits or Prepayments, a Licensee shall post an initial Customer Payments Bond of fifty thousand dollars (\$50,000) in the form as set out in Attachment B (Form of Customer Payments Bond-Surety Bond).
- (b) **Six Month Certification:** Within six (6) months after the initial Customer Payments Bond is posted, the Licensee shall provide to the Commission with any appropriate confidentiality designations: (1) a

certification, subject to review by the Commission, of the amount of the Deposits and Prepayments held by the Licensee; and (2) a Customer Payments Bond in an amount that is at least equal to the amount reflected in that certification.

- (c) **Annual Certification:** Annually thereafter, coinciding with the annual update requirements of the Commission's Application, the Licensee shall provide to the Commission with any appropriate confidentiality designations: (1) certification of the amount of the Deposits and Prepayments held by the Licensee; and (2) a Customer Payments Bond in an amount that is at least equal to the amount reflected in that certification.

4605.3 **Form of the Bond.** Any Applicant or Licensee required to provide a bond under this section shall provide a bond issued by a company authorized to do business in the District of Columbia in a form required by the Commission. At a minimum, the bond form shall:

- (a) Designate the District of Columbia and/or the Commission as the sole beneficiary of the bond;
- (b) Be continuous in nature. If a Licensee seeks to cease providing the bond it shall seek approval from the Commission at least sixty (60) days prior to the time it wants to discontinue maintaining the bond;
- (c) Cover payment of all District of Columbia Deposits and Prepayments of the Licensee that occurred while the bond was in force, as identified by the Commission under these standards; and
- (d) State that the proceeds of the bond shall be paid or disbursed as directed by the Commission. See Attachment C (Form of Customer Payments Bond-Surety Bond).

4605.4 **Commission Verification.** Each Licensee shall provide appropriate certification, at the intervals discussed in Subsection 4605.2, of funds collected by the Licensee for Prepayments and/or Deposits. Each Licensee shall certify the amount of funds held for Deposits and Prepayments through a notarized statement, subject to verification by the Commission. The certification and any audit by the Commission, will verify the year-to-date collections and balances of Prepayments and Deposits as of a specific date and will be used to verify whether the Licensee has the appropriate amount of Customer Payments Bond coverage. The Commission reserves the right, in its sole discretion, to order the Licensee to have a Certified Public Accountant review such balances, should conditions warrant such a review.

4605.5 **Compliance Investigations.** The Commission may initiate appropriate investigations if it determines an Electricity Supplier or a Licensee may be collecting Prepayments and/or Deposits from Customers without appropriate

Customer Payments Bond coverage. The Commission may utilize appropriate legal remedies both to investigate and, if appropriate, to enforce its requirements for appropriate Customer Payments Bond coverage.

4605.6 **Bond Foreclosure.** The Commission may foreclose upon any bond posted with the Commission when, in the Commission's discretion, foreclosure is necessary to ensure the fair and lawful treatment of the District of Columbia's Customers by a Licensee, to ensure that Deposits and Prepayments collected by a Licensee from a Customer will be paid. In order to draw funds on this Bond, the Commission Secretary shall present an affidavit sworn to and signed by the Commission Secretary to the surety stating that the Commission has determined that the Licensee has not satisfactorily performed its obligations to a Customer who has suffered actual damages or loss of a Deposit or Prepayment in a specific amount by means of failure, or by reason of breach of contract or violation of the Act and any orders, regulations, rules or standards promulgated thereto.

4606 BOND REQUIREMENTS FOR FINANCIAL INTEGRITY ("INTEGRITY BOND")

4606.1 **Exclusion.**

- (a) An Electricity Supplier or Licensee that cannot provide evidence to the satisfaction of the Commission that it meets the standards listed in Subsection 4606.2 will be required to submit an initial Integrity Bond of fifty thousand dollars (\$50,000), unless that Electricity Supplier or Licensee is applying to provide service as an Aggregator (as defined in D.C. Official Code § 34-1501(2) and Section 4699(B) who does not take title to electricity or as a Broker (as defined in D.C. Official Code § 34-1501(7) and Section 4699(B)), in which case a ten thousand-dollar (\$10,000) Integrity Bond will be required. However, an Electricity Supplier or Licensee that meets the standards listed in Subsection 4606.2 may still be required to provide a bond to demonstrate financial integrity for the Application on a case-by-case basis. This initial Integrity Bond shall be updated in accordance with the requirements set forth in Subsection 4606.3 below, except that Aggregators who do not take title and Brokers will not be required to update the initial \$10,000 Integrity Bond.
- (b) After continuously providing service in the District for two (2) years, any Licensee that has submitted an Integrity Bond to the Commission in compliance with these requirements may request that the Commission return the previously posted Integrity Bond and waive the requirement for a future bond based upon the Licensee's demonstrated record of continuous and uninterrupted service in the District, without meaningful substantiated consumer complaints, as determined by and in the opinion of the Commission, and such other information as the Licensee may choose to present to the Commission. The Commission may accept or reject this

request based on a review of information provided by the Licensee and such other information as the Commission may deem appropriate. The Commission retains the discretion to require an Integrity Bond of the Licensee at a later date if circumstances change, or if the Commission otherwise deems the requirement of an Integrity Bond to be necessary and appropriate.

4606.2 **Applicability.** Any Electricity Supplier or Licensee that can provide credible evidence that it meets the following standards is not required to post an Integrity Bond in the District of Columbia:

- (a) A current credit rating of BBB- or higher from a nationally-recognized credit rating service;
- (b) A current commercial paper rating of A2 or higher by Standard & Poor's and/or P2 or higher by Moody's or similar rating by another nationally-recognized rating service;
- (c) An unused line of bank credit or parent guarantees deemed adequate by the Commission; or
- (d) Any other evidence of financial integrity that the Commission may deem appropriate.

4606.3 **Procedure for Determining Amount of a Financial Integrity Bond**

- (a) **Initial Integrity Bond:** Any Electricity Supplier that cannot meet the above criteria for financial integrity shall post an Integrity Bond of fifty thousand dollars (\$50,000), unless that Electricity Supplier is applying as an Aggregator that does not take title to electricity or a Broker. If the Electricity Supplier is applying to provide service as an Aggregator that does not take title to electricity or as a Broker, the initial required Integrity Bond amount is ten thousand dollars (\$10,000).
- (b) **Future Updates:** The Commission, in its sole discretion, may determine whether or not to reevaluate the amount of the Integrity Bond in light of any changing conditions in the electricity market at the time that a Licensee submits updated information, taking into consideration the Licensee's past experience with the Commission and with its Customers. The Commission may request such information from the Licensee as may be necessary to make its evaluation.

4606.4 **Form of the Bond.** Any Electricity Supplier or Licensee required to provide a bond under this section shall provide a bond issued by a company authorized to do business in the District of Columbia in a form required by the Commission. At a minimum, this form shall:

- (a) Designate the District of Columbia and or the Commission, as the sole beneficiary of the bond;
- (b) Be continuous in nature. If any Licensee seeks to cease providing the bond it shall seek approval from the Commission at least sixty (60) days prior to the time it wants to discontinue maintaining the bond;
- (c) Cover payment of all of the Licensee's District of Columbia Deposits and Prepayments that occurred while the bond was in force as identified by the Commission under these standards;
- (d) State that the proceeds of the bond shall be paid or disbursed as directed by the Commission; and
- (e) Be in the format set out in Attachment C (Form of Integrity Bond for Electricity Suppliers and Marketers-Surety Bond, or Attachment D (Form of Integrity Bond for Aggregators and Brokers-Surety Bond).

4606.5 **Commission Verification.** Each Licensee shall provide appropriate certification at the intervals discussed in the above paragraphs. The Commission may request such information from the Licensee as is necessary to verify the accuracy of the certification at any time.

4606.6 **Compliance Investigations.** The Commission can initiate appropriate investigations if it has reason to believe that any Licensee may be providing service without appropriate Bond coverage. The Commission will utilize appropriate legal remedies both to investigate and, if appropriate, to enforce its requirements for an appropriate Integrity Bond.

4606.7 **Bond Foreclosure.** The Commission's foreclosure of an Integrity Bond shall be limited to those instances where damages to the Customers by the Licensee are actual. In order to draw funds on this Bond, the Commission Secretary shall present an affidavit sworn to and signed by the Commission Secretary to the surety stating that the Commission has determined that the Licensee has not satisfactorily performed its obligations to a Customer who has suffered actual damages or loss of a Deposit or Prepayment in a specific amount by means of failure, or by reason of breach of contract or violation of the Act and any orders, regulations, rules or standards promulgated thereto.

4607 **PRIVACY PROTECTION POLICY**

4607.1 All Applicants and current Licensees shall submit to the Commission Secretary a copy of their Privacy Protection Policy that demonstrates compliance with 15 DCMR § 308 (Use of Customer Information) within ninety (90) days of the effective date of this chapter, or within sixty (60) days of approval of their

Electricity Supplier License Application, whichever date is later. The Privacy Protection Policy shall protect against the unauthorized disclosure or use of Customer information about a Customer or a Customer's use of electricity. The Licensee shall also annually file a copy of its Privacy Protection Policy with the Commission Secretary.

4608 COMMISSION REPORTING REQUIREMENTS

4608.1 **Updates to an Approved Application.** After an Application has been approved, a Licensee shall inform the Commission of new information that changes or updates any part of the Application, including but not limited to, the averment regarding any civil, criminal, or regulatory penalties imposed on the Licensee, within thirty (30) days of the change or the new information. An Applicant or a Licensee shall also inform the Commission of changes to the averment regarding bankruptcy proceedings instituted voluntarily or involuntarily within twenty-four (24) hours of the institution of such proceedings. Also, if a Licensee changes its trade name or the d/b/a name that it is using in the District of Columbia, the Licensee shall notify the Commission within ten (10) days of the effective date of the change and prior to soliciting Customers under that new name.

4608.2 **Annual Reporting Requirements.** The Licensee shall annually review its Application and submit updated information as needed. Annual updates shall be filed with the Commission Secretary within one hundred twenty (120) days after the anniversary of the grant of the License. The Licensee shall, if it is serving Customers also submit or update as needed the name of its Regulatory Contact, website address, the contact for pricing information, copies of its flyers, scripts, pamphlets and other marketing materials. The Licensee shall recertify annually that it has complied with Subsection 4605.2(c) of this chapter. A Licensee shall provide any information required by any other Commission order or regulation.

4609 COMMISSION ACTION REGARDING A LICENSEE

4609.1 **Commission Investigation.** The Commission may initiate an investigation of a Licensee upon its own motion or upon the complaint of the OPC, the D.C. Office of the Attorney General, or any aggrieved person. The Commission shall provide written notice of the investigation to the Licensee, and shall provide the Licensee an opportunity for a hearing in accordance with District of Columbia law and Commission regulations.

4609.2 **Grounds for Commission Action.** The Commission may take action regarding a Licensee for just cause as determined by the Commission. Just cause including, but not limited to, the following:

- (a) Knowingly or with reckless disregard, providing false or misleading information to the Commission;

- (b) Slamming;
- (c) Disclosing information about a Customer supplied to the Licensee by the Customer or using information about a Customer for any purpose other than the purpose for which the information was originally acquired, without the Customer's written consent, unless the disclosure is for bill collection or credit rating reporting purposes or is required by law or an order of the Commission;
- (d) Cramming;
- (e) Failure to provide adequate and accurate information to each Customer about the Licensee's available services and charges;
- (f) Discriminating against any Customer based wholly or partly on race, color, creed, national origin, sex, or sexual orientation of the Customer or for any arbitrary, capricious, or unfairly discriminatory reason;
- (g) Refusing to provide electricity or related service to a Customer unless the refusal is based on standards reasonably related to the Licensee's economic and business purposes;
- (h) Failure to post on the Internet adequate and accurate information about its services and rates for Customers.
- (i) Failure to provide electricity for its Customers when the failure is attributable to the actions of the Electricity Supplier;
- (j) Committing fraud or engaging in sales, marketing, advertising, or trade practices that are unfair, false, misleading, or deceptive such as engaging in any solicitation that leads the Customer to believe that the Licensee is soliciting on behalf of, or is an agent of, the District of Columbia Electric Company when no such relationship exists;
- (k) Failure to maintain financial integrity;
- (l) Violating a Commission regulation or order including, but not limited to engaging in direct Solicitation to Customers without complying with the Commission's solicitation rules as provided in the Consumer Protection Standards Applicable to Energy Suppliers (15 DCMR §§ 327.7).
- (m) Failure to pay, collect, remit, or accurately calculate applicable taxes;
- (n) Violating an applicable provision of the D.C. Official Code or any other applicable consumer protection law;

- (o) Conviction of the Licensee or any principal of the Licensee (including the general partners, corporate officers or directors, or limited liability managers of offices of the Licensee) for any fraud-related crimes (including, but not limited to, counterfeiting and forgery, embezzlement and theft, fraud and false statements, perjury, and securities fraud);
- (p) Imposition of a civil, criminal, or regulatory sanction(s) or penalties against the Licensee or any principal of the Licensee (including the general partners, corporate officers or directors, or limited liability managers or officers of the Company) pursuant to any state or Federal consumer protection law or regulation;
- (q) Conviction by the Licensee or principal of the Licensee (including the general partners, corporate officers or directors, or limited liability managers or officers of the Licensee) of any felony that has some nexus with the Licensee's business;
- (r) Filing of involuntary bankruptcy/insolvency proceedings against the Licensee or filing of voluntary bankruptcy/insolvency proceedings by the Licensee;
- (s) Suspension or revocation of a license by any state or federal authority, including, but not limited to, suspension or revocation of a license to be a power marketer issued by the Federal Energy Regulatory Commission;
- (t) Imposition of any enforcement action by any Independent System Operators or Regional Transmission Organization used by the Licensee;
- (u) Failure to provide annually an updated Privacy Protection Policy that complies with 15 DCMR § 308 (Use of Customer Information);
- (v) Failure of a Licensee, who has not initially started serving Customers in the District to notify, the Commission within (3) business days before the Licensee begins soliciting or marketing to Customers directly or through an authorized representative per Section 4603.11;
- (w) Failure of the Licensee or Electric Supplier to pay its assessment for the costs and expenses of the Commission and OPC as required by D.C. Official Code §§ 34-912(b) and any penalties prescribed by D.C. Official Code § 34-1508; or
- (x) Failure to comply with any Commission regulation or order.

4610 SANCTIONS AND ENFORCEMENT

4610.1 **Sanctions.** Electricity Suppliers and Licensees are subject to sanctions for violations of the District of Columbia Code, and applicable Commission regulations and orders. The following sanctions may be imposed by the Commission:

- (a) **Civil Penalty.** The Commission may impose a civil penalty of not more than ten thousand dollars (\$10,000) for each violation. Each day a violation continues shall be considered a separate violation for purposes of this penalty. The Commission shall determine the amount of a civil penalty after consideration of the following:
 - (1) The number of previous violations on the part of the Licensee;
 - (2) The gravity and duration of the current violation; and
 - (3) The good faith of the Licensee in attempting to achieve compliance after the Commission provides notice of the violation.
- (b) **Customer Refund or Credit.** The Commission may order a Licensee or an Electricity Supplier to issue a full refund for all charges billed or collected by the Licensee or Electricity Supplier or a credit to the Customer's account. Specifically,
 - (1) If slamming occurred, the Licensee or the Electricity Supplier shall refund to the Customer all monies paid to the Licensee or the Electricity Supplier; and
 - (2) If cramming occurred, the Licensee or the Electricity Supplier shall refund to the Customer three times the amount of the unauthorized charges paid to the Licensee or the Electricity Supplier.
- (c) **Cease and Desist Order.** The Commission may order the Licensee or the Electricity Supplier to:
 - (1) Cease adding or soliciting additional Customers;
 - (2) Cease serving Customers in the District of Columbia; and
 - (3) Cease any action found to be in violation of District of Columbia law, or Commission rules and regulations.
- (d) **Cancellation of a contract or part of a contract between a Customer and a Licensee or an Electricity Supplier;**

- (e) **Suspension of a Licensee's License;** and
- (f) **Revocation of a Licensee's License.**

4610.2 **Commission Access to Records.** As part of any Commission investigation, the Commission shall have access to any accounts, books, papers, and documents of the Licensee or the Electricity Supplier that the Commission considers necessary in order to resolve the matter under investigation.

4610.3 **Emergency Action by the Commission.** The Commission may temporarily suspend a License, issue a temporary cease and desist order, or take any other appropriate temporary remedial action, pending a final determination after notice and hearing, if the Commission determines that there is reasonable cause to believe that Customers or the reliability of electric supply in the District of Columbia is or will be harmed by the actions of a Licensee or an Electricity Supplier.

4699 **DEFINITIONS**

4699.1 For the Purposes of these rules, the following terms have the meanings indicated.

Act: The Retail Competition and Consumer Protection Act of 1999.

Affiliate: A Person who directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with, or has, directly or indirectly, any economic interest in another person.

Aggregator: A Person that acts on behalf of Customers to purchase electricity.

Applicant: A Person who applies for an Electricity Supplier License required by the Act.

Application: The written request by a Person for an Electricity Supplier License in a form specified by the Commission. The Application form for an Electricity Supplier License in the District of Columbia is attached to these rules (See Attachment A).

Broker: A person who acts as an agent or intermediary in the sale and purchase of electricity but who does not take title to electricity and who is not a Consolidator.

Commission: The Public Service Commission of the District of Columbia("PSC").

Competitive Billing: The right of a Customer to receive a single bill from the Electric Company, a single bill from the Electricity Supplier, or separate bills from the Electric Company and the Electricity Supplier.

Consolidator: Any owner of, or property manager for multi-family residential, commercial office, industrial, and retail facilities who combines more than one property for the primary purpose of contracting with an aggregator or electric energy service provider for electric energy services for those properties, and who: (A) Does not take title to electric energy; (B) Does not sell electric energy to or purchase electric energy for buildings not owned or managed by such owner or property manager; (C) Does not offer aggregation of electric energy services to other, unrelated end-users; and (D) Arranges for the purchase of electric energy services only from duly licensed Electricity Suppliers or Aggregators.

Cramming: The unauthorized addition of services or charges to a Customer's existing service options.

Customer: A purchaser of electricity for their own end use in the District of Columbia. The term excludes the nonresidential occupant or tenant of a nonresidential Rental Unit of a building where the owner, lessee, or manager manages the internal distribution system serving the building and supplies electricity solely to occupants of the building for use by the occupants.

Customer Payments Bond: A bond or other form of acceptable financial instrument such as a line of credit, sworn letter of guarantee, bank loan approval documents, recent bank statements, vendor financing agreements or underwriting agreements in an amount at least equal to the total amount of Deposits or Prepayments specified in this section.

Days: Calendar days, unless otherwise expressly defined.

Deposits: Any payment made by a Customer to an Electricity Supplier to secure the receipt of electric energy services from the Electricity Supplier.

Defaulted Licensee: A Licensee is in default and is unable to deliver electricity because: (1) the Commission revokes or suspends the Electricity Supplier's retail Electricity Supplier License; or (2) the Licensee is unable to transact sales through the Regional Transmission Organization designated for the District of Columbia by the Federal Energy Regulatory Commission.

District of Columbia Electricity Supplier Coordination Tariff: The document that sets forth the basic requirements for interaction and coordination between the Electric Company as the Local Distribution Company and

each Electricity Supplier necessary for ensuring the delivery of competitive power supply from Electricity Suppliers to their Customers via the Company's distribution system.

Electric Company: Includes every corporation, company, association, joint-stock company or association, partnership, or Person doing business in the District of Columbia, their lessees, trustees, or receivers appointed by any court whatsoever, physically transmitting or distributing electricity in the District of Columbia to retail electric Customers as defined in D.C. Official Code § 34-207. The term excludes a Person or entity that does not sell or distribute electricity and that owns or operates equipment used exclusively for the charging of electric vehicles.

Electricity Supplier: A person, including an Aggregator, Broker, or Marketer, who generates electricity; sells electricity; or purchases, brokers, arranges or markets electricity or electric generation services for sale to Customers. The term excludes the following:

- (a) Building owners, lessees, or managers who manage the internal distribution system serving such building and who supply electricity solely to the occupants of the building for use by the occupants;
- (b) Any Person who purchases electricity for its own use or for the use of its subsidiaries or affiliates and does not resell it to its subsidiaries or affiliates;
- (c) Any apartment building or office building manager who aggregates electric service requirements for his or her building or buildings, or who does not: (1) Take title to electricity; (2) Market electric services to the individually-metered tenants of his or her building; or (3) Engage in the resale of electric services to others;
- (d) Property owners who supply small amounts of power, at cost, as an accommodation to lessors or licensees of the property;
- (e) A Consolidator;
- (f) A Community Renewable Energy Facilities ("CREFs") as defined in Subsection 4199.1 and as described in Subsections 4109.1 through 4109.3 pursuant to the Community Renewable Energy Amendment Act of 2013;
- (g) An Electric Company, and;
- (h) Nontraditional Marketers.

Electricity Supplier License: The authority granted by the Commission to a Person to do business as an Electricity Supplier in the District of Columbia.

Electronic Data Interchange Trading Partner Agreement: The agreement between the Electric Company and the Electricity Supplier that sets out the terms and conditions between the parties governing Electronic Data Interchange (EDI)

Independent System Operator or “ISO”: An entity authorized by the Federal Energy Regulatory Commission to manage and control the electric transmission grid in a state or region.

Initiating Service in the District: The earliest calendar date on which a licensed Electricity Supplier is contractually obligated to provide electric service to any District of Columbia Customer or Consumer.

Integrity Bond: A bond that is required of an Electricity Supplier who cannot provide credible evidence that it meets the standards listed in section 4606.2 of this chapter.

Licensee: An Electricity Supplier who has been granted a valid Electricity Supplier License by the Commission.

Marketer: A Person who purchases and takes title to electricity in order to resell electricity to Customers.

Market Participant: Any Electricity Supplier (including an affiliate of the Electric Company) or any Person providing billing services or services declared by the Commission to be potentially competitive services.

Nontraditional Marketers: A community-based organization, civic, fraternal or business association that works with a licensed Electricity Supplier as an agent to market electricity to its members or constituents. A Nontraditional Marketer: (i) conducts its transactions through a licensed Electricity Supplier; (ii) does not collect revenue directly from retail Customers; (iii) does not require its members or constituents to obtain its electricity through the Nontraditional Marketer or a specific licensed Electricity Supplier; and (iv) is not responsible for the payment of the costs of the electricity to its suppliers or producers.

OPC: The Office of the People’s Counsel of the District of Columbia.

Person: Any individual, corporation, company, association, joint stock company, association, firm, partnership, or other entity.

Prepayments: All payments other than a Deposit made by a residential and/or small commercial consumer to an Electricity Supplier for services that have not been rendered at the time of payment, subject to the following:

- (a) Where an Electricity Supplier charges for services based on a quantity of electricity, such as a price per kilowatt/hour, then Prepayments include any payments for any quantity that has not been delivered to the Customer or Consumer at the time of payment;
- (b) Where an Electricity Supplier charges for services based on a period of time, such as charging a membership fee, initiation fee or other fee for services for a time period, then Prepayments include the amount of the total charges collected by the Electricity Supplier for the period of time less the prorated value of the period of time for which services have been rendered;
- (c) Where an Electricity Supplier charges for services based on a measure other than quantity of electricity delivered or a period of time, the Commission shall determine, on a case-by-case basis, whether the charges involve a prepayment; and
- (d) Prepayments do not include any funds received in advance of the services being rendered as a result of the Customer's or Consumer's voluntary participation in a budget billing or level billing plan by which the consumer's anticipated electrical costs are averaged over a period of time.

Regional Transmission Organization or "RTO": An entity designated by the Federal Energy Regulatory Commission to direct operations of the regional electric transmission grid in its area to ensure electric grid reliability.

Regulatory Contact: The staff contact for the licensed Electricity Supplier that handles regulatory matters for that company or entity.

Residential Customer: Any Non-Commercial Customer served under the Electric Company's Tariff approved by the Commission.

Slamming: The unauthorized switching of a Customer's electric supplier Account without the express authorization of the Customer.

Small Commercial Customer: Any Small Commercial Customer served under the Electric Company's Tariff approved by the Commission.

Solicitation: A communication in any medium that urges a customer to Contract for receipt of electricity from an Energy Supplier. Types of Solicitation may include, but are not limited to, telephone Solicitation, radio advertisements, print advertisements, home Solicitations, electronic advertisements (i.e. Internet), newspaper advertisements, and written Solicitations.

Standard Offer Service or SOS: Electricity supply made available to: (1) Customers who contract for electricity with an Electricity Supplier, but who fail to receive delivery of electricity under such contracts; (2) Customers who cannot arrange to purchase electricity from an Electricity Supplier; and (3) Customers who do not choose an Electricity Supplier As prescribed in D.C. Official Code § 34-1509.

SOS Administrator: The provider of Standard Offer Service mandated by D.C. Official Code § 34-1509.

Supplier Coordination Agreement: The agreement between the Electric Company and the Electricity Supplier whereby the Electric Company agrees to supply, and the Electricity Supplier requests and agrees to take, all “Coordination Services” pursuant to the Electric Company’s Electricity Supplier Tariff.

Transfer Application: The formal submission by a licensed Electricity Supplier to the Commission to transfer its Electricity Supplier License to another licensed Electricity Supplier in the District.

8. All persons interested in commenting on the subject matter of this NOPR and Attachments may submit written comments no later than thirty (30) days after the publication of this Notice in the *D.C. Register*. Comments may be filed with Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Eighth Floor, Washington, D.C. 20005 or at the Commission’s website at www.dcpsc.org. Persons with questions concerning this Notice should call 202-626-5150.

ATTACHMENT A**APPLICATION FOR LICENSE TO SUPPLY ELECTRICITY
OR ELECTRIC GENERATION SERVICES TO THE PUBLIC IN THE
DISTRICT OF COLUMBIA**

You may use the attached form to submit your application. (Please remove this instruction sheet prior to filing.) If you need more space than is provided on this form, then you can create an attachment to this application. You may also attach exhibits. All attachments/exhibits must be labeled or tabbed to identify the application item to which they respond. You are also required to file an electronic version of this document (excluding “confidential” information) which must be converted to the Portable Document Format (“PDF”) before filing.

To file an application with the District of Columbia Public Service Commission (“Commission”), file a signed and verified original and an electronic version of your application and attachments, and a nonrefundable license fee of four hundred dollars (\$400.00) (payable to “D.C. Public Service Commission”) with the Commission Secretary in Washington, D.C.

**Commission Secretary
Public Service Commission of the District of Columbia
1325 G Street, N.W., Suite 800
Washington, D.C. 20005**

Questions pertaining to the completion of this application may be directed to the Commission at the above address or you may call the Commission at the following number: (202) 626-5100. You may reach the Commission electronically at www.websupport@psc.dc.gov

If your answer to any of the Application questions changes during the pendency of your Application, or if the information relative to any item herein changes while you are operating within the District of Columbia, you are under a duty to so inform the Commission immediately. After an Application has been approved a Licensee must inform the Commission of changes to all parts of the Application and the averment regarding any civil, criminal or regulatory penalties, etc. imposed on Applicant, *et al.* must be updated. A Licensee must inform the Commission of changes to the averment regarding bankruptcy proceedings instituted voluntarily or involuntarily within twenty-four (24) hours of the institution of such proceedings. Also, a Licensee/Electricity Supplier must provide annual updates of all items that have changed in the Application. The annual update should be provided to the Commission within one hundred twenty (120) days after the anniversary of the grant of the license. A Licensee/Electricity Supplier also is required to officially notify the Commission if it plans to cease doing business in the District of Columbia sixty (60) days prior to ceasing operations.

Confidentiality: Sections 4d and 14 of this Application related to ownership of the Applicant (to the extent such information is not already public) and financial information, respectively, will be treated as confidential information by the Commission to the extent permitted by law if the Applicant requests such treatment by stamping or marking the materials in question as

“CONFIDENTIAL.” Any interested person may request, however, release of this information by filing such a request with the Commission. If such a request is made, Applicant shall have the burden of proving the confidential nature of the information. The Commission will notify the Applicant of any request for release of this information, and will permit the Applicant the opportunity to respond to the request through written motion filed with the Commission prior to the Commission’s determination on the request.

If you are applying to provide service as an Aggregator (as defined in the “Retail Electric Competition and Consumer Protection Act of 1999” at Section 101(2) and as defined in Commission regulations) who does not take title to electricity as part of providing that service or if you are providing service as a Broker (as defined in the “Retail Competition and Consumer Protection Act of 1999” as Section 101(7) as defined in Commission regulations), you do not need to fill out certain questions in this Application. The exempted questions are marked.

Applicable law: The provisions set forth in this application related to the licensing of Electricity Suppliers and the provision of electricity and electric generation services are addressed in detail in the “Retail Electric Competition and Consumer Protection Act of 1999,” and in the Commission’s regulations.

Statements made in this Application are made under penalty of perjury (D.C. Official Code Section 22-2402), false swearing (D.C. Official Code Section 22-2404), and false statements (D.C. Official Code Section 22-2405). Perjury is punishable by a fine of up to \$5,000 or imprisonment for up to ten (10) years, or both. False statements are punishable by a fine not more than one thousand dollars (\$1,000) or imprisonment for not more than one hundred eighty (180) days, or both. Further amendments to these Code sections shall apply. If the Commission has reliable information that an Applicant has violated any or all of these sections of the Code, the Commission will forward the information to the appropriate law enforcement agency. Statements made in this Application are also subject to Commission regulations, which require the Applicant to certify the truthfulness of the contents of this Application. Any Applicant in violation of these regulations is subject to the penalties found in the “Retail Electric Competition and Consumer Protection Act of 1999,” Section 108.

BEFORE THE DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION

Application Docket No. _____

Application of _____, d/b/a (“doing business as”)

_____ for approval to offer, render, furnish, or supply electricity or electric generation services as a(n) _____, [specified in item 10 below] to the public in the District of Columbia

To the District of Columbia Public Service Commission:

BUSINESS INFORMATION

1. IDENTITY OF THE APPLICANT:

a. Legal Name _____

Current Mailing Address: _____

Street Address (if different): _____

Telephone Number: _____

Website URL: _____

Other States, including District of Columbia, in which the Applicant is now or has been engaged in the retail sale of electricity and the names under which the Applicant is engaged or has been engaged in such business(es) Applicant may limit response to the last three (3) years:

Name: _____

Business Address: _____

License # State of Issuance: _____

Other states in which the Applicant has applied to provide retail electric service but has been rejected. Applicant may limit response to the last three (3) years:

State(s): _____

Date of Application: _____

Attach additional sheets to the application if necessary.

- b. Trade name** (If Applicant will not be using a trade name, skip to question no. 2.a.):

Trade Name: _____

- c.** The District of Columbia and other states, in which the Applicant has provided retail electric under the current Applicant name or in a different name but has voluntarily or involuntarily surrendered its license. Describe reasons for license surrender. With regard to a voluntary or involuntary license surrender in the District of Columbia only, state whether any previously outstanding assessments and/or penalties imposed by the Commission and the Office of the People’s Counsel have been paid. If any previous assessments and/or penalties are unpaid, provide a date certain when those assessments and/or penalties will be paid. Applicant may limit response to the last five (5) years:

State(s): _____

Date of License Surrender and Reasons for License Surrender:

In the District of Columbia, Amount of Paid Assessments and Unpaid Assessments/Penalties Following License Surrender and to Whom Owed (If Applicable)

Attach additional sheets to the application if necessary.

2.

- a. CONTACT PERSON-REGULATORY CONTACT:**

Name and Title: _____

Address: _____

Telephone: () _____

Fax: () _____

E-mail: _____

b. CONTACT PERSON-CUSTOMER SERVICE and CONSUMER COMPLAINTS (not required for Aggregators who do not take title and/or Brokers):

Name and Title: _____

Address: _____

Telephone: () _____

Fax: () _____

E-mail: _____

3. RESIDENT AGENT:

Name and Title: _____

Address: _____

Telephone: () _____

Fax: () _____

E-mail: _____

4. PRIMARY COMPANY OFFICIALS

President/General Partners: Name(s) _____

Business Address: _____

CEO/Managing Partner: Name _____

Business Address: _____

Secretary Name: _____

Business Address: _____

Treasurer Name: _____

Business Address: _____

a. APPLICANT’S BUSINESS FORM: (select and complete appropriate statement)

- Proprietorship
- Corporation
- Partnership
- Limited Partnership
- Limited Liability Company
- Limited Liability Partnership
- Other _____

b. STATE OF FORMATION: Applicant’s business is formed under the laws of the State of _____

c. STATUS: Provide a certificate issued by the state of formation certifying that the Applicant is in good standing and qualified to do business in the state of formation.

If formed under the laws of other than the District of Columbia, provide a certificate issued by the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) certifying that the applicant is registered or qualified, to do business in the District of Columbia and is currently in good standing with DCRA and with the District Department of Finance and Revenue.

d. **OWNERSHIP:** Provide on a separate sheet the names and addresses of all persons and entities that directly or indirectly own ten percent (10%) or more of the ownership interests in the Applicant, or have the right to vote ten percent (10%) or more in the Applicant’s voting securities, or who otherwise have the power to control ten percent (10%) or more of the Applicant.

5. **AFFILIATES, OR PRECEDECESSOR(S), ENGAGED IN THE SALE OR TRANSMISSION OF ELECTRICITY AT WHOLESALE OR RETAIL TO THE PUBLIC:** (select and complete appropriate statement) (Applicant may limit responses to the last five (5) years).

a. The Applicant has no such Affiliate(s) or Predecessors(s).

b. The Applicant is an Affiliate of a regulated utility. Please provide regulated utility’s Name and the jurisdictions in which it operates:

c. The Affiliate(s), or Predecessor(s), other than a regulated utility that provides, or provided, sale or transmission of electricity at wholesale or retail to the public:

Name: _____

Business Address: _____

License #, State of Issuance: _____

Location of Operations (Utility Service Territory): _____

Attach additional sheets to the application if necessary.

6. **ACTIONS AGAINST LICENSEES:** Provide the following information for the Applicant, any Predecessor(s), and any unregulated Affiliate that engages in or engaged in the sale or transmission of electricity at wholesale or retail to the public. (Applicant may limit responses to the last five (5) years).

- Identify all actions against the Licensee, Predecessor or any regulated or unregulated affiliate(s) such as Suspensions/Revocations/Limitations/ Reprimands/Fines and describe the action in an attached statement, including docket numbers, offense dates, and case numbers, if applicable. Formal Investigations (defined as those investigations formally instituted in a public forum by way of the filing of a complaint, show cause order, or similar pleading) instituted by any regulatory agency or law enforcement agency relating to the Applicant, Predecessor(s), or unregulated affiliate(s) if, as a result of the investigation, Applicant's/Predecessor's/or affiliate's license to provide service to the public was in jeopardy are also listed. The license number, state of issuance, and name of license are identified below:

State(s): _____

Name(s): _____

License Number(s) (or other applicable identification):

- No such action has been taken.

7. FERC FILING: Applicant has:

- Filed an Application with the Federal Energy Regulatory Commission ("FERC") to be a Power Marketer.
- Received approval from FERC to be a Power Marketer at Docket or Case Number: _____
- Not Applicable.

OPERATIONAL CAPABILITY

8. ISO/RTO AFFILIATION: Provide evidence that the Applicant has met all applicable requirements of any ISO and/or RTO for its use by the Applicant. Indicate the evidence provided (not required for aggregators who do not take title and/or brokers)

Evidence of having met all applicable requirements of the PJM Interconnection, L.L.C. or another RTO or ISO (Attach evidence of being a signatory to all applicable agreements)

9. SOURCE OF SUPPLY: (Check all that apply) (not required for aggregators who do not take title and/or brokers)

- Not applicable. Applicant will not be supplying retail electricity
- Applicant owns generation.
- Applicant contracts for generation.

- Applicant obtains generation on the spot market.
- Other – Applicant must attach a statement detailing its source of Generation.

SCOPE OF OPERATIONS

(Check all that apply)

10. APPLICANT’S PROPOSED OPERATIONS: The Applicant proposes to operate as a:

- Generator of electricity in the wholesale or retail market
- Marketer of electricity purchasing and taking title to electricity as an intermediary for sale to customers.
- Aggregator acting on behalf of customers to purchase electricity.
- Broker acting as an agent or intermediary on behalf of customers in the sale and purchase of electricity and who does not take title to electricity.

Does Applicant intend to offer competitive billing services? _____

Is the Applicant proposing to offer any other services? _____

If so, please provide information regarding the proposed service in an attached statement.

11. AREA OF OPERATION: If the Applicant does not intend to offer services throughout the Potomac Electric Power Company territory in the District of Columbia, Applicant must, in an attached statement, describe in detail the area within the Electric Company’s service territory in which Applicant’s services will be offered.

- Applicant intends to offer service throughout the Potomac Electric Power Company territory in the District of Columbia.
- Applicant intends to offer services in only a portion of Potomac Electric Power Company’s service territory in the District of Columbia. Please see attached statement.

12. CUSTOMERS: Applicant proposes to initially provide services to (check all that apply):

- Residential Customers
- Commercial Customers
- Industrial Customers

- Other (Describe in attachment)

Also, Applicant proposes:

- Restrictions upon the number of end use customers (Describe in attachment)
- No restrictions on the number of end use customers.
- Restrictions upon the size of end use customers (Describe in attachment).
- No restrictions regarding the size of the end use customers (Describe in attachment).
- Other restrictions regarding customers (Describe in attachment).

13. START DATE: The Applicant proposes to begin delivering services:

- Upon approval of the Application and receipt of License.
- Other approximate date of commencement.

FINANCIAL INTEGRITY

14. REQUIRED DOCUMENTATION OF FINANCIAL INTEGRITY:

Check that the documents listed below are attached to the Application.

The Applicant shall provide the most recent versions of the following documents to the extent they are available:

- Credit reports or ratings prepared by established credit bureaus or agencies regarding the Applicant's payment and credit history.
- Balance sheets, income statements and statements of cash flow for the two (2) most recent twelve (12)-month periods for which information is available. Audited financial statements must be provided if they exist. In addition, the Applicant shall provide any financial statements subsequent to the most recent annual financial statements.
- In the event that a parent or other company, person or entity has undertaken to guarantee the financial integrity of the Applicant, the Applicant must submit such entity's balance sheet, income statement and statement of cash flow, together with documentation of such guarantee to insure the financial integrity of the Applicant. Audited financial statements must be provided if they exist. In addition, the Applicant shall provide any available quarterly financial statements subsequent to the most recent annual financial statements.

- If the Applicant, parent, or guarantor entity has not been in existence for at least two (2) twelve (12)-month periods, it must provide balance sheets, income statements and statements of cash flow for the life of the business. Audited financial statements must be provided if they exist.
- Organizational structure of Applicant. Include Applicant's parent, affiliate(s), and subsidiary(ies) if any.
- Evidence of general liability insurance.
- If the Applicant has engaged in the retail supply of electricity supply services in any other jurisdiction, evidence that the Applicant is a licensed supplier in good standing in those jurisdictions.
- A current long-term bond rating, or other senior debt rating.
- Any other evidence of financial integrity such as an unused line of bank credit or parent guarantees.

15. BONDING REQUIREMENTS

Integrity Bond

An Applicant who cannot provide credible evidence that it meets the financial integrity standards listed in Section 4606 of Chapter 46 of Title 15 DCMR must submit a bond on the form attached to this Application ("Integrity Bond"). The Applicant, if licensed by the Commission as an electricity supplier, may be required to update/revise this initial Integrity Bond, by revising the initial Integrity Bond or posting an additional Integrity Bond, as set forth in Section 4606.

However, an Applicant who can provide credible evidence that it meets the financial integrity standards listed in Section 4606 will not be required to submit an Integrity Bond. (The Applicant may still be required to submit a separate Customer Payments Bond, as discussed below.)

Customer Payments Bond

A separate bond on the appropriate form attached to this Application is mandatory if an Applicant requires prepayments and/or deposits from residential or small commercial customers ("Customer Payments Bond"). Please check one of the boxes below to state whether you, the Applicant, intend to charge, collect, or hold prepayments and/or deposits, as such terms are defined in the Bonding Requirements Addendum attached to this Application:

- Applicant will not accept prepayments or deposits from residential and small commercial customers.
- Applicant intends to accept prepayments or deposits and/or deposits from residential and small commercial customers. Applicant must comply with Bonding Requirements Addendum governing the Customer Payment Bond.

Further details regarding the District of Columbia's bonding requirements are included in Sections 4605 and 4606 of Chapter 46 of Title 15 DCMR.

- 16. NOTICE OF REQUIRED COMPLIANCE:** The Applicant is hereby notified that it is required to comply with the following:
- a.** The Applicant may be required to submit bond(s), as applicable as described in Section 15 herein.
 - b.** The Applicant must update this application with the Commission immediately if any of the information provided in this Application changes or an error or inaccuracy is noted during the pendency of the Application. After an Application has been approved, a Licensee must inform the Commission of changes to all parts of the application and the averment regarding any civil, criminal, or regulatory penalties, etc. imposed on applicant, *et al.* within thirty days of the change or an error or inaccuracy is noted. A Licensee must inform the Commission of changes to the averment regarding bankruptcy proceedings instituted voluntarily or involuntarily within Twenty-four (24) hours of the institution of such proceedings.
 - c.** If the Applicant receives a License from the Commission, Licensee/Supplier must provide annual updates of all items that have changed in the application. The annual update must be provided to the Commission within one hundred twenty (120) days after the anniversary of the grant of the License.
 - d.** Supplement this application in the event the Commission modifies the licensing requirements, or request further information.
 - e.** Agree that it will not present itself as a licensed retail supplier of electricity in the District of Columbia, sell or market services, accept deposits, prepayments, or contract with any end-use customers without a license from the Commission.
 - f.** Pay all fees imposed by the Commission and any applicable taxes.
 - g.** Ensure that a copy of each service agreement entered into with Potomac Electric Power Company is provided to the Commission.

- h. Agree to not transfer its license to sell electricity and electricity supply services without the prior approval of the District of Columbia Public Service Commission.
 - i. Attend an Electricity Suppliers Education Workshop sponsored by the Commission.
 - j. If certified, submit a Privacy Protection Policy that complies with 15 DCMR § 308 (Use of Customer Information) within ninety (90) days of the adoption of Chapter 46 of Title 15 District of Columbia Municipal Regulations (DCMR) or within sixty (60) days of receiving their Electricity Supplier license, whichever date is later. The Privacy Protection Policy must protect against the unauthorized disclosure or use of customer information about a Customer or a Customer’s use of electricity.
 - k. Abide by 15 DCMR § 308 and refrain from disclosing information about a Customer or the Customer’s use of electricity or electric generation services without the Customer's written consent.
 - l. Agrees to comply with 15 DCMR § 4603.15 Electric Company and Licensee Responsibilities in the event of a default after certification, and with the District of Columbia Electricity Supplier Coordination Tariff.
17. **AFFIDAVITS REQUIRED.** The Applicant must supply Affidavits of Tax Compliance and General Compliance to the Commission with the completed Application. The affidavits are included with this Application packet and must be executed by the Applicant or representative with authority to bind the Applicant in compliance with District of Columbia laws.
18. **FURTHER DEVELOPMENTS:** Applicant is under a continuing obligation to amend its application if substantial changes occur in the information upon which the Commission relied in approving the original filing.
19. **FEE:** The Applicant has enclosed the required fee of \$400.00.

Applicant: _____

By: _____

Printed Name: _____

Title: _____

AFFIDAVIT TAX COMPLIANCE

State of _____ :
County of _____ : SS

_____, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

That he/she is the _____ (office of Affiant) of _____ (Name of Applicant);

That he/she is authorized to and does make this affidavit for said Applicant:

That _____, the Applicant herein, certifies to the Public Service Commission of the District of Columbia ("Commission") that it is subject to, will pay, and in the past has paid, the full amount of Federal and District of Columbia taxes imposed by applicable statutes and ordinances, as may be amended from time to time. The Applicant acknowledges that failure to pay such taxes or otherwise comply with the taxation requirements of the District of Columbia, shall be cause for the Commission to revoke the license of the Applicant. The Applicant acknowledges that it shall provide to the Commission its jurisdictional Gross Receipts and revenues from retail sales in the District, for the previous year or as otherwise required by the Commission.

As provided by applicable Law, Applicant, by filing of this application waives confidentiality with respect to its tax information in the possession of the (appropriate taxing authority), regardless of the source of the information, and shall consent to the (appropriate taxing authority) providing that information to the Commission. The Commission shall retain such information confidentially. This does not constitute a waiver of the confidentiality of such information with respect to any party other than the Commission.

That the facts above set forth are true and correct to the best of his/her present knowledge, information, and belief after due inquiry and that he/she expects said Applicant to be able to prove the same at any hearing hereof.

Signature of Affiant

Sworn and subscribed before me this ____ day of _____, _____.

Signature of official administering oath

My commission expires _____.

AFFIDAVIT OF GENERAL COMPLIANCE

State of _____ :
County of _____ : ss

_____, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

He/she is the _____ (Officer/Affiant) of _____ (Name of Applicant).

That he/she is authorized to and does make this affidavit for said Applicant.

That the Applicant herein certifies to the Public Service Commission of the District of Columbia ("Commission") that:

The Applicant agrees to comply with the terms and conditions of Potomac Electric Power's Company's tariff and agreements.

The Applicant is in compliance with and agrees to comply with all applicable Federal and District of Columbia consumer protection and environmental laws and regulations, and Commissions regulations, fees, assessments, order and requirements.

If certified, the Applicant agrees to submit a Privacy Protection Policy that complies with 15 DCMR § 308 (Use of Customer Information) within ninety (90) days of the adoption of Chapter 46 of Title 15 District of Columbia Municipal Regulations or within sixty (60) days of receiving their Electricity Supplier license, whichever date is later. The Privacy Protection Policy must protect against the unauthorized disclosure or use of customer information about a Customer or a Customer's use of electricity.

The Applicant also agrees to abide by 15 DCMR § 308 and refrain from disclosing information about a Customer or a Customer's use of service without the Customer's written consent.

Applicant agrees, upon request by the Commission, to provide copies to the Commission, of its consumer forms and/or contracts, its marketing or advertising materials (flyers and solicitation scripts), consumer pamphlets and its consumer education materials.

Applicant agrees to abide by any periodic reporting requirements set by the Commission by regulation, including any required periodic reporting to the (appropriate taxing authority).

The Applicant has obtained all the licenses and permits required to operate the proposed business in the District of Columbia.

The Applicant agrees to comply with power pool, control area, regional transmission operator, and/or ISO standards and requirements, as applicable.

The Applicant agrees that it shall neither disclose nor resell customer data provided to the Applicant by Potomac Electric Power Company.

The Applicant agrees, if the Commission approves its Application, to post an appropriate bond or other form of financial guarantee as required by the Commission and its regulations.

If the Applicant is certified, but later defaults, the licensee/Supplier agrees to comply with 15 DCMR § 4603.15, Electric Company and Licensee Responsibilities in the event of a default, and with the District of Columbia Electricity Supplier Coordination Tariff.

The Applicant agrees, that within one hundred eighty (180) days of approval of a license Application or within one-year of the effective date of Chapter 46 of Title 15 DCMR, whichever is later, each Licensee's Regulatory Contact or Licensee's representative responsible for the Licensee's compliance with the Commission's rules shall complete the Electricity Supplier Education Workshop sponsored by the Commission. Successful completion of the Workshop shall be evidenced by a certificate issued by the Commission.

The Applicant, including any of its Predecessor(s) and/or affiliate that engages in or engaged in the sale or transmission of electricity at wholesale or retail to the public, the general partners, company officials, corporate officers or directors, or limited liability company managers or officers of the Applicant, its predecessor(s) or its affiliates:

1. Has had no civil, criminal or regulatory sanctions or Penalties imposed against it within the previous five (5) years pursuant to any state or federal consumer protection law or regulations, has not been convicted of any fraud-related crime (including, but not limited to, counterfeiting and forgery, embezzlement and theft, fraud and false statements, perjury, and securities fraud) within the last five (5) years; and has not ever been convicted of a felony; or alternatively.
2. Has disclosed by attachment all such sanctions, penalties or convictions.

The Applicant further certifies that it:

1. Is not under involuntary bankruptcy/insolvency proceedings including but not limited to, the appointment of a receiver, liquidator, or trustee of the supplier, or a decree by such court adjudging the supplier bankrupt or insolvent or sequestering any substantial part of its property or a petition to declare bankruptcy as to reorganize the supplier; and
2. Has not filed a voluntary petition in bankruptcy under any provision of any Federal or state bankruptcy law, or its consent to the filing of any bankruptcy or reorganization petition against it under any similar law; or without limiting the generality of the foregoing, a supplier admits in writing its inability to pay its debt

_____, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

He/she is the _____ (Officer/Affiant) of _____ (Name of Applicant);

That he/she is authorized to and does make this affidavit for said corporation;

The Applicant understands that the making of a false statement(s) herein may be grounds for denying the Application or, if later discovered, for revoking any authority granted pursuant to the Application. This Application is subject to all applicable sections of the District of Columbia Code as may be amended from time to time relating to perjury and falsification in official matters.

That the Applicant will supplement this Application in the event the Public Service Commission of the District of Columbia ("Commission") modifies the licensing requirements, or requests further information.

That the Applicant agrees that it will not present itself as a licensed retail supplier of electricity in the District of Columbia, sell or market electricity, accept deposits, prepayments, or contract with any end-use customers without a license from the Commission.

That the Applicant agrees that a license issued pursuant to this Application may not be transferred without prior approval by the Commission.

That the Applicant agrees to update information contained in this Application in accordance with the schedule set forth in the Application.

That the facts above set forth are true and correct to the best of his/her present knowledge, information, and belief after due inquiry and that he/she expects said Applicant to be able to prove the same at any hearing hereof.

Signature of Affiant

Sworn and subscribed before me this _____ day of _____, 20__.

Signature of official administering oath

My commission expires _____.

**APPLICANT'S GENERAL AUTHORIZATION FOR VERIFICATION OF
FINANCIAL INFORMATION, ETC.**

TO WHOM IT MAY CONCERN:

I/We have applied to the District of Columbia Public Service Commission (the "Commission") for a license to be an Electricity Supplier, or to provide certain Electricity Supply related services, and authorize you to release to the Staff of the Commission and its authorized representatives and agents any information or copies of records requested concerning:

MY COMPANY OR BUSINESS AND ITS HISTORY,
PERFORMANCE, OPERATIONS, CUSTOMER RELATIONS,
FINANCIAL CONDITION, INCLUDING BANK ACCOUNT
TRANSACTIONS AND BALANCES, PAYMENT HISTORY
WITH SUPPLIERS AND OTHER CREDITORS,
VERIFICATION OF NET WORTH AND OTHER
INFORMATION AND RECORDS WHICH THE COMMISSION
REQUIRES TO VERIFY OR MAKE INQUIRY CONCERNING
MY/OUR FINANCIAL INTEGRITY AND THE
INFORMATION CONTAINED IN MY/OUR LICENSE
APPLICATION OR OTHER INFORMATION PROVIDED BY
ME/US TO THE COMMISSION OR, STAFF OF THE
COMMISSION OR ITS REPRESENTATIVES OR AGENTS.

This Authorization is continuing in nature and includes release of information following issuance of a license, for reverification, quality assurance, internal review, etc. The information is for the confidential use of the Commission and the Staff of the Commission in determining my/our financial integrity for being a licensee or to confirm information I/We have supplied and may not be released by order of the Commission or by order of a court of competent jurisdiction.

A photographic or fax copy of this authorization may be deemed to be the equivalent of the original and may be used as a duplicate original. The original signed form is maintained by the Staff of the Commission.

APPLICANT'S AUTHORIZATION TO RELEASE INFORMATION:

APPLICANT (please print)

APPLICANT'S SIGNATURE

DATE

TITLE

ATTACHMENT B

FORM OF CUSTOMER PAYMENTS BOND-SURETY BOND

Bond No. _____

We,

(Name of supplier)

(Address of supplier)

as principal, and

(Surety Company)

(Address of surety)

as surety authorized to do business in the District of Columbia, are held and firmly bound to the Public Service Commission of the District of Columbia, as obligee for the use and benefit of all persons establishing legal rights hereunder, in the sum of FIFTY THOUSAND AND NO/100 (\$50,000) lawful money of the United States of America, to the payments of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly, severally, and firmly by this document.

WHEREAS, the Principal has applied to the Public Service Commission of the District of Columbia for a license to provide electric service to retail customers in the District of Columbia, and

WHEREAS, pursuant to the Retail Electric Competition and Consumer Protection Act of 1999, D.C. Law 13-107, Section 105 (D.C. Official Code §34-1505, the Public Service Commission of the District of Columbia is authorized to require the Principal to maintain a bond in order to provide retail electric service.

NOW, THEREFORE, if the Principal shall faithfully and truly fulfill all of its service or product contracts and other contractual commitments to deliver retail electric services, and not file for bankruptcy or for similar protection under law, then this obligation shall be void, otherwise to remain in full force and effect as security for the use of the Public Service Commission of the District of Columbia or of any person or entity, who after entering into a service or product contract or third party supplier agreement for service in the District of Columbia with the above named Principal is damaged or suffers any loss of a deposit or prepayment (as such terms are defined in) (Sections 4605 and 4606 of Chapter 46 of Title 15 DCMR) by reason of failure of service or by other breach or bankruptcy by this Principal.

The aggregate liability of the Surety is limited to the foregoing sum which sum shall be reduced by any payment made in good faith hereunder.

The term of this bond is for the period beginning _____ and terminating _____, and may continue for an annual period by a Continuation Certificate signed by the Principal and Surety, a copy of which must be served by registered mail upon the Secretary of the Public Service Commission of the District of Columbia.

In order to draw funds on this Bond, the Secretary of the Public Service Commission of the District of Columbia shall present the following document to the Surety, and attach thereto documentation in support thereof:

Affidavit sworn to and signed by the Secretary of the Public Service Commission of the District of Columbia, stating that at the public hearing on, _____, the Public Service Commission of the District of Columbia determined that _____ has not satisfactorily performed its obligations to a person or entity, who has suffered actual damages or loss of a deposit or prepayment (as such terms defined in Sections 4605 and 4606 of Chapter 46 of Title 15 DCMR) in a specific amount by means of failure, or by reason of breach of

contract or violation of the Retail Electric Competition and Consumer Protection Act of 1999, D.C. Law 13-107 and/or regulations, rules or standards promulgated pursuant thereto.

SIGNED, SEALED AND DATED this day of _____

Principal _____

By: _____
(Signatory)

Surety _____

Address of Surety: _____

By: _____
(Signatory)

Notary Seal

ATTACHMENT C

FORM OF INTEGRITY BOND
FOR ELECTRICITY SUPPLIERS AND MARKETERS

INTEGRITY BOND-SURETY BOND

Bond No. _____

We,

(Name of supplier)

(Address of supplier)

as principal, and

(Surety Company)

(Address of surety)

as surety authorized to do business in the District of Columbia, are held and firmly bound to the Public Service Commission of the District of Columbia, as obligee for the use and benefit of all persons establishing legal rights hereunder, in the sum of FIFTY THOUSAND AND 00/100 (\$50,000) lawful money of the United States of America, to the payments of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly, severally, and firmly by this document.

WHEREAS, the Principal has applied to the Public Service Commission of the District of Columbia for a license to provide electric service to retail customers in the District of Columbia, and

WHEREAS, pursuant to the Retail Electric Competition and Consumer Protection Act of 1999, D.C. Law 13-107, Section 105, the Public Service Commission of the District of Columbia is authorized to require the Principal to maintain a bond in order to provide retail electric service.

NOW, THEREFORE, if the Principal shall faithfully and truly fulfill all of its service or product contracts and other contractual commitments to deliver retail electric services, and not file for bankruptcy or for similar protection under law, then this obligation shall be void, otherwise to remain in full force and effect as security for the use of the Public Service Commission of the District of Columbia or of any person or entity, who after entering a service or product contract or third party supplier agreement for service in the District of Columbia with the above named Principal is actually damaged or suffers any actual loss by reason of failure of service or by other breach or bankruptcy by this Principal.

The aggregate liability of the Surety is limited to the foregoing sum which sum shall be reduced by any payment made in good faith hereunder.

The term of this bond is for the period beginning _____ and terminating _____, and may be continued for an annual period by a Continuation Certificate signed by the Principal and Surety, a copy of which must be served by registered mail upon the Secretary of the Public Service Commission of the District of Columbia.

In order to draw funds on this Bond, the Secretary of the Public Service Commission of the District of Columbia shall present the following document to the Surety, and attach thereto documentation in support thereof:

Affidavit sworn to and signed by the Secretary of the Public Service Commission of the District of Columbia, stating that at the public hearing on,, _____, the Public Service Commission of the District of Columbia determined that _____ has not satisfactorily performed its obligations to a person or entity, who has suffered actual damages or loss in a specific amount by means of failure, or by reason of breach of contract or violation of the Retail Electric Competition and Consumer Protection Act of 1999, D.C. Law 13-107 and/or regulations, rules or standards promulgated pursuant thereto.

SIGNED, SEALED AND DATED this _____ day of _____

Principal: _____

By: _____
(Signatory)

Surety: _____

Address of Surety: _____

By: _____
(Signatory)

Notary Seal

ATTACHMENT D

**FORM OF INTEGRITY BOND
FOR AGGREGATORS AND BROKERS**

INTEGRITY BOND-SURETY BOND

Bond No. _____

We,

(Name of supplier)

(Address of supplier)

as principal, and

(Surety Company)

(Address of surety)

as surety authorized to do business in the District of Columbia, are held and firmly bound to the Public Service Commission of the District of Columbia, as obligee for the use and benefit of all persons establishing legal rights hereunder, in the sum of TEN THOUSAND 00/100 (\$10,000) lawful money of the United States of America, to the payments of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly, severally, and firmly by this document.

WHEREAS, the Principal has applied to the Public Service Commission of the District of Columbia for a license to provide electric service to retail customers in the District of Columbia, and

WHEREAS, pursuant to the Retail Electric Competition and Consumer Protection Act of 1999, D.C. Law 13-107, Section 105, the Public Service Commission of the District of Columbia is authorized to require the Principal to maintain a bond in order to provide retail electric service.

NOW, THEREFORE, if the Principal shall faithfully and truly fulfill all of its service or product contracts and other contractual commitments to deliver retail electric services, and not file for bankruptcy or for similar protection under law, then this obligation shall be void, otherwise to remain in full force and effect as security for the use of the Public Service Commission of the District of Columbia or of any person or entity, who after entering into a service or product contract or third party supplier agreement for service in the District of Columbia with the above named Principal is actually damaged or suffers any actual loss by reason of failure of service or by other breach or bankruptcy by this Principal.

The aggregate liability of the Surety is limited to the foregoing sum which sum shall be reduced by any payment made in good faith hereunder.

The term of this bond is for the period beginning _____ and terminating _____, and may be continued for an annual period by Continuation Certificate signed by the Principal and Surety, a copy of which must be served by registered mail upon the Secretary of the Public Service Commission of the District of Columbia.

In order to draw funds on this Bond, the Secretary of the Public Service Commission of the District of Columbia shall present the following document to the Surety, and attach thereto documentation in support thereof:

Affidavit sworn to and signed by the Secretary of the Public Service Commission of the District of Columbia, stating that at the public hearing on, _____, the Public Service Commission of the District of Columbia determined that _____ has not satisfactorily performed its obligations a person or entity; who has suffered actual damages or loss a specific amount by means of failure, or by reason of breach of contract or violation of the Retail Competition and Consumer Protection Act of 1999, D.C. Law 13-107 and/or regulations, rules or standards promulgated pursuant thereto.

SIGNED, SEALED AND DATED this _____ day of _____

Principal: _____

By: _____
(Signatory)

Surety: _____

Address of Surety: _____

By: _____
(Signatory)

Notary Seal

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FOURTH PROPOSED RULEMAKING

GT96-3, IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS LIGHT COMPANY, DISTRICT OF COLUMBIA DIVISION, FOR THE AUTHORITY TO ESTABLISH A NEW RATE SCHEDULE NO. 1A;

RM47-2017-01-G, IN THE MATTER OF THE INVESTIGATION INTO THE PUBLIC SERVICE COMMISSION'S RULES GOVERNING THE LICENSURE AND BONDING OF NATURAL GAS SUPPLIERS AND NATURAL GAS CONSUMER PROTECTION STANDARDS IN THE DISTRICT OF COLUMBIA;

AND

FORMAL CASE NO. 1130, IN THE MATTER OF THE INVESTIGATION INTO MODERNIZING THE ENERGY DELIVERY SYSTEM FOR INCREASED SUSTAINABILITY

1. The Public Service Commission of the District of Columbia (Commission) hereby gives notice, pursuant to its authority under the Retail Natural Gas Licensing and Consumer Protection Act of 2004, effective March 16, 2005 (D.C. Law 15-227; D.C. Official Code §§ 34-1671.01 *et seq.* (2012 Repl.)) (Act), of its intent to adopt a new Chapter 47 (Licensure of Natural Gas Suppliers) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days after publication of this Notice of Proposed Rulemaking (Notice or NOPR) in the *D.C. Register*.

2. Chapter 47 establishes the rules governing the licensure and bonding of Natural Gas Suppliers in the District of Columbia, pursuant to the Retail Natural Gas Supplier and Consumer Protection Act of 2004, as codified in Sections 34-1671.01 through 34-1671.14 of the D.C. Official Code. Currently, the requirements for licensing Natural Gas Suppliers are set forth in GT 96-3, Order No. 12709, rel. April 25, 2003, and GT 96-3, Order No. 12903, rel. September 5, 2003. Bonding requirements for Natural Gas Suppliers are set forth in GT 96-3, Order No. 12709.

3. On May 26, 2017, the Commission issued its initial Notice of Proposed Rulemaking (NOPR), giving notice of the proposed adoption of Chapter 47 at 64 DCR 004997-005055. On August 18, 2017, the Commission published a Second NOPR at 64 DCR008291-008349, with revisions based upon comments and reply comments filed on May 26, 2017. In the Second NOPR, the following sections were given renewed consideration in response to comments and revised: (1) § 4703.10; (2) § 4703.11; (3) § 4705.6; (4) § 4706.1 (b); and (5) § 4708.1. On November 3, 2017, the Commission published a Third NOPR at 64 DCR 011582-011639. In the Third NOPR, the following sections were given renewed consideration in response to comments and revised: (1) § 4703.11; (2) § 4703.13; and (3) § 4708.1 (a). Also, the following sections were changed to reflect consistency, where appropriate, with the Retail

Electricity Supplier Licensing Rules: (1) § 4700.1; (2) § 4703.8; (3) § 4703.9; (4) § 4705.2 (c); (5) § 4706.5; (6) § 4708.1 (b); (7) § 4709.2 (u); and (8) § 4799.

4. Like the prior three NOPRs, this fourth NOPR combines the licensing and bonding requirements in a single chapter. The proposed rules in the instant NOPR supersedes those in the previous Third NOPR published on November 3, 2017. It also includes the same attachments, with revisions, as did the previous three NOPRs: (A) Supplier Application; (B) Form of Customer Payments Bond-Surety Bond; (C) Form of Integrity Bond for Natural Gas Suppliers and Marketers other than Aggregators and Brokers-Surety Bond; and (D) Form of Integrity Bond for Aggregators and Brokers-Surety Bond.

5. In this fourth NOPR, the following sections reflect non-substantive and substantive changes: (1) § 4701.2 (i); (2) § 4702.1; (3) § 4702.2; (4) § 4703.7; (5) § 4703.8; (6) § 4703.9; (7) § 4703.10; (8) § 4703.11; (9) § 4703.12; (10) § 4703.13 (b); (11) § 4703.14; (12) § 4703.15; (13) § 4703.16; (14) § 4703.17; (15) § 4703.18; (16) § 4705.1; (17) § 4705.2 (a); (18) § 4705.2 (c); (19) § 4705.3 (d); (20) § 4705.5; (21) § 4705.6; (22) § 4706.1 (a); (23) § 4706.3 (a); (24) § 4706.4 (a); (25) § 4706.4 (e); (26) § 4706.5; (27) § 4706.7; (28) § 4707.1; (29) § 4708.1 (deletion of subsections (a) and (b)); (30) § 4708.2; (31) § 4709.1; (32) § 4709.2; (33) § 4709.2 (h); (34) § 4709.2 (j); (35) § 4709.2 (l); (36) § 4709.2 (n); (37) § 4709.2 (u); (38) § 4709.2 (v); (39) § 4710.1 (d); (40) § 4710.1 (e); and (41) § 4710.1 (f). In § 4799.1, the following definitions are revised: “Act,” “Commission,” “Customer,” “Default Service,” “Market Participant,” “Natural Gas Company (or Company),” “Residential Customer,” “Slamming,” and “Solicitation.” A definition for “Small Commercial Customer” is included. The term and definition of “Firm Delivery Service Gas Supplier Agreement Tariff-Rate Schedule No. 5 Tariff” is modified to “Firm Delivery Service Gas Supplier Agreement Tariff.” In addition, Attachment A is revised, including the type of information to be included in the Supplier Application, the Affidavit of Tax Compliance, the Affidavit of General Compliance, and Verification. Attachment B, Form of Customer Payments Bond is revised to reflect corrected section numbers.

6. The Commission notes that these proposed rules may be amended in the future depending on actions taken in Formal Case No. 1130, In the Matter of the Investigation into Modernizing the Energy Delivery System for Increased Sustainability (MEDSIS proceeding)

Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended to add a new Chapter 47 as follows:

CHAPTER 47 LICENSURE OF NATURAL GAS SUPPLIERS

4700 APPLICABILITY

4701 LICENSING REQUIREMENTS

4702 COMMISSION ASSESSMENT AND FEES

4703 LICENSING PROCEDURES

4704 NATURAL GAS SUPPLIER EDUCATION WORKSHOP

- 4705 BOND REQUIREMENTS FOR NATURAL GAS SUPPLIERS COLLECTING DEPOSITS OR PREPAYMENTS (“CUSTOMER PAYMENTS BOND”)
- 4706 BOND REQUIREMENTS FOR FINANCIAL INTEGRITY (“INTEGRITY BOND”)
- 4707 PRIVACY PROTECTION POLICY
- 4708 COMMISSION REPORTING REQUIREMENTS
- 4709 COMMISSION ACTION REGARDING A LICENSEE
- 4710 SANCTION AND ENFORCEMENT
- 4799 DEFINITIONS

4700 APPLICABILITY

- 4700.1 **Application.** These rules apply to a Person who engages in the business of a Natural Gas Supplier in the District of Columbia.
- 4700.2 **Purpose.** These rules provide uniform requirements for obtaining any form of a Natural Gas Supplier License in the District of Columbia, describe the administrative procedures available to the Applicants and Licensees, outline the grounds for Commission action regarding a Licensee, and describe the sanctions that may be imposed by the Commission.
- 4700.3 **Restrictions.** No Person shall present itself as a licensed retail Natural Gas Supplier, perform the duties of a Natural Gas Supplier, accept Deposits or prepayments from retail customers, contract with retail customers or arrange for contracts for retail customers, prior to receipt of a license from the Commission.

4701 LICENSING REQUIREMENTS

- 4701.1 **Persons Subject to Licensing Requirements.** Any Person who engages in the business of a Natural Gas Supplier in the District of Columbia shall hold a Natural Gas Supplier License issued by the Commission.
- 4701.2 **Application Information Requirements for Natural Gas Suppliers.** An Application for a Natural Gas Supplier License and an Application for renewal of a Natural Gas Supplier License shall include the following information, in a manner and form specified by the Commission:
 - (a) Proof of technical and managerial competence;
 - (b) Proof of compliance with all applicable requirements of the Federal Energy Regulatory Commission, and any Natural Gas Transmission or Pipeline Company to be used by the Applicant;

- (c) A sworn verification that the Applicant is currently in compliance with, and will comply with all, applicable federal and District of Columbia environmental laws and regulations;
- (d) Proof of compliance with the Bonding Requirements set forth in §§ 4705 and 4706;
- (e) Proof that the Applicant has registered with the Department of Consumer and Regulatory Affairs and the Department of Finance and Revenue to do business in the District of Columbia;
- (f) A sworn verification that the Applicant is currently in compliance with, and will comply with, all applicable taxes;
- (g) A sworn verification that the Applicant is currently in compliance with, and will comply with all of the requirements of the Retail Natural Gas Licensing and Consumer Protection Act of 2004 (Act) and all orders and regulations of the Commission issued under the Act;
- (h) If the Applicant was a previously licensed supplier in the District but has surrendered that license under a former name or in this current applicant's name, the Applicant must:
 - (1) Submit a sworn verification that it has paid all previously outstanding Commission and Office of the People's Counsel (OPC) imposed assessments and penalties;
 - (2) If prior assessments and penalties remain unpaid, submit a date certain when those assessments and any penalties will be paid; and
 - (3) If the Applicant fails to comply with either directive, its application will not be considered;
- (i) Applicant's website address;
- (j) A sample copy each of the Natural Gas Supplier's natural gas supply Customer contracts (*e.g.*, fixed, variable) and a sample bill;
- (k) The name and contact information for the Natural Gas Supplier's designated contact Person for Customer and consumer complaints;
- (l) The Trade name(s) or d/b/a (doing business as name(s)) if the Applicant will be using either while doing business as a Natural Gas Supplier in the District of Columbia; and

(m) Any other information required by the Commission.

4702 COMMISSION ASSESSMENT AND FEES

4702.1 The Licensee or the Natural Gas Supplier shall pay an assessment for the costs and expenses of the Commission and OPC as required by D.C. Official Code § 34-912 (b) and any penalties assessed pursuant to § 34-1671.11.

4702.2 The Licensee or the Natural Gas Supplier shall pay any additional fees imposed by the Commission pursuant to the Commission's rules, regulations, or orders. Renewal Applications may not be approved if the Licensee or Natural Gas Supplier owes any outstanding assessment to the Commission, OPC, or both.

4703 LICENSING PROCEDURES

4703.1 **Scope.** These procedures apply to an Application for a Natural Gas Supplier License before the Commission and the renewal of a Natural Gas Supplier License.

4703.2 **Form.** An Application for a Natural Gas Supplier License shall be made to the Commission in writing on the applicable form provided by the Commission (See the form set out in Attachment A); be verified by oath or affirmation; and be accompanied by an Application fee of four hundred dollars (\$400.00).

4703.3 **Number of copies; Service.** Each Applicant shall file a signed and verified original and an electronic version of their application and attachments.

4703.4 **Change in Application Information.** The Applicant shall immediately inform the Commission of any change in the information provided in the Application during the pendency of the Application process.

4703.5 **Notice of Incomplete Application (Deficiency Letter).** The Commission shall review the submitted Application for completeness within fifteen (15) days of receipt of the Application and inform the Applicant if the Application is either complete or incomplete. If the Application is complete, the Commission shall notify the Applicant in writing that the Application has been accepted for filing. If the Application is incomplete, the Commission shall notify the Applicant in writing of the deficiencies in the Application. The Applicant shall have ten (10) days, or such additional time as the Commission may designate if it extends the time period for good cause shown, to provide the information requested in the deficiency letter. Once the deficiency has been cured by the Applicant, the Commission will notify the Applicant in writing that the Application is now complete and has been accepted for filing. If the Applicant does not provide the

information to the Commission within ten (10) days or within the alternative time period set by the Commission, the Application shall be deemed dismissed without prejudice. An Applicant may submit a new Application at any time.

- 4703.6 **Comments and Objections Regarding Filed Application.** All persons interested in filing an objection or a comment regarding the filed Application or the licensure of an Applicant may submit written comments or objections to the Commission Secretary and to the Applicant no later than twenty (20) days after the Application has been posted on the Commission's website. An Applicant may file reply comments no later than ten (10) days after objections or comments are filed with the Commission Secretary. The Commission may waive this filing deadline at its discretion.
- 4703.7 **Review of Complete Application.** Upon determining that an Application is complete, the Commission shall conduct an appropriate investigation of the information provided by the Applicant in the complete Application and of any objections or comments received on the Application. Within fifteen (15) days after the comment period has expired, the Commission shall conclude its investigation and issue a Licensing Order approving or denying the Application if no objections or comments are filed. If an objection to licensure or comments is filed, the Commission shall conclude its investigation and issue a Licensing Order approving or denying the Application within sixty (60) days after the comments or objection period has expired. In the event that the Commission denies a License to an Applicant, the Commission shall state in writing its reasons for such denial and file its determination with the Commission Secretary. A copy of the Commission determination shall also be served on the Applicant and OPC.
- 4703.8 **Licensee's Update Information.** A licensed Natural Gas Supplier shall comply with any information update requirements or supplemental information requirements pursuant to Subsections 4708.1 and 4708.2.
- 4703.9 **Term of Natural Gas Supplier License.** A Natural Gas Supplier License is valid until revoked by the Commission or surrendered by the Licensed Natural Gas Supplier. A Natural Gas Supplier is subject to review every five (5) years after the date on which the license was issued or was last reviewed. Not less than forty-five (45) days before the five-year anniversary of the date on which the licensee was issued or was last reviewed; a Natural Gas Supplier shall file an application for review by the Commission pursuant to the licensing requirements and procedures set forth in Sections 4701 and 4703. The Commission shall complete its review of the application within thirty (30) days after its filing. Licensed Natural Gas Suppliers shall submit a review application not less than forty-five (45) days before five years after the effective date of this chapter.

- 4703.10 **Transfer of Natural Gas Supplier License.** A Natural Gas Supplier License is not transferable without the prior approval of the Commission. To obtain the approval of the Commission, a Licensee shall file a Transfer Application in a format similar to an application for a natural gas supplier license (see Attachment A) with the Commission Secretary. After receiving the Transfer Application, the Commission shall give public notice by posting the Transfer Application on its website. All Persons interested in filing an objection or a comment regarding the filed Transfer Application may submit written comments or objections to the Commission's Secretary no later than thirty (30) days after the posting of the Transfer Application on the Commission's website. The Licensee may file reply comments no later than seven (7) days after objections or comments are filed. The Commission may waive this filing deadline at its discretion. Within thirty (30) days after the comment period has expired, the Commission shall issue an order approving or denying the Transfer Application if no objections or comments are filed. If an objection to a Transfer Application or a comment is filed, the Commission shall conclude its investigation and issue an order approving or denying the Transfer Application within sixty (60) days after the comments or objection period has expired. In the event that the Commission denies a Transfer Application, the Commission shall state in writing its reasons for such denial and file its determination with the Commission Secretary. A copy of the Commission's determination shall also be served on the Licensee and on OPC.
- 4703.11 **Solicitation of Customers.** A Licensee, both new and existing, who has not initially started serving Customers shall notify the Commission within three (3) business days before the Licensee begins soliciting or marketing to Customers directly or through an authorized representative in the District of Columbia. This is a one-time initial notice prior to the Licensee beginning its marketing to or soliciting of District consumers. The notice shall include the name of the licensed Natural Gas Supplier's designated contact person for pricing information if the Licensee is serving Customers and the URL address of the Natural Gas Supplier's website. All door-to-door sales representatives and agents shall be required to present a company photo identification to Customers as part of the solicitation process. In addition, the Licensee is required to maintain a record of the identity of each sales representative and marketing agent or representative active in the District, including the company photo identification, and make it available upon request to the Commission. The Natural Gas Supplier shall maintain the photo identification record for a period of six (6) months after the representative or agent has been employed or marketing on the Natural Gas Supplier's behalf.
- 4703.12 **Electronic Solicitation.** For the purpose of monitoring compliance with 15 DCMR Chapter 3 regarding electronic solicitation on the Licensee's website, each Licensee who contracts electronically with Customers shall provide the Commission with screenshots of their online enrollment web pages upon request.

- 4703.13 **Serving Customers.** A Licensee shall do the following before it begins to serve customers in the District of Columbia:
- (a) Notify the Commission of the estimated start date when it will begin to serve Customers in the District of Columbia; and
 - (b) File an affidavit attesting that all sales and marketing and regulatory personnel including independent contractors and vendors performing marketing or sales activities on the Licensees' behalf have received reasonable training on the relevant provisions of Chapters 3 and 47 of Title 15 DCMR before they begin soliciting customers in the District of Columbia.
- 4703.14 **Cessation of Business in the District of Columbia or Cessation of Business to a Customer Class.** A Licensee shall provide to the Commission at least sixty (60) days prior written notice of the Licensee's intention to cease providing natural gas:
- (a) To all Customers in the District of Columbia; or
 - (b) To all Customers within a specified Customer class. Upon receipt of such notice, the Commission may order the Licensee to provide such further notice to Customers or to the public as the Commission deems necessary, and/or take such other action that the Commission deems appropriate.
- 4703.15 **Natural Gas Company and Licensee Responsibilities in the Event of Default.** In the event of a default, the Licensee and the Natural Gas Company (Company) shall abide by the Natural Gas Company's Firm Delivery Service Gas Supplier Agreement. Also, a Defaulted Licensee using consolidated billing services remains obligated to provide the Natural Gas Company with information necessary to allow the Natural Gas Company to continue consolidated billing through the conclusion of the billing cycle in which the default occurred. The Defaulted Licensee using consolidated billing services is prohibited from issuing bills to persons who were Customers at the time of the default unless specifically authorized by the Commission. A request to authorize a Defaulted Licensee to bill directly may be made to the Commission by the Defaulted Licensee or the Natural Gas Company. In order that a Defaulted Licensee's charges may be included in Natural Gas Company consolidated billing services, a Defaulted Licensee and the Natural Gas Company shall abide by the Firm Delivery Service Gas Supplier Agreement.
- 4703.16 **Required Notices Upon Default.** Upon default, a Licensee shall immediately notify its Customers of its default by electronic mail, if possible, or by telephonic communication followed by written notice and send written notice by electronic

mail to the Natural Gas Company and Commission notifying them of its default. Upon receipt of notice of a Licensee's default from the defaulting Licensee, the Natural Gas Company shall immediately provide the defaulting Licensee's Customers Default Service in accordance with the Firm Delivery Service Gas Supplier Agreement, unless or until a Customer notifies the Natural Gas Company that the Customer has selected a new Natural Gas Supplier.

4703.17 **Accuracy of Information.** Any Applicant who knowingly or in reckless disregard submits misleading, incomplete, or inaccurate information to the Commission during the Application Process may have its Application rejected, its Natural Gas Supplier License suspended or revoked or be otherwise penalized in accordance with applicable law and the provisions of the Commission's rules in Section 4710 as prescribed by D.C. Official Code § 34-1671.

4703.18 **Proprietary and Confidential Information.** In its Application, the Applicant may designate as confidential information documents provided in response to Sections 4d and 14 of the Application related to the ownership of the Applicant (to the extent such information is not already public) and financial information. If an interested person requests the release of this information, the Applicant shall have the burden of proving the confidential nature of the information. The Commission will notify the Applicant of any request for release of this information and will permit the Applicant to respond to the request through a written motion filed with the Commission prior to the Commission's determination on the request. The Commission may order the release of information if an Applicant does not meet its burden of proving that the information is confidential pursuant to 15 DCMR § 150 (Confidential or Proprietary Information).

4704 NATURAL GAS SUPPLIER EDUCATION WORKSHOP

4704.1 **Natural Gas Supplier Education Workshop.** Within one hundred eighty (180) days of approval of a License Application or within one (1) year of the effective date of this chapter, whichever is later, each Licensee's Regulatory Contact or Licensee's representative responsible for the Licensee's compliance with the Commission's rules shall complete the Natural Gas Supplier Education Workshop sponsored by the Commission. Successful completion of the workshop by the Licensee shall be evidenced by a certificate issued by the Commission. Thereafter, each Licensee shall certify annually that its Regulatory Contact or representative responsible for the Licensee's compliance with the Commission's rules has completed the Natural Gas Supplier Education Workshop sponsored by the Commission or is otherwise knowledgeable with respect to the Commission's Natural Gas Supplier rules.

4705 BOND REQUIREMENTS FOR NATURAL GAS SUPPLIERS COLLECTING DEPOSITS OR PREPAYMENTS (“CUSTOMER PAYMENTS BOND”)

4705.1 **Applicability.** Any Natural Gas Supplier that states on its Application that it intends to charge Deposits or collect Prepayments or that does in fact require a Deposit or collects a Prepayment, shall post a Customer Payments Bond with the Commission, in addition to any Integrity Bond that may be required or submitted and shall submit the certification described in this section. Any Natural Gas Supplier that states on its Application that it does not intend to charge Deposits or collect Prepayments and that does not in fact require a Deposit or collect any Prepayment will not be required to post a Customer Payments Bond or provide the certification described below. Any Licensee that charges a Deposit or collects a Prepayment without posting the required Customer Payments Bond may be subject to suspension, revocation, or other action against its license, as well as be held liable for restitution to any Customers who paid such Deposits or Prepayments. Any Licensee requiring, charging, collecting or holding Deposits, or Prepayments may not request return of a current Customer Payments Bond (as defined in this chapter) or waiver of the requirements for a future Customer Payments Bond, unless and until the Licensee returns the Deposits or Prepayments to its Customers or provides the services to which the Deposit or Prepayments applied.

4705.2 **Procedure for Determining Amount of a Customer Payments Bond:**

- (a) **Initial Bond:** Before accepting any Deposits or Prepayments, a Licensee shall post an initial Customer Payments Bond of fifty thousand dollars (\$50,000) in the form as set out in Attachment B (Form of Customer Payments Bond-Surety Bond).
- (b) **Six Month Certification:** Within six (6) months after the initial Customer Payments Bond is posted, the Licensee shall provide to the Commission, with any appropriate confidentiality designations: (1) a certification, subject to review by the Commission, of the amount of the Deposits and Prepayments held by the Licensee, and (2) a Customer Payments Bond in an amount that is at least equal to the amount reflected in that certification.
- (c) **Annual Certification:** Annually thereafter, coinciding with the annual update requirements of the Commission’s Application, the Licensee shall provide to the Commission with any appropriate confidentiality designations: (1) certification of the amount of the Deposits and Prepayments held by the Licensee; and (2) a Customer Payments Bond in an amount that is at least equal to the amount reflected in that certification.

- 4705.3 **Form of the Bond.** Any Applicant or Licensee required to provide a bond under this section shall provide a bond issued by a company authorized to do business in the District of Columbia in a form required by the Commission. At a minimum, the bond form shall:
- (a) Designate the Commission as the sole beneficiary of the bond;
 - (b) Be continuous in nature. If a Licensee seeks to cease providing the bond it must seek approval from the Commission at least sixty (60) days prior to the time it wants to discontinue maintaining the bond;
 - (c) Cover payment of all District of Columbia Deposits and Prepayments of the Licensee that occurred while the bond was in force; as identified by the Commission under these standards; and
 - (d) State that the proceeds of the bond shall be paid or disbursed as directed by the Commission. See Attachment B (Form of Customer Payments Bond-Surety Bond).
- 4705.4 **Commission Verification.** Each Licensee shall provide appropriate certification, at the intervals discussed in Subsection 4705.2 of funds collected by the Licensee for Prepayments and/or Deposits. Each Licensee shall certify the amount of funds held for Deposits and Prepayments through a notarized statement, subject to verification by the Commission. The certification and any audit by the Commission will verify the year to date collections and balances of Prepayments and Deposits as of a specific date and will be used to verify whether the Licensee has the appropriate amount of Customer Payments Bond coverage. The Commission reserves the right, in its sole discretion, to order the Licensee to have a Certified Public Accountant review such balances, should conditions warrant such a review.
- 4705.5 **Compliance Investigations.** The Commission may initiate appropriate investigations if it determines a Natural Gas Supplier or a Licensee may be collecting Prepayments and/or Deposits from Customers without appropriate Customer Payments Bond coverage. The Commission may utilize appropriate legal remedies prescribed by D.C. Official Code § 34-6711 both to investigate and, if appropriate, to enforce its requirements for appropriate Customer Payments Bond coverage.
- 4705.6 **Bond Foreclosure.** The Commission may foreclose upon any bond posted with the Commission when, in the Commission's discretion, foreclosure is necessary to ensure the fair and lawful treatment of the District of Columbia's Customers by a Licensee, to ensure that Deposits and Prepayments collected by a Licensee from a Customer will be paid. In order to draw funds on this Bond, the Commission

Secretary shall present an affidavit sworn to and signed by the Commission Secretary to the surety stating that the Commission has determined that the Licensee has not satisfactorily performed its obligations to a Customer who has suffered actual damages or loss of a Deposit or Prepayment in a specific amount by means of failure, or by reason of breach of contract or violation of the Act and any orders, regulations, rules or standards promulgated thereto.

4706 BOND REQUIREMENTS FOR FINANCIAL INTEGRITY (“INTEGRITY BOND”)

4706.1 Exclusion.

- (a) A Natural Gas Supplier or Licensee that cannot provide evidence to the satisfaction of the Commission that it meets the standards listed in Subsection 4706.2 below will be required to submit an initial Integrity Bond of fifty thousand dollars (\$50,000), unless that Natural Gas Supplier or Licensee is applying to provide service as an Aggregator who does not take title to natural gas or as a Broker, in which case a ten thousand-dollar (\$10,000) Integrity Bond will be required. However, a Natural Gas Supplier or Licensee that meets the standards listed in Subsection 4706.2 below may still be required to provide a bond to demonstrate financial integrity for the Application on a case-by-case basis. This initial Integrity Bond shall be updated in accordance with the requirements set forth in Subsection 4706.3, except that Aggregators who do not take title and Brokers will not be required to update the initial \$10,000 Integrity Bond.
- (b) After continuously providing service in the District for two (2) years, any Licensee that has submitted an Integrity Bond to the Commission in compliance with these requirements may request that the Commission return the previously posted Integrity Bond and waive the requirement for a future bond based upon the Licensee’s demonstrated record of continuous and uninterrupted service in the District, without meaningful substantiated consumer complaints, as determined by and in the opinion of the Commission, and such other information as the Licensee may choose to present to the Commission. The Commission may accept or reject this request based on a review of information provided by the Licensee and such other information as the Commission may deem appropriate. The Commission retains the discretion to require an Integrity Bond of the Licensee at a later date if circumstances change, or if the Commission otherwise deems the requirement of an Integrity Bond to be necessary and appropriate.

4706.2 **Applicability.** Any Natural Gas Supplier or Licensee that can provide credible evidence that it meets the following standards is not required to post an Integrity Bond in the District of Columbia:

- (a) A current credit rating of BBB- or higher from a nationally-recognized credit rating service;
- (b) A current commercial paper rating of A2 or higher by Standard & Poor's and/or P2 or higher by Moody's or similar rating by another nationally-recognized rating service;
- (c) An unused line of bank credit or parent guarantees deemed adequate by the Commission; or
- (d) Any other evidence of financial integrity that the Commission may deem appropriate.

4706.3 **Procedure for Determining Amount of a Financial Integrity Bond**

- (a) **Initial Integrity Bond:** Any Natural Gas Supplier that cannot meet the above criteria for financial integrity shall post an Integrity Bond of fifty thousand dollars (\$50,000), unless that Natural Gas Supplier is applying as an Aggregator that does not take title to electricity or a Broker. If the Natural Gas Supplier is applying to provide service as an Aggregator that does not take title to electricity or as a Broker, the initial required Integrity Bond amount is ten thousand dollars (\$10,000).
- (b) **Future Updates:** The Commission, in its sole discretion, may determine whether or not to reevaluate the amount of the Integrity Bond in light of any changing conditions in the natural gas market at the time that a Licensee submits updated information, taking into consideration the Licensee's previous and ongoing relationship with its customers and its historical compliance with Commission rules and requirements. The Commission may request such information from the Licensee as may be necessary to make its evaluation.

4706.4 **Form of the Bond.** Any Natural Gas Supplier or Licensee required to provide a bond under this section shall provide a bond issued by a company authorized to do business in the District of Columbia in a form required by the Commission. At a minimum, this form shall:

- (a) Designate the District of Columbia and/or the Commission, as the sole beneficiary of the bond;

- (b) Be continuous in nature. If any Licensee seeks to cease providing the bond it shall seek approval from the Commission at least sixty (60) days prior to the time it wants to discontinue maintaining the bond;
- (c) Cover payment of all of the Licensee's District of Columbia Deposits and Prepayments that occurred while the bond was in force as identified by the Commission under these standards;
- (d) State that the proceeds of the bond shall be paid or disbursed as directed by the Commission; and
- (e) Be in the format set out in Attachment C (Form of Integrity Bond for Natural Gas Suppliers and Marketers-Surety Bond, or Attachment D (Form of Integrity Bond for Aggregators and Brokers-Surety Bond).

4706.5 **Commission Verification.** Each Licensee shall provide appropriate certification at the intervals discussed in the above paragraphs. The Commission may request such information from the Licensee as is necessary to verify the accuracy of the certification at any time.

4706.6 **Compliance Investigations.** The Commission can initiate appropriate investigations if it has reason to believe that any Licensee may be providing service without appropriate Bond coverage. The Commission will utilize appropriate legal remedies both to investigate and, if appropriate, to enforce its requirements for an appropriate Integrity Bond.

4706.7 **Bond Foreclosure.** The Commission's foreclosure of an Integrity Bond shall be limited to those instances where damages to the Customers by the Licensee are actual. In order to draw funds on this Bond, the Commission Secretary shall present an affidavit sworn to and signed by the Commission Secretary to the surety stating that the Commission has determined that the Licensee has not satisfactorily performed its obligations to a Customer who has suffered actual damages or loss of a Deposit or Prepayment in a specific amount by means of failure, or by reason of the Licensee's breach of contract or violation of the Act and any orders, regulations, rules or standards promulgated thereto.

4707 **PRIVACY PROTECTION POLICY**

4707.1 All Applicants and current Licensees shall submit to the Commission Secretary a copy of their Privacy Protection Policy that demonstrates compliance with 15 DCMR § 308 (Use of Customer Information) within ninety (90) days of the effective date of this chapter, or within sixty (60) days of approval of their Natural Gas Supplier License Application, whichever date is later. The Privacy Protection Policy shall protect against the unauthorized disclosure or use of Customer

information about a Customer or a Customer's use of natural gas. The Licensee shall also annually file a copy of its Privacy Protection Policy with the Commission Secretary.

4708 COMMISSION REPORTING REQUIREMENTS

4708.1 Updates to an Approved Application. After an Application has been approved, a Licensee shall inform the Commission of new information that changes or updates any part of the Application, including but not limited to the averment regarding any civil, criminal, or regulatory penalties imposed on the Licensee, within thirty (30) days of the change or the new information. An Applicant or a Licensee shall also inform the Commission of changes to the averment regarding bankruptcy proceedings instituted voluntarily or involuntarily within twenty-four (24) hours of the institution of such proceedings. Also, if a Licensee changes its trade name or the d/b/a name that it is using in the District of Columbia, the Licensee shall notify the Commission within ten (10) days of the effective date of the change and prior to soliciting Customers under that new name.

4708.2 Annual Reporting Requirements. The Licensee shall annually review its Application and submit updated information as needed. Annual updates shall be filed with the Commission Secretary within one hundred twenty (120) days after the anniversary of the grant of the License. The Licensee shall, if it is serving Customers, also submit the name of its Regulatory Contact, website address, the contact for pricing information, copies of its flyers, scripts, pamphlets and other marketing materials. The Licensee shall recertify annually that it has complied with Subsection 4705.2(c) of this chapter. A Licensee shall provide any information required by any other Commission order or regulation.

4709 COMMISSION ACTION REGARDING A LICENSEE

4709.1 Commission Investigation. The Commission may initiate an investigation of a Licensee upon its own motion or upon the complaint of OPC, the D.C. Office of the Attorney General, or any aggrieved person. The Commission shall provide written notice of the investigation to the Licensee, and shall provide the Licensee an opportunity for a hearing in accordance with District of Columbia law and Commission regulations.

4709.2 Grounds for Commission Action. The Commission may take action regarding a Licensee for just cause as determined by the Commission, including, but is not limited to, the following:

- (a) Knowingly or with reckless disregard, providing false or misleading information to the Commission;

- (b) Slamming;
- (c) Disclosing information about a Customer supplied to the Licensee by the Customer or using information about a Customer for any purpose other than the purpose for which the information was originally acquired, without the Customer's written consent, unless the disclosure is for bill collection or credit rating reporting purposes or is required by law or an order of the Commission;
- (d) Cramming;
- (e) Failure to provide adequate and accurate information to each Customer about the Licensee's available services and charges;
- (f) Discriminating against any Customer based wholly or in part on the race, color, creed, national origin, sex, or sexual orientation of the Customer or for any arbitrary, capricious, or unfairly discriminatory reason;
- (g) Refusing to provide natural gas or related service to a Customer unless the refusal is based on standards reasonably related to the Licensee's economic and business purposes;
- (h) Failure to post on the Internet adequate and accurate information about its services and rates for its Customers;
- (i) Failure to provide natural gas for its Customers when the failure is attributable to the actions of the Natural Gas Supplier;
- (j) Committing fraud or engaging in sales, marketing, advertising, or trade practices that are unfair, false, misleading, or deceptive such as engaging in any solicitation that leads the Customer to believe that the Licensee is soliciting on behalf of, or is an agent of, the Natural Gas Company when no such relationship exists;
- (k) Failure to maintain financial integrity;
- (l) Violating a Commission regulation or order including, but not limited to engaging in direct Solicitation to Customers without complying with the Commission's solicitation rules as provided in the Consumer Protection Standards Applicable to Energy Suppliers (15 DCMR § 327);
- (m) Failure to pay, collect, remit, or accurately calculate applicable taxes;

- (n) Violating an applicable provision of the D.C. Official Code or any other applicable consumer protection law;
- (o) Conviction of the Licensee or any principal of the Licensee (including the general partners, corporate officers or directors, or limited liability managers of offices of the Licensee) for any fraud-related crimes (including, but not limited to, counterfeiting and forgery, embezzlement and theft, fraud and false statements, perjury, and securities fraud);
- (p) Imposition of a civil, criminal, or regulatory sanction(s) or penalties against the Licensee or any principal of the Licensee (including the general partners, corporate officers or directors, or limited liability managers or officers of the Company) pursuant to any state or Federal consumer protection law or regulation;
- (q) Conviction by the Licensee or principal of the Licensee (including the general partners, corporate officers or directors, or limited liability managers or officers of the Licensee) of any felony that has some nexus with the Licensee's business;
- (r) Filing of involuntary bankruptcy/insolvency proceedings against the Licensee or filing of voluntary bankruptcy/insolvency proceedings by the Licensee;
- (s) Suspension or revocation of a license by any state or federal authority, including, but not limited to, suspension or revocation of a license to be a power marketer issued by the Federal Energy Regulatory Commission;
- (t) Failure to provide annually an updated Privacy Protection Policy that complies with 15 DCMR § 308 (Use of Customer Information);
- (u) Failure of a Licensee, who has not initially started serving Customers in the District to notify the Commission within (3) business days before the Licensee begins soliciting or marketing to Customers directly or through an authorized representative per Subsection 4703.11;
- (v) Failure of the Licensee or Natural Gas Supplier to pay its assessment for the costs and expenses of the Commission and OPC as required by D.C. Official Code § 34-912(b) and any penalties imposed by § 34-1671.11; and
- (w) Failure to comply with any Commission regulation or order.

4710 SANCTIONS AND ENFORCEMENT

4710.1 **Sanctions.** Natural Gas Suppliers and Licensees are subject to sanctions for violations of the D.C. Official Code, and applicable Commission regulations and orders. The following sanctions may be imposed by the Commission:

- (a) **Civil Penalty.** The Commission may impose a civil penalty of not more than ten thousand dollars (\$10,000) for each violation. Each day a violation continues shall be considered a separate violation for purposes of this penalty. The Commission shall determine the amount of a civil penalty after consideration of the following:
 - (1) The number of previous violations on the part of the Licensee;
 - (2) The gravity and duration of the current violation; and
 - (3) The good faith of the Licensee in attempting to achieve compliance after the Commission provides notice of the violation.

- (b) **Customer Refund or Credit.** The Commission may order a Licensee or and Natural Gas Supplier to issue a full refund for all charges billed or collected by the Licensee or Natural Gas Supplier or a credit to the Customer's account. Specifically,
 - (1) If slamming occurred, the Licensee or the Natural Gas Supplier shall refund to the Customer all monies paid to the Licensee or the Natural Gas Supplier; and
 - (2) If cramming occurred, the Licensee or the Natural Gas Supplier shall refund to the Customer three times the amount of the unauthorized charges paid to the Licensee or the Natural Gas Supplier.

- (c) **Cease and Desist Order.** The Commission may order the Licensee or the Natural Gas Supplier to (1) cease adding or soliciting additional customers; (2) cease serving customers in the District of Columbia; and (3) cease any action found to be in violation of District of Columbia law, or Commission rules and regulations.

- (d) **Cancellation of a contract or part of a contract between a Customer and a Licensee or a Natural Gas Supplier;**

- (e) **Suspension of a Licensee's License; and**

(f) **Revocation of a Licensee's License.**

4710.2 **Commission Access to Records.** As part of any Commission investigation, the Commission shall have access to any accounts, books, papers, and documents of the Licensee or the Natural Gas Supplier that the Commission considers necessary in order to resolve the matter under investigation.

4710.3 **Emergency Action by the Commission.** The Commission may temporarily suspend a License, issue a temporary cease and desist order, or take any other appropriate temporary remedial action, pending a final determination after notice and hearing, if the Commission determines that there is reasonable cause to believe that Customers or the reliability of natural gas supply in the District of Columbia is or will be harmed by the actions of a Licensee or a Natural Gas Supplier.

4799 DEFINITIONS

4799.1 For the Purposes of these rules, the following terms have their meanings indicated.

Act: The Retail Natural Gas Supplier Licensing and Consumer Protection of Act of 2004, effective March 16, 2005 (D.C. Law 15-227; D.C. Official Code §§ 34-1671.01 *et seq.* (2012 Repl.)).

Affiliate: A Person who directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with, or has, directly or indirectly, any economic interest in another person.

Aggregator: A Person that acts on behalf of customers to purchase natural gas.

Applicant: A Person who applies for a Natural Gas Supplier License required by the Act.

Application: The written request by a Person for a Natural Gas Supplier License in a form specified by the Commission. The Application form for a Natural Gas Supplier License in the District of Columbia is attached to these rules (See Attachment A).

Broker: A person who acts as an agent or intermediary in the sale and purchase of natural gas but who does not take title to natural gas.

Commission: The Public Service Commission of the District of Columbia (PSC).

Competitive Billing: The right of a customer to receive a single bill from the Company, a single bill from the Natural Gas Supplier, or separate bills from the Company and the Natural Gas Supplier.

Consolidator: Any owner of, or property manager for multi-family residential, commercial office, industrial, and retail facilities who combines more than one property for the primary purpose of contracting with an aggregator or natural gas service provider for natural gas services for those properties, and who: (A) Does not take title to natural gas; (B) Does not sell natural gas to or purchase natural gas for buildings not owned or managed by such owner or property manager; (C) Does not offer aggregation of natural gas services to other, unrelated end-users; and (D) Arranges for the purchase of natural gas services only from duly licensed Natural Gas Suppliers or Aggregators.

Customer: A purchaser of natural gas in whose name a service account exists with the Company. The term excludes the nonresidential occupant or tenant of a nonresidential Rental Unit of a building where the owner, lessee, or manager manages the internal distribution system serving the building and supplies natural gas solely to occupants of the building for use by the occupants.

Cramming: The unauthorized addition of services or charges to a customer's existing service options.

Customer Payments Bond: A bond or other form of acceptable financial instrument such as a line of credit, sworn letter of guarantee, bank loan approval documents, recent bank statements, vendor financing agreements or underwriting agreements in an amount at least equal to the total amount of Deposits or Prepayments specified in this section.

Days: Calendar days, unless otherwise expressly defined.

Deposit: Any payment made by a residential consumer to a Natural Gas Supplier to secure the Natural Gas Supplier against the consumer's nonpayment or default.

Defaulted Licensee: A Licensee is in default and is unable to deliver natural gas because: (1) the Commission revokes or suspends the Natural Gas Supplier's retail Natural Gas Supplier License; or (2) the Licensee is unable to transact sales through the Natural Gas Transmission or Pipeline Company designated for the District of Columbia by the Federal Energy Regulatory Commission.

Default Service: A Customer who receives natural gas supply from the Company. Default Service is available to customers who contract for natural gas with a Natural Gas Supplier, but who fail to receive delivery of natural gas under such contracts and to customers who do not choose a Natural Gas Supplier as prescribed by D.C. Official Code § 1671.06 (b)(2).

Disconnection: Physical disconnection of a natural gas service by the Company. This is distinguished from termination of a contract by a Natural Gas Supplier.

Enrollment: The process in which the Company receives and processes the notification from the Natural Gas Supplier that a customer has entered into a contract for the supply of natural gas with that Natural Gas Supplier.

Firm Delivery Service Gas Supplier Agreement Tariff: The tariff that sets forth the basic requirements for interaction and coordination between the Natural Gas Company and each Natural Gas Supplier necessary for ensuring the delivery of competitive natural gas supply from Natural Gas Suppliers to their customers via the Company's delivery system.

Initiating Service in the District: The earliest calendar date on which a licensed Natural Gas Supplier is contractually obligated to provide natural gas service to any District of Columbia Customer or Consumer.

Integrity Bond: A bond that is required of a Natural Gas Supplier who cannot provide credible evidence that it meets the standards listed in section 4706.2 of this chapter.

Licensee: A Natural Gas Supplier who has been granted a valid Natural Gas Supplier License by the Commission.

Marketer: A person who purchases and takes title to gas as an intermediary for sale to customers.

Market Participant: Any Natural Gas Supplier (including an affiliate of the natural gas company) or any person providing billing services or services declared by the Commission to be potentially competitive services, notwithstanding whether or not the supplier or person has been licensed by the Commission.

Natural Gas Company (or Company): Every corporation, company, association, joint-stock company or association, partnership, or Person doing business in the District of Columbia, their lessees, trustees, or receivers appointed by any court whatsoever, physically transmitting or distributing natural gas in the District of Columbia to retail natural gas customers as defined by D.C. Official Code § 34-209 and § 34-1671.02 (11).

Natural Gas Supplier: A licensed person, broker, or marketer, who generates natural gas; sells natural gas; or purchases, brokers, arranges or markets natural gas for sale to customers.

Natural Gas Supplier License: The authority granted by the Commission to a Person to do business as a Natural Gas Supplier in the District of Columbia.

Nontraditional Marketers: A community-based organization, civic, fraternal or business association that works with a licensed Natural Gas Supplier as agent to market natural gas to its members or constituents. A Nontraditional Marketer: (i) conducts its transactions through a licensed Natural Gas Supplier; (ii) does not collect revenue directly from retail customers; (iii) does not require its members or constituents to obtain its natural gas through the Nontraditional Marketer or a specific licensed Natural Gas Supplier; and (iv) is not responsible for the payment of the costs of the natural gas to its suppliers or producers.

OPC: The Office of the People's Counsel of the District of Columbia.

Person: Any individual, corporation, company, association, joint stock company, association, firm, partnership, or other entity.

Prepayments: All payments other than a Deposit made by a residential and/or small commercial customer to a Natural Gas Supplier for services that have not been rendered at the time of payment.

Regulatory Contact: The staff contact for the licensed Natural Gas Supplier that handles regulatory matters for that company or entity.

Residential Customer: Any non-commercial Customer served under the Natural Gas Company tariff approved by the Commission.

Slamming: The unauthorized switching of a Customer's Natural Gas Supplier account.

Small Commercial Customer: Any small commercial customer served under the Natural Gas Company's Tariff approved by the Commission.

Solicitation: A communication in any medium that includes an opportunity to contract for receipt of natural gas from a Natural Gas Supplier.

Termination of Contract: Cessation of the contract for the supply of natural gas between a Natural Gas Supplier and the customer. Upon termination of the contract with the Natural Gas Supplier, the customer will receive their natural gas supply under Sales Service as provided by the Company, or from another Natural Gas Supplier.

Transfer Application: The formal submission by a licensed Natural Gas Supplier to the Commission to transfer its Natural Gas Supplier License to another licensed Natural Gas Supplier in the District.

7. All persons interested in commenting on the subject matter of this NOPR and Attachments may submit written comments no later than thirty (30) days after the publication of this Notice in the *D.C. Register*. Comments may be filed with Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005 or at the Commission's website at www.dcpsc.org. Persons with questions concerning this Notice should call 202-626-5150.

ATTACHMENT A

**APPLICATION FOR LICENSE TO SUPPLY NATURAL GAS
OR NATURAL GAS SUPPLY SERVICES TO
TO THE PUBLIC IN THE
DISTRICT OF COLUMBIA**

You may use the attached form to submit your application. (Please remove this instruction sheet prior to filing.) If you need more space than is provided on this form, then you can create an attachment to this application. You may also attach exhibits. All attachments/exhibits must be labeled or tabbed to identify the application item to which they respond. You are also required to file an electronic version of this document (excluding “confidential” information) which must be converted to the Portable Document Format (“PDF”) before filing.

To file an application with the District of Columbia Public Service Commission (“Commission”), file a signed and verified original and an electronic version of your application and attachments, and a nonrefundable license fee of four hundred dollars (\$400.00) (payable to “D.C. Public Service Commission”) with the Commission Secretary in Washington, D.C.:

**Commission Secretary
Public Service Commission of the District of Columbia
1325 G Street, N.W., Suite 800
Washington, D.C. 20005**

Questions pertaining to the completion of this application may be directed to the Commission at the above address or you may call the Commission at the following number: (202) 626-5100. You may reach the Commission electronically at www.websupport@psc.dc.gov

If your answer to any of the Application questions changes during the pendency of your Application, or if the information relative to any item herein changes while you are operating within the District of Columbia, you are under a duty to so inform the Commission immediately. After an Application has been approved a Licensee must inform the Commission of changes to all parts of the Application and the averment regarding any civil, criminal or regulatory penalties, etc. imposed on Applicant, *et al.* must be updated. A Licensee must inform the Commission of changes to the averment regarding bankruptcy proceedings instituted voluntarily or involuntarily within twenty-four (24) hours of the institution of such proceedings. Also, a Licensee/Natural Gas Supplier must provide annual updates of all items that have changed in the Application. The annual update should be provided to the Commission within one hundred twenty (120) days after the anniversary of the grant of the license. A Licensee/Natural Gas Supplier also is required to officially notify the Commission if it plans to cease doing business in the District of Columbia sixty (60) days prior to ceasing operations.

Confidentiality: Sections 4d and 14 of this Application related to ownership of the Applicant (to the extent such information is not already public) and financial information,

respectively, will be treated as confidential information by the Commission to the extent permitted by law if the Applicant requests such treatment by stamping or marking the materials in question as "CONFIDENTIAL." Any interested person may request, however, release of this information by filing such a request with the Commission. If such a request is made, Applicant shall have the burden of proving the confidential nature of the information. The Commission will notify the Applicant of any request for release of this information, and will permit the Applicant the opportunity to respond to the request through written motion filed with the Commission prior to the Commission's determination on the request.

If you are applying to provide service as an Aggregator or as a Broker (as defined in Commission regulations), who does not take title to natural gas as a part of providing that service, you do not need to fill out certain questions in this Application. The exempted questions are marked.

Applicable law: The provisions set forth in this application related to the licensing of Natural Gas Suppliers and the provision of natural gas supply and natural gas supply services are addressed in detail in the "Retail Natural Gas Supplier Licensing and Consumer Protection Act of 2004," and in Commission orders and regulations.

Statements made in this Application are made under penalty of perjury (D.C. Official Code Section 22-2402), false swearing (D.C. Official Code Section 22-2404), and false statements (D.C. Official Code Section 22-2405). Perjury is punishable by a fine of up to five thousand dollars (\$5,000) or imprisonment for up to 10 years, or both. False statements are punishable by a fine not more than one thousand dollars (\$1,000) or imprisonment for not more than one hundred eighty (180) days, or both. Further amendments to these D.C. Official Code sections shall apply. If the Commission has reliable information that an Applicant has violated any or all of these sections of the Code, the Commission will forward the information to the appropriate law enforcement agency. Statements made in this Application are also subject to Commission regulations, which require the Applicant to certify the truthfulness of the contents of this Application. Any Applicant in violation of Commission regulations is subject to the penalties found in the "Retail Natural Gas Supplier Licensing and Consumer Protection Act of 2004," D.C. Official Code Section 34-1671.11.

BEFORE THE DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION

Application Docket No. _____

Application of _____, d/b/a (“doing business as”)

_____ for approval to offer, render, furnish, or supply natural gas services as a(n) _____, [specified in item 10 below] to the public in the District of Columbia

To the District of Columbia Public Service Commission:

BUSINESS INFORMATION

1. IDENTITY OF THE APPLICANT:

a. Legal Name _____

Current Mailing Address: _____

Street Address (if different): _____

Telephone Number: _____

Website URL: _____

Other States, including District of Columbia, in which the Applicant is now or has been engaged in the retail sale of natural gas and the names under which the Applicant is engaged or has been engaged in such business(es) Applicant may limit response to the last three (3) years:

Name: _____

Business Address: _____

License # State of Issuance: _____

Other states in which the Applicant has applied to provide retail natural gas service but has been rejected. Applicant may limit response to the last three (3) years:

State(s): _____

Date of Application: _____

Attach additional sheets to the application if necessary.

b. Trade name (If Applicant will not be using a trade name, skip to question no. 2.a.):

Trade Name: _____

c. The District of Columbia and other states, in which the Applicant has provided retail natural gas service under the current Applicant name or in a different name but has voluntarily or involuntarily surrendered its license. Describe reasons for license surrender. With regard to a voluntary or involuntary license surrender in the District of Columbia only, state whether any previously outstanding assessments and/or penalties imposed by the Commission and the Office of the People’s Counsel have been paid. If any previous assessments and/or penalties are unpaid, provide a date certain when those assessments and/or penalties will be paid. Applicant may limit response to the last five (5) years:

State(s): _____

Date of License Surrender and Reasons for License Surrender: _____

In the District of Columbia, Amount of Paid Assessments and Unpaid Assessments/Penalties Following License Surrender and to Whom Owed (If Applicable)

Attach additional sheets to the application if necessary.

2.a. CONTACT PERSON-REGULATORY CONTACT:

Name and Title: _____

Address: _____

Telephone: () _____

Fax: () _____

E-mail: _____

**b. CONTACT PERSON-CUSTOMER SERVICE and CONSUMER COMPLAINTS
(not required for Aggregators who do not take title and/or Brokers):**

Name and Title: _____

Address: _____

Telephone: () _____

Fax: () _____

E-mail: _____

3. RESIDENT AGENT:

Name and Title: _____

Address: _____

Telephone: () _____

Fax: () _____

E-mail: _____

4. PRIMARY COMPANY OFFICIALS

President/General Partners:

Name(s) _____

Business Address: _____

CEO/Managing Partner:
Name(s) _____

Business Address: _____

Secretary Name: _____

Business Address: _____

Treasurer Name: _____

Business Address: _____

a. **APPLICANT’S BUSINESS FORM: (select and complete appropriate statement)**

- Proprietorship
- Corporation
- Partnership
- Limited Partnership
- Limited Liability Company
- Limited Liability Partnership
- Other _____

b. **STATE OF FORMATION: Applicant’s business is formed under the laws of the State of _____**

- c. **STATUS:** Provide a certificate issued by the state of formation certifying that the Applicant is in good standing and qualified to do business in the state of formation.

If formed under the laws of other than the District of Columbia, provide a certificate issued by the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) certifying that the applicant is registered or qualified, to do business in the District of Columbia and is currently in good standing with DCRA and with the District Department of Finance and Revenue.

- d. **OWNERSHIP:** Provide on a separate sheet the names and addresses of all persons and entities that directly or indirectly own ten percent (10%) or more of the ownership interests in the Applicant, or have the right to vote ten percent (10%) or more in the Applicant’s voting securities, or who otherwise have the power to control ten percent (10%) or more of the Applicant.

5. AFFILIATES, OR PREDECESSOR(S), ENGAGED IN THE SALE OR TRANSPORTATION/DELIVERY OF NATURAL GAS AT WHOLESALE OR RETAIL TO THE PUBLIC: (select and complete appropriate statement) (Applicant may limit responses to the last five (5) years)

a. The Applicant has no such Affiliate(s) or Predecessors(s). _____

b. Applicant is an Affiliate of a regulated utility. Please provide the regulated utility’s Name and the jurisdictions in which it operates: _____

c. Affiliate(s), or Predecessor(s), other than a regulated utility that provides, or provided, sale or transportation/delivery of natural gas at wholesale or retail to the public:

Name: _____

Business Address: _____

License #, State of Issuance: _____

Location of Operations (Utility Service Territory): _____

Attach additional sheets to the application if necessary.

6. ACTIONS AGAINST LICENSEES: Provide the following information for the Applicant, any Predecessor(s), and any unregulated Affiliate that engages in or engaged in the sale or transportation/delivery of natural gas at wholesale or retail to the public. (Applicant may limit responses to the last five (5) years).

- Identify all actions against the Licensee, Predecessor or any regulated or unregulated affiliate(s) such as Suspensions/Revocations/Limitations/Reprimands/Fines and describe the action in an attached statement, including docket numbers, offense dates, and case numbers, if applicable. Formal Investigations (defined as those investigations formally instituted in a public forum by way of the filing of a complaint, show cause order, or similar pleading) instituted by any regulatory agency or law enforcement agency relating to the Applicant, Predecessor(s), or unregulated affiliate(s) if, as a result of the investigation, Applicant's/Predecessor's/or affiliate's license to provide service to the public was in jeopardy are also listed. The license number, state of issuance, and name of license are identified below:

State(s): _____

Name(s): _____

License Number(s) (or other applicable identification):

- No such action has been taken.

7. RELIABILITY AND ENVIRONMENTAL OFFICIAL ACTIONS AGAINST APPLICANTS/AFFILIATES: Provide the following information for Official Actions that have been taken against the Applicant, any Predecessor(s), and any unregulated Affiliate (if available to the Applicant) that engages in the retail or wholesale sale of natural gas for matters relating to environmental or reliability status for the past five years.

- Official Actions such as Suspensions/Revocations/Limitations/Reprimands/Fines/Regulatory Investigations (state agencies, FERC, EPA, or other federal agencies) have been taken against the Applicant, any Predecessor(s) or unregulated affiliate(s), and are described in the attached statement, including docket numbers, offense dates, and case numbers, if applicable.

State(s): _____

Name(s): _____

- No such action has been taken.

OPERATIONAL CAPABILITY

TECHNICAL FITNESS

8. Provide sufficient information to demonstrate technical fitness to provide the service proposed in this Application. Examples of such information which may be submitted include the following:

- A general description of Applicant's retail natural gas supply activities in the District of Columbia, if any, including other service territories in which Applicant has provided service and the time period.
- A copy of each agreement (if applicable) entered into with District of Columbia natural gas distribution companies.
- Biographies, including titles, of relevant experienced personnel in key technical positions.
 - Other.

9. **SOURCE OF SUPPLY:** (Check all that apply) This is for informational purposes only. No update required.

- Not applicable. Applicant will not be supplying retail natural gas.
- Applicant owns natural gas supply.
- Applicant contracts for natural gas.
- Applicant obtains natural gas on the spot market
- Other. Applicant must attach a statement detailing its source of natural gas supply.
- Aggregator or Broker only

SCOPE OF OPERATIONS

(Check all that apply)

10. **APPLICANT'S PROPOSED OPERATIONS:** The Applicant proposes to operate as a:

- Natural Gas Supplier/Marketer of natural gas.
- Aggregator acting on behalf of Customers to purchase natural gas and does not take title to natural gas.
- Broker acting as an agent or intermediary on behalf of Customers in the sale and purchase of natural gas and who does not take title to natural gas.

Which natural gas supply related service(s) does the Applicant offer?

- Billing
- Other (Please specify the nature of such other services in an attached statement.)

Does Applicant intend to offer competitive billing services? _____

Is the Applicant proposing to offer any other services? _____

If so, please provide information regarding the proposed service in an attached statement.

11. AREA OF OPERATION: If the Applicant does not intend to offer services throughout the Washington Gas Light Company territory in the District of Columbia, Applicant must, in an attached statement, describe in detail the area within the Natural Gas Company’s service territory in which Applicant’s services will be offered.

- Applicant intends to offer service throughout the Washington Gas Light Company territory in the District of Columbia.
- Applicant intends to offer services in only a portion of Washington Gas Light Company’s service territory in the District of Columbia. Please see attached statement.

12. CUSTOMERS: Applicant proposes to initially provide services to (check all that apply):

- Residential Customers
- Commercial Customers
- Industrial Customers
- Other (Describe in attachment)

Also, Applicant proposes:

- Restrictions upon the number of end use Customers (Describe in attachment)
- No restrictions on the number of end use Customers.
- Restrictions upon the size of end use Customers (Describe in attachment).
- No restrictions regarding the size of the end use Customers (Describe in attachment).

- Other restrictions regarding Customers (Describe in attachment).

13. START DATE: The Applicant proposes to begin delivering services:

- Upon approval of the Application and receipt of License.
- Other approximate date of commencement.

FINANCIAL INTEGRITY

14. REQUIRED DOCUMENTATION OF FINANCIAL INTEGRITY:

Check that the documents listed below are attached to the Application.

The Applicant shall provide the most recent versions of the following documents to the extent they are available:

- Credit reports or ratings prepared by established credit bureaus or agencies regarding the Applicant's payment and credit history.
- Balance sheets, income statements and statements of cash flow for the two (2) most recent 12 month periods for which information is available. Audited financial statements must be provided if they exist. In addition, the Applicant shall provide any financial statements subsequent to the most recent annual financial statements.
- In the event that a parent or other company, person or entity has undertaken to guarantee the financial integrity of the Applicant, the Applicant must submit such entity's balance sheet, income statement and statement of cash flow, together with documentation of such guarantee to insure the financial integrity of the Applicant. Audited financial statements must be provided if they exist. In addition, the Applicant shall provide any available quarterly financial statements subsequent to the most recent annual financial statements.
- If the Applicant, parent, or guarantor entity has not been in existence for at least two-12 month periods, it must provide balance sheets, income statements and statements of cash flow for the life of the business. Audited financial statements must be provided if they exist.
- Organizational structure of Applicant. Include Applicant's parent, affiliate(s), and subsidiary(ies) if any.
- Evidence of general liability insurance.

- If the Applicant has engaged in the retail supply of natural gas services in any other jurisdiction, evidence that the Applicant is a licensed supplier in good standing in those jurisdictions.
- A current long-term bond rating, or other senior debt rating.
- Any other evidence of financial integrity such as an unused line of bank credit or parent guarantees.

15. BONDING REQUIREMENTS

Integrity Bond

An Applicant who cannot provide credible evidence that it meets the financial integrity standards listed in Section 4706 of Chapter 47 of Title 15 DCMR must submit a bond on the form attached to this Application (“Integrity Bond”). The Applicant, if licensed by the Commission as a natural gas supplier, may be required to update/revise this initial Integrity Bond, by revising the initial Integrity Bond or posting an additional Integrity Bond, as set forth in Section 4706.

However, an Applicant who can provide credible evidence that it meets the financial integrity standards listed in Section 4706 will not be required to submit an Integrity Bond. (The Applicant may still be required to submit a separate Customer Payments Bond, as discussed below.)

Customer Payments Bond

A separate bond on the appropriate form attached to this Application is mandatory if an Applicant requires prepayments and/or deposits from residential or small commercial Customers (“Customer Payments Bond”). Please check one of the boxes below to state whether you, the Applicant, intend to charge, collect, or hold prepayments and/or deposits, as such terms are defined in the Bonding Requirements Addendum attached to this Application:

- Applicant will not accept prepayments or deposits from residential and small commercial Customers.
- Applicant intends to accept prepayments or deposits and/or deposits from residential and small commercial Customers. Applicant must comply with Bonding Requirements Addendum governing the Customer Payment Bond.

Further details regarding the District of Columbia’s bonding requirements are included in Sections 4705 and 4706 of Chapter 47 of Title 15 DCMR.

16. NOTICE OF REQUIRED COMPLIANCE: The Applicant is hereby notified that it is required to comply with the following:

- (a) The Applicant may be required to submit bond(s), as applicable as described in Section 15 herein.
- (b) The Applicant must update this application with the Commission immediately if any of the information provided in this Application changes or an error or inaccuracy is noted during the pendency of the Application. After an Application has been approved, a Licensee must inform the Commission of changes to all parts of the application and the averment regarding any civil, criminal, or regulatory penalties, etc. imposed on applicant, *et al.* within thirty days of the change or an error or inaccuracy is noted. A Licensee must inform the Commission of changes to the averment regarding bankruptcy proceedings instituted voluntarily or involuntarily within Twenty-four (24) hours of the institution of such proceedings.
- (c) If the Applicant receives a License from the Commission, Licensee/Supplier must provide annual updates of all items that have changed in the application. The annual update must be provided to the Commission within one hundred twenty (120) days after the anniversary of the grant of the License.
- (d) Supplement this application in the event the Commission modifies the licensing requirements, or request further information.
- (e) Agree that it will not present itself as a licensed retail supplier of natural gas in the District of Columbia, sell or market services, accept deposits, prepayments, or contract with any end-use Customers without a license from the Commission.
- (f) Pay all fees imposed by the Commission and any applicable taxes.
- (g) Ensure that a copy of each service agreement entered into with the Washington Gas Light Company is provided to the Commission.
- (h) Agree to not transfer its license to sell natural gas and natural gas supply services without the prior approval of the District of Columbia Public Service Commission.
- (i) Attend a Natural Gas Suppliers Education Workshop sponsored by the Commission.
- (j) If certified, submit a Privacy Protection Policy that complies with 15 DCMR § 308 (Use of Customer Information) within ninety (90) days of the adoption of Chapter 47 of Title 15 District Code of Municipal Regulations (DCMR) or within sixty (60) days of receiving its Natural Gas Supplier license, whichever date is later. The Privacy Protection Policy must protect against the unauthorized

disclosure or use of Customer information about a Customer or a Customer’s use of service.

- (k) Abide by 15 DCMR § 308 and not disclose information about a Customer or the Customer’s use of natural gas or natural gas services without the Customer’s written consent.
- (l) Agrees to comply with 15 DCMR § 4703.15 Natural Gas Company and Licensee Responsibilities in the event of a default after certification, and with the District of Columbia Natural Gas Supplier Coordination Tariff.

17. AFFIDAVITS REQUIRED. The Applicant must supply Affidavits of Tax Compliance and General Compliance to the Commission with the completed Application. The affidavits are included with this Application packet and must be executed by the Applicant or representative with authority to bind the Applicant in compliance with District of Columbia laws.

18. FURTHER DEVELOPMENTS: Applicant is under a continuing obligation to amend its application if substantial changes occur in the information upon which the Commission relied in approving the original filing.

19. FEE: The Applicant has enclosed the required fee of \$400.00.

Applicant: _____

By: _____

Printed Name: _____

Title: _____

AFFIDAVIT OF TAX COMPLIANCE

State of _____ :
County of _____ : ss
_____ :

_____, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

That he/she is the _____(office of Affiant) of _____(Name of Applicant);

That he/she is authorized to and does make this affidavit for said Applicant:

That _____, the Applicant herein, certifies to the Public Service Commission of the District of Columbia (“Commission”) that it is subject to, will pay, and in the past has paid, the full amount of D.C. and Federal taxes imposed by applicable statutes and ordinances, as may be amended from time to time. The Applicant acknowledges that failure to pay such taxes or otherwise comply with the taxation requirements of the District of Columbia, shall be cause for the Commission to revoke the license of the Applicant. The Applicant acknowledges that it shall provide to the Commission its jurisdictional Gross Receipts and revenues from retail sales in the District, for the previous year or as otherwise required by the Commission.

As provided by applicable Law, Applicant, by filing of this application waives confidentiality with respect to its tax information in the possession of the (appropriate taxing authority), regardless of the source of the information, and shall consent to the (appropriate taxing authority) providing that information to the Commission. The Commission shall retain such information confidentially. This does not constitute a waiver of the confidentiality of such information with respect to any party other than the Commission.

That the facts above set forth are true and correct to the best of his/her present knowledge, information, and belief after due inquiry and that he/she expects said Applicant to be able to prove the same at any hearing hereof.

Signature of Affiant

Sworn and subscribed before me this ____ day of _____.

Signature of official administering oath

My commission expires _____.

AFFIDAVIT OF GENERAL COMPLIANCE

State of _____ :
_____ : ss
County of _____ :

_____, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

He/she is the _____(Officer/Affiant) of _____(Name of Applicant).

That he/she is authorized to and does make this affidavit for said Applicant.

That the Applicant herein certifies to the Public Service Commission of the District of Columbia (“Commission”) that:

The Applicant agrees to comply with the terms and conditions of Washington Gas Light Company’s tariff and agreements.

The Applicant is in compliance with and agrees to comply with all applicable Federal and District of Columbia consumer protection and environmental laws and regulations, and Commissions regulations, fees, assessments, order and requirements.

If certified, the Applicant agrees to submit a Privacy Protection Policy that complies with 15 DCMR §308 (Use of Customer Information) within ninety (90) days of the adoption of Chapter 47 of Title 15 District Code of Municipal Regulations or within sixty (60) days of receiving its Natural Gas Supplier license, whichever date is later. The Privacy Protection Policy must protect against the unauthorized disclosure or use of Customer information about a Customer or a Customer’s use of service.

The Applicant also agrees to abide by 15 DCMR § 308 and not disclose information about a Customer or a Customer’s use of service without the Customer’s written consent.

Applicant agrees, upon request by the Commission, to provide copies to the Commission, of its consumer forms and/or contracts, its marketing or advertising materials (flyers and solicitation scripts), consumer pamphlets and its consumer education materials.

Applicant agrees to abide by any periodic reporting requirements set by the Commission by regulation, including any required periodic reporting to the (appropriate taxing authority).

The Applicant has obtained all the licenses and permits required to operate the proposed business in the District of Columbia.

The Applicant agrees to abide by any periodic reporting requirements set by the Commission by regulation, including any required periodic reporting to the (appropriate taxing authority).

The Applicant agrees that it shall neither disclose nor resell individual residential Customer data provided to the Applicant by Washington Gas Light Company. Disclosure or resale of individual non-residential Customer data provided to the Applicant by a District of Columbia natural gas company will be governed by Customer contract.

The Applicant agrees, if the Commission approves its Application, to post an appropriate bond or other form of financial guarantee as required by the Commission and its regulations.

If the Applicant is certified, but later defaults, the licensee/Supplier agrees to comply with 15 DCMR § 4703.15, Natural Gas Company and Licensee Responsibilities in the event of a default, and with the District of Columbia Natural Gas Supplier Coordination Tariff.

The Applicant agrees, that within 180 days of approval of a license Application or within one year of the effective date of Chapter 47 of Title 15 DCMR, whichever is later, each Licensee's Regulatory Contact or Licensee's representative responsible for the Licensee's compliance with the Commission's rules shall complete the Natural Gas Supplier Education Workshop sponsored by the Commission. Successful completion of the workshop by the Licensee shall be evidenced by a certificate issued by the Commission.

The Applicant, including any of its Predecessor(s) and/or affiliates that engages in or engaged in the sale or transportation/delivery of natural gas at wholesale or retail to the public, the general partners, company officials, corporate officers or directors, or limited liability company managers or officers of the Applicant, its predecessor(s) or its affiliates:

1. Has had no civil, criminal or regulatory sanctions or Penalties imposed against it within the previous five (5) years pursuant to any state or federal consumer protection law or regulations, has not been convicted of any fraud-related crime (including, but not limited to, counterfeiting and forgery, embezzlement and theft, fraud and false statements, perjury, and securities fraud) within the last five (5) years; and has not ever been convicted of a felony; or alternatively.
2. Has disclosed by attachment all such sanctions, penalties or convictions.

The Applicant further certifies that it:

1. Is not under involuntary bankruptcy/insolvency proceedings including but not limited to, the appointment of a receiver, liquidator, or trustee of the supplier, or a decree by such court adjudging the supplier bankrupt or

insolvent or sequestering any substantial part of its property or a petition to declare bankruptcy as to reorganize the supplier; and

- 2. Has not filed a voluntary petition in bankruptcy under any provision of any Federal or state bankruptcy law, or its consent to the filing of any bankruptcy or reorganization petition against it under any similar law; or without limiting the generality of the foregoing, a supplier admits in writing its inability to pay its debt generally as they become due to consents to the appointment of a receiver, trustee or liquidator of it or of all or any part of its property.

That Applicant possesses the requisite managerial and financial fitness to provide service at retail in the District of Columbia.

That the facts above set forth are true and correct to the best of his/her present knowledge, information, and belief after due inquiry and that he/she expects said Applicant to be able to prove the same at any hearing hereof.

Signature of Affiant

Sworn and subscribed before me this ____ day of _____, _____.

Signature of official administering oath

My commission expires _____.

VERIFICATION

State of _____ :
: SS
County of _____ :

_____, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

He/she is the _____ (Officer/Affiant) of _____ (Name of Applicant);

That he/she is authorized to and does make this affidavit for said corporation;

The Applicant understands that the making of a false statement(s) herein may be grounds for denying the Application or, if later discovered, for revoking any authority granted pursuant to the Application. This Application is subject to all applicable sections of the District of Columbia Code as may be amended from time to time relating to perjury and falsification in official matters.

That the Applicant will supplement this Application in the event the Public Service Commission of the District of Columbia ("Commission") modifies the licensing requirements, or requests further information.

That the Applicant agrees that it will not present itself as a licensed retail supplier of natural gas in the District of Columbia, sell or market natural gas, accept deposits, prepayments, or contract with any end-use Customers without a license from the Commission.

That the Applicant agrees that a license issued pursuant to this Application may not be transferred without prior approval by the Commission.

That the Applicant agrees to update information contained in this Application in accordance with the schedule set forth in the Application.

That the facts above set forth are true and correct to the best of his/her present knowledge, information, and belief after due inquiry and that he/she expects said Applicant to be able to prove the same at any hearing hereof.

Signature of Affiant

Sworn and subscribed before me this _____ day of _____, 20__.

Signature of official administering oath

My commission expires_____.

**APPLICANT'S GENERAL AUTHORIZATION FOR VERIFICATION OF
FINANCIAL INFORMATION, ETC.**

TO WHOM IT MAY CONCERN:

I/We have applied to the District of Columbia Public Service Commission (the "Commission") for a license to be a Natural Gas Supplier, or to provide certain Natural Gas Supply related services, and authorize you to release to the Staff of the Commission and its authorized representatives and agents any information or copies of records requested concerning:

MY COMPANY OR BUSINESS AND ITS HISTORY,
PERFORMANCE, OPERATIONS, CUSTOMER RELATIONS,
FINANCIAL CONDITION, INCLUDING BANK ACCOUNT
TRANSACTIONS AND BALANCES, PAYMENT HISTORY
WITH SUPPLIERS AND OTHER CREDITORS,
VERIFICATION OF NET WORTH AND OTHER
INFORMATION AND RECORDS WHICH THE COMMISSION
REQUIRES TO VERIFY OR MAKE INQUIRY CONCERNING
MY/OUR FINANCIAL INTEGRITY AND THE
INFORMATION CONTAINED IN MY/OUR LICENSE
APPLICATION OR OTHER INFORMATION PROVIDED BY
ME/US TO THE COMMISSION OR, STAFF OF THE
COMMISSION OR ITS REPRESENTATIVES OR AGENTS.

This Authorization is continuing in nature and includes release of information following issuance of a license, for reverification, quality assurance, internal review, etc. The information is for the confidential use of the Commission and the Staff of the Commission in determining my/our financial integrity for being a licensee or to confirm information I/We have supplied and may not be released by order of the Commission or by order of a court of competent jurisdiction.

A photographic or fax copy of this authorization may be deemed to be the equivalent of the original and may be used as a duplicate original. The original signed form is maintained by the Staff of the Commission.

APPLICANT'S AUTHORIZATION TO RELEASE INFORMATION:

APPLICANT (please print)

APPLICANT'S SIGNATURE

DATE

TITLE

PREPAYMENT AND DEPOSIT BONDING REQUIREMENTS ADDENDUM**1. DEFINITION AND EXCLUSION**

- a. Any natural gas supplier or aggregator or broker who charges or collects deposits or prepayments shall maintain a bond in an amount at least equal to the total amount of such deposits and prepayments as specified in this section. Prepayments and/or deposits from non-residential customers whose metered use during any month of the previous twelve-month period was in excess of 625 dekatherms per month are exempt from the calculation of the bond requirement. For new non-residential customers, the exemption will apply if the sales to that customer are expected to be in excess of 625 dekatherms per month.
- b. "Deposits" include all payments made by a consumer to a natural gas supplier to secure the natural gas supplier against the consumer's nonpayment or default.
- c. "Prepayments" include all payments made by a consumer to a natural gas supplier for services that have not been rendered at the time of payment.
 1. Where a natural gas supplier charges for services based on a quantity of natural gas, such as a price per therm, then prepayments include any payments for any quantity that has not been delivered to the consumer at the time of payment.
 2. Where a natural gas supplier charges for services based on a period of time, such as charging a membership fee, initiation fee or other fee for services for a time period, then prepayments include the amount of the total charges collected by the natural gas supplier for the period of time less the prorated value of the period of time for which services have been rendered.
 3. Where a natural gas supplier charges for services based on a measure other than quantity of natural gas delivered or a period of time, the Commission shall determine, on a case by case basis, whether the charges involve a prepayment and the appropriate method of calculating the required bond.
 4. Prepayments do not include any funds received in advance of the services being rendered as a result of the consumer's voluntary participation in a budget billing or level billing plan by which the

consumer's anticipated natural gas costs are averaged over a period of time.

2. WHO MUST POST BOND

Any natural gas supplier or aggregator or broker who charges or collects deposits or prepayments shall maintain a bond in an amount at least equal to the total amount of such deposits and prepayments as specified in this section. Prepayments and/or deposits from non-residential customers whose metered use during any month of the previous twelve-month period was in excess of 625 dekatherms per month are exempt from the calculation of the bond requirement. For new non-residential customers, the exemption will apply if the sales to that customer are expected to be in excess of 625 dekatherms per month.

3. PROCEDURE FOR DETERMINING AMOUNT OF BOND

- a. **INITIAL BOND:** Before accepting any deposits or prepayments, or for active suppliers prior to who have deposits or prepayments from current customers, a natural gas supplier must (1) notify the PSC on its license Application, within thirty (30) days of the change for an existing license holder, or by separate communication that it intends to begin charging deposits or prepayments, and (2) post an initial bond of fifty thousand dollars (\$50,000). If a bond is required of an aggregator or broker the amount shall be ten thousand dollars (\$10,000).
- b. **SIX MONTH CERTIFICATION:** Within six months after the initial bond is posted, (1) the natural gas supplier shall provide to the PSC, an audited certification conducted by either an independent certified accountant ("CPA") or the PSC Accounting Division (see below) of the amount of the deposits and prepayments and (2) a bond in the amount certified by either an independent CPA or by the PSC Accounting Division.
- c. **ANNUAL CERTIFICATION:** Annually thereafter, coinciding with the annual update requirements of the PSC license application, the natural gas supplier shall provide to the PSC (1) a statement of the amount of the deposits and prepayments conducted by either an independent CPA or the PSC Accounting Division and (2) a bond in that amount.
- d. **QUARTERLY UPDATES:** Following submittal of the first annual update, the natural gas supplier must provide to the PSC (1) a quarterly management report stating the amount of deposits and prepayments collected and (2) an adjustment to the bond in that amount.

4. **CPA/PSC ACCOUNTING DIVISION AUDIT REPORT.** The natural gas supplier shall provide appropriate certification at the intervals discussed in the above paragraphs, on funds collected by a Supplier for prepayments or deposits. The Supplier will have the option of certifying funds through an audit conducted by independent certified public accountant or by the PSC Accounting Division. The audit will verify collections and balances of prepayments and deposits as of a specific date and whether the Supplier has appropriate bond coverage.
5. **BOND FORM: BENEFICIARY, CLAIMS, DISTRIBUTION.** The natural gas supplier shall provide a bond on the form required by the PSC.
6. **COMPLIANCE INVESTIGATIONS.** The PSC has the right to initiate appropriate investigations if it determines a Supplier is collecting prepayments and/or deposits from customers without appropriate bond coverage. The PSC will utilize appropriate legal remedies both to investigate and/or enforce actions necessary to ensure suppliers have appropriate bonds.

**ATTACHMENT B
FORM OF CUSTOMER PAYMENTS BOND**

SURETY BOND

Bond No. _____

We,

(Name of supplier)

(Address of supplier)

as principal, and

(Surety Company)

(Address of surety)

as surety authorized to do business in the District of Columbia, are held and firmly bound to the Public Service Commission of the District of Columbia, as obligee for the use and benefit of all persons establishing legal rights hereunder, in the sum of FIFTY THOUSAND AND NO/100 (\$50,000) lawful money of the United States of America, to the payments of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly, severally, and firmly by this document.

WHEREAS, the Principal has applied to the Public Service Commission of the District of Columbia for a license to provide natural gas service to retail Customers in the District of Columbia, and

WHEREAS, pursuant to the Retail Natural Gas Licensing and Consumer Protection Act of 2004, the Public Service Commission of the District of Columbia is authorized to require the Principal to maintain a bond in order to provide retail natural gas service.

NOW, THEREFORE, if the Principal shall faithfully and truly fulfill all of its service or product contracts and other contractual commitments to deliver retail natural gas services, and not file for bankruptcy or for similar protection under law, then this obligation shall be void, otherwise to remain in full force and effect as security for the use of the Public Service Commission of the District of Columbia or of any person or entity, who after entering into a service or product contract or third party supplier agreement for service in the District of Columbia with the above named Principal is damaged or suffers any loss of a deposit or prepayment (as such terms are

defined in) (Sections 4705 and 4706 of Chapter 47 of Title 15 DCMR) by reason of failure of service or by other breach or bankruptcy by this Principal.

The aggregate liability of the Surety is limited to the foregoing sum which sum shall be reduced by any payment made in good faith hereunder.

The term of this bond is for the period beginning _____ and terminating _____, and may continue for an annual period by a Continuation Certificate signed by the Principal and Surety, a copy of which must be served by registered mail upon the Secretary of the Public Service Commission of the District of Columbia.

In order to draw funds on this Bond, the Secretary of the Public Service Commission of the District of Columbia shall present the following document to the Surety, and attach thereto documentation in support thereof:

Affidavit sworn to and signed by the Secretary of the Public Service Commission of the District of Columbia, stating that at the public hearing on _____, the Public Service Commission of the District of Columbia determined that _____ has not satisfactorily performed its obligations to a person or entity, who has suffered actual damages or loss of a deposit or prepayment (as such terms defined in Sections 4705 and 4706 of Chapter 47 of Title 15 DCMR) in a specific amount by means of failure, or by reason of breach of contract or violation of the Retail Natural Gas Licensing and Consumer Protection Act of 2004 and/or regulations, rules or standards promulgated pursuant thereto.

SIGNED, SEALED AND DATED this _____ day of _____

Principal _____

By: _____
(Signatory)

Surety _____

Address of Surety:

By: _____
(Signatory)

Notary Seal

**ATTACHMENT C
FORM OF INTEGRITY BOND
FOR NATURAL GAS SUPPLIERS AND MARKETERS
INTEGRITY BOND-SURETY BOND**

Bond No. _____

We,

(Name of supplier)

(Address of supplier)

as principal, and

(Surety Company)

(Address of surety)

as surety authorized to do business in the District of Columbia, are held and firmly bound to the Public Service Commission of the District of Columbia, as obligee for the use and benefit of all persons establishing legal rights hereunder, in the sum of FIFTY THOUSAND AND 00/100 (\$50,000) lawful money of the United States of America, to the payments of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly, severally, and firmly by this document.

WHEREAS, the Principal has applied to the Public Service Commission of the District of Columbia for a license to provide natural gas service to retail Customers in the District of Columbia, and

WHEREAS, pursuant to the Retail Natural Gas Licensing and Consumer Protection Act of 2004, (D.C. Official Code §34-1671.05), the Public Service Commission of the District of Columbia is authorized to require the Principal to maintain a bond in order to provide retail natural gas service.

NOW, THEREFORE, if the Principal shall faithfully and truly fulfill all of its service or product contracts and other contractual commitments to deliver retail natural gas services, and not file for bankruptcy or for similar protection under law, then this obligation shall be void, otherwise to remain in full force and effect as security for the use of the Public Service Commission of the District of Columbia or of any person or entity, who after entering a service or product contract or third party supplier agreement for service in the District of Columbia with the above named Principal is actually damaged or suffers any actual loss by reason of failure of service or by other breach or bankruptcy by this Principal.

The aggregate liability of the Surety is limited to the foregoing sum which sum shall be reduced by any payment made in good faith hereunder.

The term of this bond is for the period beginning _____ and terminating _____, and may be continued for an annual period by a Continuation Certificate signed by the Principal and Surety, a copy of which must be served by registered mail upon the Secretary of the Public Service Commission of the District of Columbia.

In order to draw funds on this Bond, the Secretary of the Public Service Commission of the District of Columbia shall present the following document to the Surety, and attach thereto documentation in support thereof:

Affidavit sworn to and signed by the Secretary of the Public Service Commission of the District of Columbia, stating that at the public hearing on, _____, the Public Service Commission of the District of Columbia determined that _____ has not satisfactorily performed its obligations to a person or entity, who has suffered actual damages or loss in a specific amount by means of failure, or by reason of breach of contract or violation of the Retail Natural Gas Licensing and Consumer Protection Act of 2004 and/or regulations, rules or standards promulgated pursuant thereto.

SIGNED, SEALED AND DATED this _____ day of _____

Principal: _____

By: _____
(Signatory)

Surety: _____

Address of Surety: _____

By: _____
(Signatory)

Notary Seal

ATTACHMENT D

FORM OF INTEGRITY BOND
FOR AGGREGATORS AND BROKERS

INTEGRITY BOND-SURETY BOND

Bond No. _____

We,

(Name of supplier)

(Address of supplier)

as principal, and

(Surety Company)

(Address of surety)

as surety authorized to do business in the District of Columbia, are held and firmly bound to the Public Service Commission of the District of Columbia, as obligee for the use and benefit of all persons establishing legal rights hereunder, in the sum of TEN THOUSAND 00/100 (\$10,000) lawful money of the United States of America, to the payments of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly, severally, and firmly by this document.

WHEREAS, the Principal has applied to the Public Service Commission of the District of Columbia for a license to provide natural gas service to retail Customers in the District of Columbia, and

WHEREAS, pursuant to the Retail Natural Gas Licensing and Consumer Protection Act of 2004, the Public Service Commission of the District of Columbia is authorized to require the Principal to maintain a bond in order to provide retail natural gas service.

NOW, THEREFORE, if the Principal shall faithfully and truly fulfill all of its service or product contracts and other contractual commitments to deliver retail natural gas services, and not file for bankruptcy or for similar protection under law, then this obligation shall be void, otherwise to remain in full force and effect as security for the use of the Public Service Commission of the District of Columbia or of any person or entity, who after entering into a service or product contract or third party supplier agreement for service in the District of Columbia with the above named Principal is actually and directly damaged or suffers any actual or direct loss by reason of failure of service or by other breach or bankruptcy by this Principal.

The aggregate liability of the Surety is limited to the foregoing sum which sum shall be reduced by any payment made in good faith hereunder.

The term of this bond is for the period beginning _____ and terminating _____, and may be continued for an annual period by Continuation Certificate signed by the Principal and Surety, a copy of which must be served by registered mail upon the Secretary of the Public Service Commission of the District of Columbia.

In order to draw funds on this Bond, the Secretary of the Public Service Commission of the District of Columbia shall present the following document to the Surety, and attach thereto documentation in support thereof:

Affidavit sworn to and signed by the Secretary of the Public Service Commission of the District of Columbia, stating that at the public hearing on, _____, the Public Service Commission of the District of Columbia determined that _____ has not satisfactorily performed its obligations a person or entity; who has suffered actual damages or loss a specific amount by means of failure, or by reason of breach of contract or violation of the Retail Natural Gas Licensing and Consumer Protection Act of 2004 and/or regulations, rules or standards promulgated pursuant thereto.

SIGNED, SEALED AND DATED this _____ day of _____

Principal: _____

By: _____
(Signatory)

Surety: _____

Address of Surety: _____

By: _____
(Signatory)

Notary Seal

DEPARTMENT OF FOR-HIRE VEHICLES

NOTICE OF THIRD EMERGENCY RULEMAKING

The Director of the Department of For-Hire Vehicles (“Department” or “DFHV”), pursuant to the authority set forth in Sections 8(c) (3), (7), (19) and (20), 20a, and 20g, of the District of Columbia Taxicab Commission Establishment Act of 1985 (“Establishment Act”), effective March 25, 1986, effective March 10, 2015 (D.C. Law 6-97; D.C. Official Code §§ 50-301.07(c) (3), (7), (19) and (20), 50-301.20, and 50-301.26 (2014 Repl. & 2016 Supp.)), hereby gives notice of the adoption, on an emergency basis, of amendments to Chapter 4 (Taxicab Payment Service Providers) of Title 31 (Taxicabs and Public Vehicles For Hire) of the District of Columbia Municipal Regulations (DCMR).

This emergency rulemaking establishes the amount of the payment service provider (“PSP”) surcharge bond and was initially approved by the D.C. Taxicab Commission (“Commission”) on October 14, 2015. Current regulations require PSPs to maintain a bond to ensure the payment to the District of the passenger surcharges collected through approved modern taximeter systems (MTSs). The regulations do not establish, however, the amount of the bond. There is an immediate need to preserve and promote the safety and welfare of District residents by ensuring that the amount of the bond is clearly established in the Department’s regulations, to eliminate the possibility of confusion among these stakeholders about this requirement for both: (1) renewal applications of all current PSPs are currently pending before the Department; and (2) any new PSP applicants that choose to submit an application prior to December 31, 2017. Unlike previous iterations of this rulemaking, this current version clarifies that PSP applications shall not be accepted after December 31, 2017, which is consistent with the DTS Modernization Rules published on November 17, 2017, in the *D.C. Register* at 64 DCR 011950.

An identical emergency rulemaking was adopted by the Commission on December 9, 2015 and took effect immediately. The emergency rulemaking remained in effect for one hundred and twenty (120) days after the date of adoption, expiring April 6, 2016 and published in the *D.C. Register* on May 20, 2016, at 63 DCR 007719. An identical second emergency rulemaking was adopted by the Commission on April 13, 2016 and took effect immediately, unpublished in the *D.C. Register*. The second emergency rulemaking remained in effect for one hundred and twenty (120) days after adoption expiring on August 11, 2016. An identical third emergency rulemaking was adopted by the Department on August 11, 2016 and took effect immediately, unpublished in the *D.C. Register*. The third emergency rulemaking remained in effect for one hundred and twenty days (120) after adoption expiring on December 9, 2016. An identical emergency rulemaking was adopted by the Department on December 9, 2016, and took effect immediately, and was published in the *D.C. Register* on January 27, 2017 at 64 DCR 000807. This emergency rulemaking remained in effect for one hundred and twenty (120) days after adoption expiring on April 8, 2017. An identical fifth emergency rulemaking was adopted by the Department on April 7, 2017 and took effect immediately, unpublished in the *D.C. Register*. The fifth emergency rulemaking remained in effect for one hundred and twenty (120) and expired on August 5, 2017. The sixth emergency rulemaking was adopted by the Department on August 4, 2017, and took effect immediately, expiring December 2, 2017, unpublished in the *D.C.*

Register. It is hereby superseded by this emergency rulemaking, which was adopted on November 27, 2017, and will expire on March 27, 2018.

Chapter 4, TAXICAB PAYMENT SERVICE PROVIDERS, of Title 31 DCMR, TAXICABS AND PUBLIC VEHICLES FOR HIRE, is amended as follows:

Section 403, PROPOSED MODERN TAXIMETER SYSTEMS – APPLICATIONS BY PSPS, is amended as follows:

The title of Section 403, PROPOSED MODERN TAXIMETER SYSTEMS – APPLICATIONS BY PSPS, is amended to read as follows:

403 APPLICATIONS

Subsection 403.3 is amended to read as follows:

403.3 Each application shall be made under penalty of perjury, and shall be accompanied by an application fee of five thousand dollars (\$5,000) and by a surcharge bond of one hundred thousand dollars (\$100,000). PSP applications shall not be accepted after December 31, 2017.

DEPARTMENT OF FOR-HIRE VEHICLES**NOTICE OF EMERGENCY RULEMAKING**

The Director of the Department of For-Hire Vehicles, pursuant to the authority set forth in Sections 8 (c) (1), (2), (3), (5), (7), (10), (12), (13), and (19); 14; 20; 20a; 20j; and 20l of the District of Columbia Taxicab Commission Establishment Act of 1985 (“Establishment Act”), effective March 25, 1986 (D.C. Law 6-97); D.C. Official Code §§ 50-301.07(c) (1),(2), (3), (5), (7), (10), (12), (13), and (19); 50-301.13; 50-301.19; 50-301.20; and 50-301.29 (2014 Repl. & 2017 Supp.)), hereby gives notice of the adoption, on an emergency basis, of amendments to Chapter 18 (Wheelchair Accessible Paratransit Taxicab Service) and Chapter 20 (Fines and Civil Penalties) of Title 31 (Taxicabs and Public Vehicles For Hire) of the District of Columbia Municipal Regulations (DCMR).

This notice incorporates and combines the following two (2) emergency rulemakings which were adopted by the Department on November 30, 2017 and took effect immediately, expiring in one hundred twenty (120) days on March 30, 2018.

Emergency rulemaking amending Chapter 18: This emergency rulemaking amends Chapter 18 to immediately modify the requirements: (1) that taxicab companies approved to provide service in Transport DC add a wheelchair accessible vehicle for every three thousand (3,000) trips completed in the program, allowing the addition of these vehicles at such greater intervals as may be established in an administrative issuance; and (2) for a fixed, flat rate fare of thirty three dollars (\$33) for each Transport DC trip, changing the requirement from a fixed fare to a cap on the fare. This emergency rulemaking is necessary as the Department finds there is an immediate need to preserve and promote the safety and welfare of District residents to make the foregoing changes to ensure the financial viability of the Transport DC program, which serves the ongoing paratransit needs of the community, including by providing wheelchair service. Notices of Emergency and Proposed Rulemaking were adopted by the Department on June 29, 2016 and on January 30, 2017 but were not published in the *D.C. Register*. An additional emergency rulemaking was adopted by the Department on October 6, 2016 and expired on February 3, 2017, also unpublished in the *D.C. Register*. An emergency rulemaking was adopted on June 2, 2017 and expired on September 30, 2017, unpublished in the *D.C. Register*. This emergency rulemaking was adopted by the Department on November 30, 2017, took effect immediately, and will remain in effect for one hundred twenty (120) days after the date of its adoption (expiring March 30, 2018), unless earlier superseded by an amendment or repeal by the Department, whichever occurs first.

Emergency rulemaking amending Chapter 20: This emergency rulemaking is necessary as the Department finds there is an immediate need to preserve and promote the safety and welfare of District residents to ensure that civil fines are immediately available civil penalties for serious violations such as fraud, misrepresentation, larceny, aggressive driving, and illegal driving maneuvers, and for numerous other violations as set forth in § 816. Prior to the enactment of Chapter 20, these violations were punishable by a five hundred dollar (\$500) civil fine for “unlawful activities” under a schedule of fines in § 825, in addition to other civil penalties (vehicle impoundment, and license suspension, revocation, or nonrenewal). When Chapter 20

was published as final, however, fines for these violations were inadvertently omitted. The Department, therefore, finds there is an immediate need to preserve and promote the safety and welfare of District residents by ensuring that lawful, reasonable, and appropriate civil fines are immediately available for these violations, in addition to civil penalties other than fines. Notices of emergency and proposed rulemaking were adopted by the Department on June 29, 2016, on October 6, 2016, on January 30, 2017, and on June 2, 2017; the last expired on September 30, 2017. None were published in the *D.C. Register*.

This emergency rulemaking was adopted by the Department on November 30, 2017, took effect immediately, and will remain in effect for one hundred twenty (120) days after the date of its adoption (expiring March 30, 2018), unless earlier superseded by an amendment or repeal by the Department, whichever occurs first.

Chapter 18, WHEELCHAIR ACCESSIBLE PARATRANSIT TAXICAB SERVICE, of Title 31 DCMR, TAXICABS AND PUBLIC VEHICLES FOR HIRE, is amended as follows:

Section 1806, TAXICAB COMPANIES AND OPERATORS – OPERATING REQUIREMENTS is amended as follows:

Subsection 1806.5(a), is amended to read as follows:

- (a) Each company shall add a vehicle to its fleet which complies with subparagraph (b) each time the company completes three thousand (3,000) Transport DC trips, or such greater number of trips as may be established in an administrative issuance.

Subsection 1806.10 is amended to read as follows:

1806.10 The rates and charges, and acceptable forms of payment, for each Transport DC trip shall be in accordance with the following requirements:

- (a) The fare for a Transport DC trip shall not exceed a flat rate of thirty-three dollars (\$33) as stated in an administrative issuance, plus any gratuity which a passenger chooses to add to the total fare, payable as follows:
 - (1) Not more than five dollars (\$5.00) of the Transport DC fare shall be paid by the passenger by any means allowed by Chapter 8, including a payment card or cash; and
 - (2) The remaining fare shall be paid by District.
- (b) No passenger surcharge shall be collected from a passenger for a Transport DC trip.

Chapter 20, FINES AND CIVIL PENALTIES, is amended as follows:

Subsection 2000.8 of Section 2000, FINES AND CIVIL PENALTIES, is amended as follows:

Schedule 3 (Fines for Entities, Owners, and Operators) is amended as follows:

The fine for fraudulent actions is amended to read as follows:

Schedule 3 Fines For Entities, Owners, and Operators Maximum Fines Based On Circumstances	
Fraudulent and unlawful actions <ul style="list-style-type: none"> • Falsifying or tampering with manifest (§ 823) • Displaying, possessing, or presenting a fraudulent copy or altered government issued operator identification (Face) card or vehicle inspection (DFHV) card (§ 814.7) • Tampering with meter or meter seals (§ 1323) • Knowingly operating with non-functioning meter or operating without a meter • Improperly sealed meter (§ 1321) • Improper conduct and/or unlawful actions (§ 816) 	\$500

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to Section 14 of the Legalization of Marijuana for Medical Treatment Amendment Act of 2010 (Act), effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code § 7-1671.13 (2012 Repl.)), and Mayor's Order 2011-71, dated April 13, 2011, hereby gives notice of the adoption, on an emergency basis, of the following amendments to Chapter 53 (General Registration Requirements) of Title 22 (Health), Subtitle C (Medical Marijuana), of the District of Columbia Municipal Regulations (DCMR).

This emergency action is necessary to protect the public by ensuring that there are a sufficient number of dispensaries open for business to adequately supply the needs of the District's registered patients. A quarter of the qualifying patients in the District's Medical Marijuana Program live in Wards 7 and 8, but there are no dispensaries east of the Anacostia River, resulting in a geographical barrier to access to these healthcare services. To further ensure adequate access to medical marijuana for patients located in Wards 7 and 8, the Department exercised its authority under D.C. Official Code § 7-1671.06(d)(2)(A) to increase the number of dispensaries registered to operate in the District by emergency and proposed rulemaking to seven (7) so that a dispensary could be registered in Ward 7 and in Ward 8.

The Department is aware that in previous rounds, a significant number of the applicants that were selected to receive registrations took many months to complete the requirements for registration and then to open for business. This emergency action is necessary to immediately preserve and promote the health, safety and welfare of the public, and is being taken to ensure that applicants which have been selected and deemed eligible for registration proceed expeditiously to open their facilities for business.

This emergency rule was adopted on December 14, 2017 and became effective immediately on that date. The emergency rule will expire one hundred twenty (120) days from the date of adoption, April 13, 2018, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

The Director of the Department of Health also gives notice of her intent to adopt this rule, in final, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, and upon completion of the thirty (30) day Council period of review if the Council does not act earlier to adopt a resolution approving the rules.

Chapter 53, GENERAL REGISTRATION REQUIREMENTS, of Title 22-C DCMR, MEDICAL MARIJUANA, is amended as follows:

Section 5303, FAILURE TO OPEN OR OPERATE, is amended to read as follows:

5303 FAILURE TO OPEN OR OPERATE

5303.1 For purposes of this section, "deemed eligible" shall mean:

- (a) The applicant has met all application prerequisites;
 - (b) The applicant has been selected by the Director for registration; and
 - (c) The applicant is only pending the remaining necessary approvals required under this title from MPD, DCRA, OTR, and the Department, including passing the pre-opening inspection.
- 5303.2 Being “deemed eligible” does not guarantee that an applicant will receive a registration, or create a contract between the applicant and the Department. The medical marijuana laws of the District of Columbia and the federal government are subject to change at any time and that the District of Columbia shall not be liable as a result of these changes.
- 5303.3 An applicant that has been deemed eligible for a dispensary registration shall complete the steps to obtain a registration and open for business within one hundred twenty (120) days from the date of receipt of the notice of selection.
- 5303.4 Except as provided in § 5303.6, if an applicant that has been deemed eligible for a dispensary registration, or a registrant that has received a dispensary registration, fails to open for business within one hundred twenty (120) days, the Director shall withdraw the applicant’s selection, and consider the next highest ranking applicant. If a registration has been issued, the registrant shall surrender and return the registration to the Department.
- 5303.5 If there are no applicants pending, the Director may open the application process to select a replacement dispensary or cultivation center applicant.
- 5303.6 The Director may grant an applicant that has been deemed eligible for a dispensary registration an extension at his or her discretion for good cause shown.
- 5303.7 A registration for a dispensary or cultivation center shall be returned to the Director if the dispensary or cultivation center fails to operate for any reason for more than sixty (60) days after it has opened for business.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to Phillip Husband, General Counsel, Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 6th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 8:00 a.m. and 4:00 p.m. at the address listed above, or by contacting Angli Black, Paralegal Specialist, at Angli.Black@dc.gov, (202) 442-5977.

DEPARTMENT OF HEALTH**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director of the Department of Health (“DOH”), pursuant to the authority set forth in Section 22 of the Vital Records Act of 1981 (“Act”), effective October 8, 1981 (D.C. Law 4-34; D.C. Official Code § 7-221 (2012 Repl.)) and in accordance with Mayor's Order 2002-13, dated January 25, 2002, hereby gives notice of the adoption, on an emergency basis, of the following amendments to Chapter 28 (Vital Records) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (“DCMR”).

The emergency rulemaking implements Subchapter Q of Title V of the Fiscal Year 2017 Budget Support Act of 2016, known as the Vital Records Fees Amendment Act of 2016 (“Amendment Act”), effective October 8, 2016 (D.C. Law 21-160; D.C. Official Code § 7-221 (2012 Repl.)). The Amendment Act established within the Department of Health a Vital Records Fee Fund to defray the cost of providing birth certificates at no cost to persons experiencing homelessness.

This emergency rulemaking action is necessary for the Department to immediately implement the Amendment Act by establishing a process for persons experiencing homelessness to obtain copies of their birth certificates at no cost. The rulemaking will provide that the person experiencing homelessness is able to obtain at no cost a copy of their birth certificate by providing to the Vital Records Division of the Department of Health a valid waiver provided by a homelessness services provider authorized by the District of Columbia Department of Human Services.

A birth certificate is a basic legal document that gives identity to a person and is required to establish United States Citizenship. The birth certificate enables a person to obtain a United States passport and to prove citizenship in order to obtain health care through entitlement programs, such as Medicaid and Medicare. Proof of citizenship is necessary to register to vote and exercise the franchise. Proof of citizenship is necessary in many cases to obtain employment. Birth certificates are used as a form of identification for establishing bank accounts and access to banking services. A birth certificate is used in many cases to prove residency in order to obtain free public education and to establish eligibility for job training and apprenticeship programs. A birth certificate is used by a person experiencing homelessness as proof of citizenship in order to obtain a housing voucher that would allow that person to end their homelessness. A birth certificate, while critical to helping an individual exit homelessness, is easy to lose for a person experiencing homelessness who is carrying his or her worldly possessions around due to the lack of permanent housing. Until recently, some social service providers in the city would help cover these costs, but many are no longer providing that service. Homeless individuals are more likely than not to not have the financial resources to pay for even the most essential things, including a copy of their birth certificate. It is therefore critically necessary to put this waiver program in place as soon as possible. Funds have been appropriated and are available for the Department of Health to implement this waiver program.

This emergency rulemaking was adopted on December 14, 2017 and became effective on that date. The emergency rulemaking will remain in effect for up to one hundred twenty (120) days

after the date of adoption, expiring on April 13, 2018, or upon earlier amendment or repeal by the Director or publication of a final rulemaking in the *D.C. Register*, whichever occurs first.

The Director also hereby gives notice of her intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the publication of this notice in the *D.C. Register*.

Chapter 28, VITAL RECORDS, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 2880, FEES FOR THE ISSUING AND AMENDING OF VITAL RECORDS, is amended by adding two new Subsections 2880.2 and 2880.3 to read as follows:

2880.2 An individual experiencing homelessness may have the fee that would normally apply to obtain a certified copy of a birth certificate waived, provided that:

- (a) The fee waiver is limited to one (1) birth certificate per person per fiscal year;
- (b) An original unaltered fee waiver voucher is presented to the Vital Records Division that has been provided to the individual by a homelessness services provider authorized by the Department of Human Services;
- (c) If the request for a fee waiver is the result of a lost or stolen birth certificate, the loss or theft has been reported to the Vital Records Division;
- (d) If a search of the records of the Vital Records Division fails to disclose the existence of a birth record for the individual named on the fee waiver voucher, the fee waiver voucher shall be surrendered in lieu of the fee that would otherwise be due to conduct a records search;
- (e) The fee waiver voucher shall be presented to the Vital Records Division for payment for a certified copy of a birth certificate not later than sixty (60) days from the date of issuance; and
- (f) The fee waiver voucher shall name the birth registrant as the applicant for the fee waiver.

2880.3 The Department of Human Services shall provide a list of authorized homeless services providers the Vital Records Division and immediately notify the Division of modifications to the list.

Copies of the proposed rulemaking can be obtained at www.dcregs.dc.gov or by contacting Phillip Husband, General Counsel of the District of Columbia Department of Health, 899 North Capitol Street, N.E., 6th Floor, Washington, D.C. 20002. All persons desiring to file

comments on the proposed rulemaking action should submit written comments via e-mail to Angli.Black@dc.gov or by mail to the District of Columbia Department of Health, Attn: Phillip Husband, General Counsel, no later than thirty (30) days after the publication of this notice in the *D.C Register*. Copies of the proposed rules may be obtained between the hours of 8:00 a.m. and 4:00 p.m. at the address listed above, or by contacting Angli Black, Paralegal Specialist, at the email above or (202) 442-5977.

**DEPARTMENT OF HUMAN SERVICES
ECONOMIC SECURITY ADMINISTRATION**

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Human Services (DHS), pursuant to the authority set forth in Section 205(e) and 552 of the District of Columbia Public Assistance Act of 1982 (Act), effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-202.05(e) and § 4-205.52 (2012 Repl.)), as added by Section 5002 of the TANF Child Benefit Protection Congressional Review Emergency Amendment Act of 2017, enacted October 23, 2017 (D.C. Act 22-167; 64 DCR 10802 (October 27, 2017)), Section 5002 of the TANF Benefit Protection Act of 2017, effective December 13, 2017 (D.C. Act 22-130; 64 DCR 7652 (August 11, 2017)), and any substantially similar subsequent legislation; Mayor's Reorganization Plan No. 3 of 1986; and Mayor's Orders 2006-50, dated April 13, 2006, and 2017-192, dated August 25, 2017; hereby gives notice of the intent to amend Chapter 58 (Temporary Assistance for Needy Families) and Chapter 72 (Standards of Assistance and Payment Levels in Public Assistance Programs) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

The proposed rules will establish new payment levels for recipients of the following benefits: Temporary Assistance for Needy Families (TANF) (D.C. Official Code § 4-205.52 (2012 Repl.)); General Assistance for Children (D.C. Official Code § 4-205.05a (2012 Repl.)); Interim Disability Assistance (IDA) (D.C. Official Code § 4-204.07 (2012 Repl. & 2017 Supp.)); and Program on Work, Employment and Responsibility (POWER) (D.C. Official Code § 4-205.78 (2012 Repl.)). The proposed rules will also amend 29 DCMR § 5814.5 to refer to the new payment levels enumerated in Chapter 72.

The purpose of the proposed rulemaking is to modify the District of Columbia's (District's) public assistance payment levels for District residents participating in the TANF, General Assistance for Children, IDA, and POWER public benefit programs. The rules increase payment levels by thirteen and three tenths percent (13.3%) in accordance with D.C. Official Code § 4-205.52(d-1)(1)(B) (2017 Supp.) for Fiscal Year 2018. The rules also implement Section 5002(e) of the TANF Child Benefit Protection Congressional Review Emergency Amendment Act of 2017, which repeals Subsections 552 (c-2) and (c-3) of the Act that required reduction of public assistance payment levels for District of Columbia residents who have been participating in the TANF program for more than sixty (60) months. The elimination of this requirement is scheduled to be implemented in April 2018, when funds to support it will become available. In addition, the rules modify specific sections of 29 DCMR § 5814.5 to direct the application of the modified payment levels for public benefits, pursuant to Chapter 72.

Emergency rulemaking action is necessary for the immediate preservation of the welfare of District residents who rely on cash assistance from the District's TANF, General Assistance for Children, IDA, and POWER programs. The thirteen and three tenths percent (13.3%) increase in cash assistance payments for families went into effect on October 1, 2017 by operation of law. The elimination of TANF benefit payment rate decreases will become effective in April 2018. There is a significant likelihood that TANF customers over the sixty (60) month time limit will be confused

about when, whether, and by how much the TANF cash assistance benefits for their family will change in Fiscal Year 2018. It is imperative to adopt these rules on an emergency basis so that these vulnerable District families can plan for the change and protect their welfare.

DHS adopted the emergency rules on November 22, 2017, and they became effective immediately. The emergency rules shall remain in effect until March 21, 2018, one hundred twenty (120) days after the rules were adopted, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director gives notice of the intent to take final rulemaking action in not less than thirty (30) days after publication of this notice in the *D.C. Register*.

Chapter 72, STANDARDS OF ASSISTANCE AND PAYMENT LEVELS IN PUBLIC ASSISTANCE PROGRAMS, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 7200, STANDARDS OF ASSISTANCE AND PAYMENT LEVELS, is amended to read as follows:

7200.1 For the purposes of payments under TANF (D.C. Official Code § 205.52), POWER (D.C. Official Code § 4-205.78), General Assistance for Children (D.C. Official Code § 4-205.05a) and Interim Disability Assistance (D.C. Official Code § 4-204.07) (public assistance payments), effective October 1, 2017, the District of Columbia's payments levels are adjusted as set forth in § 7200.2.

7200.2 Pursuant to D.C. Official Code § 4-205.52(d), the payment levels set forth in this subsection shall apply to public assistance payments made after October 1, 2017.

Family Size	Standards of Assistance	Payment Level
1	\$ 450	\$362
2	\$ 560	\$450
3	\$ 712	\$575
4	\$ 870	\$703
5	\$ 1,002	\$811
6	\$ 1,178	\$953
7	\$ 1,352	\$1,093
8	\$ 1,494	\$1,207
9	\$ 1,642	\$1,329
10	\$ 1,786	\$1,443
11	\$ 1,884	\$1,522
12	\$ 2,024	\$1,637
13	\$ 2,116	\$1,711
14	\$ 2,232	\$1,804
15	\$ 2,316	\$1,873
16	\$ 2,432	\$1,968
17	\$ 2,668	\$2,157
18	\$ 2,730	\$2,208
19	\$ 2,786	\$2,252

7200.3 [REPEALED].

7200.4 Effective October 1, 2017 through March 31, 2018, the payment levels set forth in this subsection shall apply to recipients who have received TANF benefits for more than sixty (60) months:

	Family Size	Standards of Assistance	Payment Level
1		\$ 450	\$109
2		\$ 560	\$138
3		\$ 712	\$174
4		\$ 870	\$214
5		\$ 1,002	\$246
6		\$ 1,178	\$290
7		\$ 1,352	\$332
8		\$ 1,494	\$367
9		\$ 1,642	\$404
10		\$ 1,786	\$438
11		\$ 1,884	\$462
12		\$ 2,024	\$497
13		\$ 2,116	\$520
14		\$ 2,232	\$547
15		\$ 2,316	\$568
16		\$ 2,432	\$597
17		\$ 2,668	\$654
18		\$ 2,730	\$669
19		\$ 2,786	\$683

7200.5 Effective April 1, 2018, the payment levels set forth in § 7200.2 shall apply to recipients who have received TANF benefits for more than sixty (60) months.

Section 5814, INCOME DISREGARDS, of Chapter 58, TEMPORARY ASSISTANCE FOR NEEDY FAMILIES, is amended as follows:

Subsection 5814.5 is amended to read as follows:

5814.5 After application of these disregards in § 5814.4, the remaining income shall be compared to the Standard of Assistance for the applicable family unit size as specified in the District of Columbia Public Assistance Act of 1982, as amended. If the remaining income is less than the Standard of Assistance, the income shall be compared to the payment standard for the applicable family unit size as specified in the District of Columbia Public Assistance Act of 1982, as amended. The payment levels set forth in Chapter 72 of Title 29 DCMR shall apply to payments made beginning on October 1, 2017.

All persons who desire to comment on these proposed rules should submit their comments in writing to the Department of Human Services, 64 New York Avenue, N.E., 6th Floor, Washington, D.C. 20002, Attn: Anthea Seymour, Administrator, Economic Security Administration, or by email to Anthea.Seymour@dc.gov. All comments must be received by the Department of Human Services no later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of these rules and related information may be obtained by writing to the above address, or by calling the Department of Human Services at (202) 671-4200.

DC MAYOR'S OFFICE ON AFRICAN AFFAIRS**COMMISSION ON AFRICAN AFFAIRS****NOTICE OF COMMISSIONERS MEETING**

The Commission on African Affairs will be holding a meeting on Wednesday, February 7, 2018 from 6pm to 8pm

The meeting will be held at Franklin D. Reeves Center of Municipal Affairs, 2000 14th Street, NW, 6th floor, Washington, DC 20001.

The Location is closest to the U Street / African –American Civil war Memorial / Cardozo Metro station on the green and yellow line of the Metro.

All commission meetings are open to the public.

Below is a draft Agenda for this meeting. A final agenda will be posted on The Office of African Affairs website at oaa.dc.gov.

If you have any questions about the commission or its meetings, please contact oaa@dc.gov.

Phone: (202) 727-5634

DRAFT AGENDA

- I. Opening – Call to Order
- II. MOAA Updates and Announcements
- III. Chair Announcements
- IV. Public Comments
- V. Adjournment (8:00pm)

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, FEBRUARY 7, 2018
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson
Members: Nick Alberti, Mike Silverstein,
James Short, Donald Isaac, Sr., Bobby Cato, Rema Wahabzadah,

- Protest Hearing (Status)** **9:30 AM**
Case # 17-PRO-00091; Provost, LLC, t/a Provost, 2129 Rhode Island Ave NE
License #108015, Retailer CR, ANC 5C
Application for a New License
- Show Cause Hearing (Status)** **9:30 AM**
Case # 17-CMP-00621; Atlas Performing Arts Center, t/a Atlas Performing
Arts Center, 1333 H Street NE, License #85207, Retailer CX, ANC 6A
Purchased Alcohol from an Off-Premises Retailer
- Show Cause Hearing (Status)** **9:30 AM**
Case # 17-251-00160; Only Paradise Restaurant, Inc., t/a Golden Paradise
Restaurant, 3903 14th Street NW, License #98205, Retailer CR, ANC 4C
Violation of Settlement Agreement
- Show Cause Hearing (Status)** **9:30 AM**
Case # 17-CMP-00640; Mimi & D, t/a Vita Restaurant and Lounge/Penthouse
Nine, 1318 9th Street NW, License #86037, Retailer CT, ANC 2F
Violation of Settlement Agreement
- Show Cause Hearing (Status)** **9:30 AM**
Case # 17-CMP-00521; Tonic at Quigley's, LLC, t/a Tonic, 2036 G Street NW
License #75297, Retailer CR, ANC 2A
Substantial Change in Operation Without Board Approval

Board’s Calendar

February 7, 2018

Show Cause Hearing (Status) 9:30 AM

Case # 17-CC-00088; Whole Foods Market Group, Inc., t/a Fresh Fields Whole Foods Market, 1440 P Street NW, License #60167, Retailer B, ANC 2F
Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal Drinking Age

Fact Finding Hearing* 9:30 AM

Angel N. Portillo
Manager's Application

Show Cause Hearing* 10:00 AM

Case # 17-CMP-00492; Bhullers Corporation, t/a JJ Mutts Wine and Spirits 643 Pennsylvania Ave SE, License #25523, Retailer A, ANC 6B
Advertisements Relating to Alcoholic Beverages Exceeded 25% of the Window Space

Show Cause Hearing* 11:00 AM

Case # 17-251-00134; Kabin Group, LLC, t/a Kabin, 1337 Connecticut Ave NW, License #91276, Retailer CT, ANC 2B
Allowed Establishment to be Used for Unlawful or Disorderly Purposes

BOARD RECESS AT 12:00 PM

ADMINISTRATIVE AGENDA

1:00 PM

Fact Finding Hearing* 1:30 PM

Case # 17-CMP-00688; Acostas Group Corporation, t/a DC Grill Express, 1917 18th Street NW, License #99452, Retailer CR, ANC 2B
No ABC Manager on Duty, Operating After Board Approved Hours, Transfer of Ownership Without Board Approval

Protest Hearing* 2:00 PM

Case # 17-PRO-00064; Albo Corp, t/a Eleven Market, 1936 11th Street NW License #60236, Retailer B, ANC 1B
Application to Renew the License

***The Board will hold a closed meeting for purposes of deliberating these hearings pursuant to D.C. Official Code §2-574(b)(13).**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
INVESTIGATIVE AGENDA

WEDNESDAY, FEBRUARY 7, 2018
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On Wednesday, February 7, 2018 at 4:00 pm., the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed “to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations.”

1. Case# 17-251-00249, Mari Vanna Restaurant, 1141 Connecticut Avenue N.W., Retailer CR, License # ABRA-087559

2. Case# 17-CC-00126, King Avenue Liquors, 2757 M.L. King Jr. Avenue S.E., Retailer A, License # ABRA-060177

3. Case# 17-CC-00127, City Tap House, 901 9th Street N.W., Retailer CR, License # ABRA-101102

4. Case# 17-CC-00122, Penn Brach Liquor, 3228 Pennsylvania Avenue S.E., Retailer A, License # ABRA-101190

5. Case# 17-CMP-00718, Peace Lounge, 2632 Georgia Avenue N.W., Retailer CT, License # ABRA-106785

6. Case# 17-CMP-00716, Public Tenley, 4611 41st Street N.W., Retailer CR, License # ABRA-098973

7. Case# 17-CC-00139, Lupo Verde, 1401 T Street N.W., Retailer CR, License # ABRA-088527

8. Case# 17-CC-00137, Embassy Suites, 5335 Wisconsin Avenue N.W., Retailer CH, License # ABRA-074223

9. Case# 17-MGR-00002, ABC Manager, Joel Leos, License # ABRA-097417

10. Case# 17-CC-00134, Hard Rock Café, 999 E Street N.W., Retailer CR, License # ABRA--14130

11. Case# 17-CC-00140, The Corner Market, 400 East Capitol Street N.E., Retailer B, License # ABRA-074845

12. Case# 17-CMP-00722, Chinese Disco, 3251 Prospect Street N.W., Retailer CR, License # ABRA-078058

13. Case# 17-CMP-00679, 9 & P St. Liquor, 1428 9th Street N.W., Retailer A, License # ABRA-101095

14. Case# 17-CC-00099, The Dupont Circle Hotel, 1500 New Hampshire Avenue N.W., Retailer CH, License # ABRA-000616

15. Case# 17-CC-00103, Fort Drum Market, 4686 Martin Luther King Jr. Avenue S.W., Retailer B, License # ABRA-096107

16. Case# 17-CMP-00715, Mulebone, 2121 14th Street N.W., Retailer CR, License # ABRA-078882

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, FEBRUARY 7, 2018 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Application for Safekeeping of License – Original Request. ANC 4C. SMD 4C10. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***Bless 7 to 10 Market***, 434 Shepherd Street NW, Retailer B, License No. 090618.

2. Review Application for Safekeeping of License – Original Request. ANC 1C. SMD 1C01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***Ababa Ethiopian Restaurant***, 2106 18th Street NW, Retailer CR, License No. 103289.

3. Review Application for Safekeeping of License – Original Request. ANC 2B. SMD 2B01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Restaurant Nora***, 2130 Florida Avenue NW, Retailer CR, License No. 000979.

4. Review Application for Safekeeping of License – Original Request. ANC 6B. SMD 6B03. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***Porron***, 525 8th Street SE, Retailer CT, License No. 106740.

5. Review Request for Change of Hours. ***Approved Hours of Operation***: Sunday-Thursday 7am to 2am, Friday-Saturday 7am to 4am. ***Approved Hours of Alcoholic Beverage Sales and Consumption***: Sunday 10am to 2am, Monday-Thursday 8am to 2am, Friday-Saturday 8am to 3am. ***Approved Hours of Live Entertainment***: Sunday-Thursday 6pm to 2am, Friday-Saturday 6pm to 3am. ***Proposed Hours of Operation***: Sunday-Thursday 7am to 2am, Friday-Saturday 7am to 7am (24-hour operations). ***Proposed Hours of Alcoholic Beverage Sales and Consumption***: Sunday -Thursday 8am to 2am, Friday-Saturday 8 am to 3am. ANC 1B. SMD 1B12. No outstanding fines/citations. No outstanding violations. No pending enforcement

matters. No Settlement Agreement. *Busboys & Poets*, 1390 V Street NW, Retailer CR, License No. 071220.

6. Review Request for Change of Hours. *Approved Hours of Operation Inside Premises:* Sunday-Saturday 12am to 12am (24 hour operations). *Approved Hours of Alcoholic Beverage Sales and Consumption Inside Premises:* Sunday 10:30am to 2am, Monday-Thursday 11:30am to 2am, Friday 11:30am to 2:30am, Saturday 10:30am to 2:30am. *Approved Hours of Operation and Alcoholic Beverage Sales and Consumption for Summer Garden:* Saturday and Sunday 10:30am to 1am, Monday-Friday 11:30am to 1am. *Approved Hours of Live Entertainment:* Sunday-Saturday 6pm to 1am. *Proposed Hours of Alcoholic Beverage Sales and Consumption Inside Premises:* Sunday 10am to 2am, Monday-Thursday 11:30am to 2am, Friday 11:30am to 2:30am, Saturday 10am to 2:30am. *Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption for Summer Garden:* Saturday and Sunday 10am to 1am, Monday-Friday 11:30am to 1am. ANC 2B. SMD 2B05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Hotel Tabard Inn*, 1739 N Street NW, Retailer CH, License No. 001445.
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***In accordance with D.C. Official Code §2-547(b) of the Open Meetings Amendment Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

DC COMMISSION ON THE ARTS AND HUMANITIES

NOTICE OF FUNDING AVAILABILITY

FY 2018 Public Art Project Grant

The DC Commission on the Arts and Humanities (CAH) announces the availability of grants to support *Designed to Recycle*, which is a public art project seeking proposals for two-dimensional art to be printed on vinyl and wrapped onto District recycling trucks by individual artists in the District of Columbia during Fiscal Year 2018.

At the time of application, individuals must be artists or arts professionals aged 18 or older and demonstrate proof of residency in the District of Columbia of at least one (1) year. Applicants must also be in good standing with the DC the Office of Tax and Revenue (OTR), and the Internal Revenue Service (IRS).

All eligible applications are reviewed through a competitive process. CAH will publish evaluation criteria and eligibility requirements in its forthcoming grant guidelines. All activities funded by the grant must occur between May 1, 2018 and be completed by September 30, 2018.

For Deadline the Request for Proposals (RFP) will be available electronically beginning February 09, 2018 on the CAH website at <http://dcarts.dc.gov/>. Applicants must apply online starting February 16, 2018. The deadline for the application is March 23, 2018.

For more information, please contact:

Ron Humbertson
Art Collections Registrar
DC Commission on the Arts and Humanities
200 I (EYE) St. SE
Washington, DC 20003
(202) 719-6527 or ron.humbertson@dc.gov

DEPARTMENT OF BEHAVIORAL HEALTH**DISTRICT OF COLUMBIA TASK FORCE ON SCHOOL MENTAL HEALTH****NOTICE OF PUBLIC MEETING**

The Members of the District of Columbia Task Force on School Mental Health will hold its next meeting on Friday, February 9, 2018 3:00 – 5:00 PM. The meeting will be held at the DC Department of Behavioral Health, 64 New York Avenue NE, Room 284, Washington, D.C. 20002. Below is the agenda for this meeting. Information about the Task Force can be found on the Office of the Deputy Mayor for Health and Human Services website at <https://dmhhs.dc.gov/>. Please RSVP to Sakina B. Thompson, sakina.thompson@dc.gov, and for additional information call (202) 727-7973 or e-mail sakina.thompson@dc.gov.

AGENDA

- I.** Welcome and Introductions
- II.** Review Agenda
- III.** Presentations
- IV.** Discussion
- V.** Next Steps
- VI.** Adjourn

BRIYA PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Environmental Branding for Fort Totten School Site**

Briya Public Charter School seeks competitive proposals to design environmental branding for indoor common spaces at its Fort Totten school location. For a copy of the RFP, please email Amy Houser at ahouser@briya.org. Please include “RFP Requested – Environmental Branding” in the subject line of the email. All proposals must be submitted by 3:00 pm on Monday, February 12, 2018.

CITY ARTS AND PREP PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

General Contractor

City Arts + Prep PCS solicits proposals for the following:

- **General Contractor**

Proposals and requests for the full RFP should be emailed to bids@cityartspcs.org no later than 5:00 P.M., Friday, February 16, 2018.

**D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUSINESS AND PROFESSIONAL LICENSING ADMINISTRATION**

SCHEDULED MEETINGS OF BOARDS AND COMMISSIONS

February 2018

CONTACT PERSON	BOARDS AND COMMISSIONS	DATE	TIME/ LOCATION
Grace Yeboah Ofori	Board of Accountancy	2	8:30 am-12:00pm
Patrice Richardson	Board of Appraisers	21	8:30 am-4:00 pm
Patrice Richardson	Board Architects and Interior Designers	No Meeting	8:30 am-1:00 pm
Andrew Jackson	Board of Barber and Cosmetology	5	10:00 am-2:00 pm
Sheldon Brown	Boxing and Wrestling Commission	15	7:00-pm-8:30 pm
Brittani Strozier	Board of Funeral Directors	1	12:00pm-4:00 pm
Avis Pearson	Board of Professional Engineering	22	9:00 am-1:30 pm
Patrice Richardson	Real Estate Commission	13	8:30 am-1:00 pm
Jennifer Champagne	Board of Industrial Trades	20	1:00pm-3:30 pm
	Asbestos Electrical Elevators Plumbing Refrigeration/Air Conditioning Steam and Other Operating Engineers		

Dates and Times are subject to change. All meetings are held at 1100 4th St., SW, Suite E-300 A-B Washington, DC 20024. For further information on this schedule, please contact the front desk at 202-442-4320.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**Board of Real Estate Appraisers
1100 4th Street SW, Room E300
Washington, DC 20024**

MEETING AGENDA

**February 21, 2018
10:00 AM**

1. Call to Order – 10:00 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Draft Minutes, January 17, 2018
7. Executive Session Executive Session (Closed to the Public) pursuant to the authority of D.C. Official Code Section 2-575(b)(4)(A) to seek the advice of counsel, D.C. Official Code Section 2-575(b)(9) to discuss disciplinary matters, and D.C. Official Code Section 2-775(b)(13) to deliberate upon a decision in an adjudication action or proceeding
 - A. Legal Committee Recommendations
 - B. Review – Applications for Licensure
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – March 21, 2018 at 10:00 a.m.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**DC Board of Accountancy
1100 4th Street SW, Room E300
Washington, DC 20024**

MEETING AGENDA

**Friday, February 2, 2018
9:00 AM**

1. Call to Order – 9:00 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Accept Meeting Minutes,
7. Executive Session - Pursuant to § 2-575(4) (a), (9) and (13) the Board will enter executive session to receive advice from counsel, review application(s) for licensure and discuss disciplinary matters.
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – March 2, 2018 at 9:00 a.m.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

DISTRICT OF COLUMBIA - BOARD OF BARBER AND COSMETOLOGY
1100 4th Street SW, Room E-300, Washington DC 20024
Monday, February 5, 2018
AGENDA

1. **CALL to ORDER-** *10:00 a.m. (Public Session)*
2. **ATTENDANCE**
3. **COMMENTS** from the Public
4. **DRAFT MINUTES** – *December 4, 2017 - vote*
5. **CORRESPONDENCE**
6. **OLD BUSINESS**
 - A. Budget Discussion/Barber and Cosmetology General Fund/Autonomy
 - B. Owner vs. Manager License Discussion Continued
7. **NEW BUSINESS**
 - A. 12th Annual Barber and Cosmetology Practitioners Forum Updates
8. **BOARD COMMITTEES**
 - A. FY18 Committees
9. **EXECUTIVE SESSION - (CLOSED TO PUBLIC)**

Pursuant to § 2-575(4) (a), (9) and (13) the Board will enter executive session to receive advice from counsel, review application(s) for licensure and discuss disciplinary matters.
10. **FINAL RECOMMENDATIONS/ACTIONS**
11. **ADJOURN - vote**

Next Scheduled Regular Meeting is **Monday March 5, 2018 at 10am.**
1100 4th Street, SW, Room 300B, Washington, DC 20024

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**D.C. Board of Funeral Directors
1100 4th Street SW, Room E300
Washington, DC 20024**

MEETING AGENDA

**Thursday, February 01, 2018
1:00 PM.**

1. Call to Order – 1:00 p.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Minutes, 1/4/2018
6. Motion - Executive Session (Closed to the Public) to consult with an attorney pursuant to D.C. Official Code § 2-575(b) (4) (A); D.C. Official Code § 2-575(b) (9) (13) (14) to discuss complaints/legal matters, applications and legal counsel report.
 - A. Applications
 - B. Complaints/Investigation
7. Old Business
8. New Business
9. Adjourn
10. Next Scheduled Board Meeting –March 1, 2018 at 1:00 p.m.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**District of Columbia Board of Industrial Trades
1100 4th Street, S.W., Room 300
Washington, D.C. 20024**

**AGENDA
February 20, 2018**

1. Call to Order – 1:00 p.m.
2. Minutes - Draft, December 20, 2017
3. Comments from the Public
4. Executive Session (Closed to the Public) to consult with an attorney pursuant to D.C. Official Code §2-575(b)(4)(A); D.C. Official Code 2-575(b)(9) to discuss complaints/legal matters, applications and legal counsel report.
5. Recommendations
6. Old Business
7. New Business
8. Adjourn

Next Scheduled Regular Board Meeting, March 20, 2018
1100 4th Street, SW, Room 300B, Washington, DC 20024

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**District of Columbia Board of Professional Engineers
1100 4th Street SW, Room 380
Washington, DC 20024**

AGENDA

**February 22, 2018 ~ Room 300
10:00 A.M. (Application Review by Board Members)**

11:00 A.M.

- 1) Call to Order – 11:00 a.m.
- 2) Attendance
- 3) Executive Session - **Pursuant to § 2-575(4) (a), (9) and (13) the Board will enter executive session – Closed to the Public**
 - Deliberation over applications for licensure
 - Review complaints and investigations
- 4) Comments from the Public
- 5) Review of Minutes
- 6) Recommendations
 - Applications for Licensure
 - Legal Committee Report
- 7) Old Business
- 8) New Business
- 9) Adjourn

Next scheduled meeting – March 22, 2018

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**D.C. Boxing and Wrestling Commission
1100 4th Street SW, Room E200
Washington, DC 20024**

MEETING AGENDA

**February 15, 2018
7:00 PM.**

1. Motion - Executive Session (Closed to the Public) to consult with an attorney pursuant to D.C. Official Code § 2-575(b)(4)(A); D.C. Official Code § 2-575(b)(9) to discuss complaints/legal matters, applications and legal counsel report.
2. Call to Order – 7:00 p.m.
3. Members Present
4. Staff Present
5. Comments from the Public
6. Review of Correspondence
7. Approval of Minutes
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – March 15, 2017 at 7:00 p.m.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**Real Estate Commission
1100 4th Street SW, Room E300
Washington, DC 20024**

MEETING AGENDA

**February 13, 2018
10:00 AM**

1. Call to Order – 10:00 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Draft Minutes, January 9, 2018
7. Executive Session (Closed to the Public) pursuant to the authority of D.C. Official Code Section 2-575(b)(4)(A) to seek the advice of counsel, D.C. Official Code Section 2-575(b)(9) to discuss disciplinary matters, and D.C. Official Code Section 2-775(b)(13) to deliberate upon a decision in an adjudication action or proceeding)
 - A. Legal Committee Recommendations
 - B. Review – Applications for Licensure
8. Old Business
9. New Business
10. Adjourn

Next Scheduled Board Meeting – March 13, 2018 at 10:00 a.m.

D.C. BILINGUAL PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS**

D.C. Bilingual Public Charter School in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995 solicits proposals for vendors to provide the following services for SY17.18:

- Third Party Inspections and Material Testing Services

Proposal Submission

A Portable Document Format (pdf) election version of your proposal must be received no later than 3:00 p.m. EST on Thursday, February 15, 2018. Please email Elle Carne ecarne@programmanagers.com or call [202-540-2425](tel:202-540-2425) for more information or to receive a copy of the RFP.

No phone call submission or late responses please. Interviews, samples, demonstrations will be scheduled at our request after the review of the proposals only.

DEPARTMENT OF EMPLOYMENT SERVICES
NOTICE OF FUNDING AVAILABILITY (NOFA)
FISCAL YEAR 2018 (FY18)

The District of Columbia Department of Employment Services (DOES) is issuing this Notice of Funding Availability (NOFA) to announce its intent to solicit multiple grant applications for opportunities to support various innovative workforce development initiatives. The purpose of the grant is to support innovative workforce development solutions that acquaint and enrich essential skill sets for District of Columbia (District) residents to increase their success rate of entering in and sustaining employment that forges a path to the middle class and further stimulates the District's economy.

Eligibility: Applicants shall be a Non-Profit or For-Profit entity that is eligible to do business with the District government. Additional eligibility requirements will be detailed in the individual Request for Applications (RFA) and in the Notice of Grant Award. Where applicable, the individual RFAs will be released via the ARIBA e-Sourcing system or through the online Grants Management System.

Award Period: The grant period will be determined and established in each individual RFA or by the agency.

Available Funding: DOES has identified up to \$4,000,000 in available funding and anticipates awarding multiple grants.

Selection Process: Pursuant to the DC Office of Grants and Partnerships Grants Sourcebook and City Wide Manual, DOES may award grants through competitive, sole-source and unsolicited proposals.

Reservations

DOES reserves the right to issue amendments subsequent to the issuance of this NOFA or individual RFA, or to rescind the NOFA or individual RFA.

If you have any questions about this NOFA, please contact:

Anthony Gamblin
Program Manager
Office of Grants Administration and Resource Allocation
Department of Employment Services
4058 Minnesota Avenue, NE, Suite 5300
Washington, DC 20019
Email: OGAGrants@dc.gov

DEPARTMENT OF ENERGY AND ENVIRONMENT**NOTICE OF FILING OF AN APPLICATION
TO PERFORM VOLUNTARY CLEANUP**

**2009 8th Street NW
Case No. VCP2017-052**

Pursuant to § 636.01(a) of the Brownfield Revitalization Amendment Act of 2000, effective June 13, 2001 (D.C. Law 13-312; D.C. Official Code §§ 8-631 et seq., as amended April 8, 2011, DC Law 18-369 (herein referred to as the “Act”)), the Voluntary Cleanup Program in the Department of Energy and Environment (DOEE), Land Remediation and Development Branch, is informing the public that it has received an application to participate in the Voluntary Cleanup Program (VCP). The applicant for real property located at 2009 8th Street NW, Washington, DC 20001 is 2009 8th Street Apartments LLC, 1420 Spring Hill Road, Suite 420, McLean, Virginia 22102. The application identifies the presence of petroleum compounds on the property. The applicant intends to redevelop the subject property into a mixed use building.

Pursuant to § 636.01(b) of the Act, this notice will also be mailed to the Advisory Neighborhood Commission (ANC-1B) for the area in which the property is located. The application is available for public review at the following location:

Voluntary Cleanup Program
Department of Energy and Environment (DOEE)
1200 First Street, NE, 5th Floor
Washington, DC 20002

Interested parties may also request a copy of the application by contacting the Voluntary Cleanup Program at the above address or by calling (202) 535-2289. An electronic copy of the application may be viewed at <http://doee.dc.gov/service/vcp-cleanup-sites>.

Written comments on the proposed approval of the application must be received by the VCP program at the address listed above within twenty-one (21) days from the date of this publication. DOEE is required to consider all relevant public comments it receives before acting on the application, the cleanup action plan, or a certificate of completion.

Please refer to Case No. VCP2017-052 in any correspondence related to this application.

**DEPARTMENT OF HEALTH CARE FINANCE
NOTICE OF PUBLIC MEETING**

Department of Health Care Finance Pharmacy and Therapeutics Committee

The Department of Health Care Finance (DHCF) Pharmacy and Therapeutics Committee (Committee), pursuant to the requirements of Mayor's Order 2007-46, dated January 23, 2007 hereby announces a public meeting of the Committee to obtain input on the review and maintenance of a Preferred Drug List (PDL) for the District of Columbia. The meeting will be held **Thursday, March 1st, 2018, at 2:30PM at 441 Fourth Street NW, Washington, DC 20001, on the 10th Floor in the Main Street Conference Room 1028.** Please note that government issued ID is needed to access the building. Use the North Lobby elevators to access the 11th floor.

The Committee will receive public comments from interested individuals on issues relating to the topics or class reviews to be discussed at this meeting. The clinical drug class review for this meeting will include:

Androgenic Agents	Hypoglycemics, Incretin Mimetics/Enhancers
Antibiotics, Vaginal	Hypoglycemics, Insulins
Antiemetics/Antivertigo Agents	Hypoglycemics, Meglitinides
Antihyperuricemics	Hypoglycemics, Metformins
Bladder Relaxants	Hypoglycemics, SGLT2 Inhibitors
Bone Resorption and Suppression Agents	Hypoglycemics, Thiazolidinediones
BPH Agents	Pancreatic Enzymes
Erythropoiesis Stimulating Agents	Phosphate Binders
GI Motility, Chronic, Irritable Bowl Syndrome	Progestins For Cachexia
Growth Hormone	Proton Pump Inhibitors
H. Pylori Agents	Ulcerative Colitis Agents
Histamine-2-Receptor Antagonists	Vaginal Estrogen Preparations

Any person or organizations who wish to make a presentation to the DHCF P&T Committee should furnish his or her name, address, telephone number, and name of organization represented by calling (202) 442-9076 **no later than 4:45PM on Tuesday, February 20, 2018.** The person or organization may also submit the aforementioned information via e-mail to Charlene Fairfax (charlene.fairfax@dc.gov).

An individual wishing to make an oral presentation to the Committee will be limited to three (3) minutes. A person wishing to provide written information should supply twenty (20) copies of the written information to the Committee **no later than 4:45PM on February 20, 2018.**

Handouts are limited to no more than two standard 8-1/2 by 11 inch pages of "bulleted" points (or one page front and back). The ready-to-disseminate, written information can also be mailed **to arrive no later than February 20, 2018** to:

Department of Health Care Finance
Attention: Charlene Fairfax, RPh, CDE
441 4th Street NW, Suite 900 South
Washington, DC 20001

**DISTRICT OF COLUMBIA COMMISSION ON JUDICIAL DISABILITIES AND
TENURE****Judicial Tenure Commission Begins Reappointment Evaluation of
Judge Fern Flanagan Saddler**

This is to notify members of the bar and the general public that the Commission has begun inquiries into the qualifications of **Judge Fern Flanagan Saddler** of the Superior Court of the District of Columbia, who is a declared candidate for reappointment as an Associate Judge upon the expiration of her term on June 30, 2018.

Under the provisions of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198, 87 Stat. 796 (1973), §443(c) as amended by the District of Columbia Judicial Efficiency and Improvement Act, P.L. 99-573, 100 Stat. 3233, §12(1) provides in part as follows:

"...If a declaration (of candidacy) is so filed, the Tenure Commission shall, not less than sixty days prior to the expiration of the declaring candidate's term of office, prepare and submit to the President a written statement of the declaring candidate's performance during his present term of office and his fitness for reappointment to another term. If the Tenure Commission determines the declaring candidate to be well qualified for reappointment to another term, then the term of such declaring candidate shall be automatically extended for another full term, subject to mandatory retirement, suspension, or removal. If the Tenure Commission determines the declaring candidate to be qualified for reappointment to another term, then the President may nominate such candidate, in which case the President shall submit to the Senate for advice and consent the renomination of the declaring candidate as judge. If the President determines not to so nominate such declaring candidate, he shall nominate another candidate for such position only in accordance with the provisions of subsections (a) and (b). If the Tenure Commission determines the declaring candidate to be unqualified for reappointment to another term, then the President shall not submit to the Senate for advice and consent the nomination of the declaring candidate as judge and such judge shall not be eligible for reappointment or appointment as a judge of a District of Columbia court."

The Commission hereby requests members of the bar, litigants, interested organizations, and members of the public to submit any information bearing on Judge Saddler's qualifications which it is believed will aid the Commission. The cooperation of the community at an early stage will assist the Commission in fulfilling its responsibilities. The identity of any person submitting materials shall be kept confidential unless expressly authorized by the person submitting the information.

All communications should be received by the Commission no later than **March 9, 2018**, and addressed to:

District of Columbia Commission on Judicial Disabilities and Tenure
Building A, Room 246
515 Fifth Street, N.W.
Washington, D.C. 20001
Telephone: (202) 727-1363
Fax: (202) 727-9718
E-Mail: dc.cjdt@dc.gov

In addition, comments concerning Judge Saddler may be submitted by an online survey available on the Commission's website, <https://www.cjdt.dc.gov>, and using the link "Evaluate Candidates", or using the link <https://www.surveymonkey.com/r/AssociateJudgeSuperiorCourt1219>.

The members of the Commission are:

Jeannine C. Sanford, Esq., Chairperson
Anthony T. Pierce, Esq., Vice Chairperson
Hon. Joan L. Goldfrank
Hon. Colleen Kollar-Kotelly
William P. Lightfoot, Esq.
David P. Milzman, M.D.
Nikki Sertsu

BY: /s/ Jeannine C. Sanford, Esq.
Chairperson

**DISTRICT OF COLUMBIA COMMISSION ON JUDICIAL DISABILITIES AND
TENURE**

**Judicial Tenure Commission Begins Review of
Judge Frederick H. Weisberg**

This is to notify members of the bar and the general public that the Commission is reviewing the qualifications of **Judge Frederick H. Weisberg** of the Superior Court of the District of Columbia, who is retiring and has requested a recommendation for an initial appointment as a Senior Judge.

The District of Columbia Retired Judge Service Act P.L. 98-598, 98 Stat. 3142, as amended by the District of Columbia Judicial Efficiency and Improvement Act, P.L. 99-573, 100 Stat. 3233, §13(1) provides in part as follows:

"...A retired judge willing to perform judicial duties may request a recommendation as a senior judge from the Commission. Such judge shall submit to the Commission such information as the Commission considers necessary to a recommendation under this subsection.

(2) The Commission shall submit a written report of its recommendations and findings to the appropriate chief judge of the judge requesting appointment within 180 days of the date of the request for recommendation. The Commission, under such criteria as it considers appropriate, shall make a favorable or unfavorable recommendation to the appropriate chief judge regarding an appointment as senior judge. The recommendation of the Commission shall be final.

(3) The appropriate chief judge shall notify the Commission and the judge requesting appointment of such chief judge's decision regarding appointment within 30 days after receipt of the Commission's recommendation and findings. The decision of such chief judge regarding such appointment shall be final."

The Commission hereby requests members of the bar, litigants, former jurors, interested organizations, and members of the public to submit any information bearing on Judge Weisberg's qualifications which it is believed will aid the Commission. The cooperation of the community at an early stage will assist the Commission in fulfilling its responsibilities. The identity of any person submitting materials will be kept confidential unless expressly authorized by the person submitting the information.

All communications should be mailed, faxed, or e-mailed by **March 9, 2018**, and addressed to:

District of Columbia Commission on Judicial Disabilities and Tenure
Building A, Room 246
515 Fifth Street, N.W.
Washington, D.C. 20001
Telephone: (202) 727-1363
FAX: (202) 727-9718
E-Mail: dc.cjdt@dc.gov

In addition, comments concerning Judge Weisberg may be submitted by an online survey available on the Commission's website, <https://www.cjdt.dc.gov>, and using the link "Evaluate Candidates", or using the link <https://www.surveymonkey.com/r/SeniorJudgeSuperiorCourt1216A>.

The members of the Commission are:

Jeannine C. Sanford, Esq., Chairperson
Anthony T. Pierce, Esq., Vice Chairperson
Hon. Joan L. Goldfrank
Hon. Colleen Kollar-Kotelly
William P. Lightfoot, Esq.
David P. Milzman, M.D.
Nikki Sertsu

BY: /s/ Jeannine C. Sanford, Esq.
Chairperson

KIPP DC PUBLIC CHARTER SCHOOLS**REQUEST FOR PROPOSALS****LED Lighting**

KIPP DC is soliciting proposals from qualified vendors for LED Lighting. The RFP can be found on KIPP DC's website at <http://www.kippdc.org/procurement>. Proposals should be uploaded to the website no later than 5:00 P.M., EST, on February 16, 2018. Questions can be addressed to nate.schwartz@kippdc.org.

LAYC CAREER ACADEMY PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

LAYC Career Academy Public Charter School is seeking bids from prospective vendors to provide:

- Daily Cleaning Services for LAYC Career Academy Building

Proposals are due no later than 4:00 P.M., EST, Friday, February 16, 2018. No proposals will be accepted after the deadline. Questions can be addressed to jeremy@laycca.org.

Details:

LAYC Career Academy is soliciting proposals for a one (1) year contract, with opportunity for renewal, for cleaning services for our school building. Vendors are required to submit written proposals that present the vendor's qualifications and understanding of the work to be performed. The vendor's proposal should be prepared simply and economically and should provide all the information it considers pertinent to its qualifications for the Specifications listed herein. Emphasis should be placed on completeness of services offered and clarity of content.

The proposal must be submitted no later than 4:00PM on February 16 2018, to the following email address: jeremy@laycca.org, Attn: Request for Proposal for Cleaning Services.

- a) Proposal Content - A completed proposal must contain the following:
 - Proposal Form & Signature Page – the proposal form and signature page must be completed and signed by an individual authorized to bind the vendor. All proposals submitted without such proposal form and signature page may be deemed nonresponsive.
 - References – Proposals shall include a list of three (3) references including name, address, phone number and contact person
- b) Proposal Period – Services are to start on March 1, 2018.
- c) Proposal Award - It is the intent of the school to accept the lowest responsible proposal, provided it has been submitted in accordance with the proposal documents. If a proposal is selected it will be the most advantageous regarding price, quality of service, the vendors qualifications and capabilities to provide the specified service, and other factors which LAYC Career Academy may consider. The school reserves the right to accept or reject any or all proposals and to waive irregularities therein
- d) Term and Renewal – The term of the Contract shall be for one (1) year unless earlier terminated. The Contract may be terminated by either party with a ninety (90) day written notice. The services are to start March 1, 2018.
- e) Basis of Payment – Payment will be made to the contractor within 30 days upon receiving the contractor's monthly invoice. The invoice shall state the date the service was performed. Special services provided will be billed via a separate invoice and described by the service provided and the date it was provided.

Specifications

The specifications outline the requirements for cleaning services for the building. A list of each building, the address and approximate square footage is outlined to assist you in your quote. A walkthrough can be scheduled by appointment to view the buildings beforehand. Building includes approximately 21,500 Square Feet among 4 floors and a basement, and includes a cafeteria.

Responsibilities of the Contractor:

1. Empty all trash and recycling receptacles, replace liners, as needed, and remove trash to dumpsters on site.
2. Thoroughly vacuum carpeted areas, including stairs and hallways
3. Clean all entrance doors, inside and out
4. Sweep entrance mats
5. Remove cobwebs
6. Lock designated doors and set alarms when exiting the building
7. Dust window sills, blinds
8. Dust furniture, tables, chairs, and desks
9. Clean, and sanitize drinking fountains
10. Spot clean walls and doors
11. Turn off designated lights after cleaning
12. Disinfect counters, sinks, and table tops in kitchens
13. Clean inside and outside of refrigerators and microwaves
14. Damp mop hard surface floors
15. Clean and disinfect all toilets and urinals
16. Wash both sides of toilet seats with germicide detergent solution
17. Clean all mirrors
18. Clean and refill all soap, paper towel, tissues, sanitary napkin holders, and seat cover dispensers

Pricing should be inclusive of all staffing, labor, and necessary supplies.

LAYC CAREER ACADEMY PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS**

LAYC Career Academy Public Charter School is seeking bids from prospective vendors to provide:

- Security Services for LAYC Career Academy Building

Proposals are due no later than 4:00 P.M., EST, Friday, February 16, 2018. No proposals will be accepted after the deadline. Questions can be addressed to jeremy@laycca.org.

Details:

LAYC Career Academy is soliciting proposals for a one (1) year contract, with opportunity for renewal, for Security services for our school building. Vendors are required to submit written proposals that present the vendor's qualifications and understanding of the work to be performed. The vendor's proposal should be prepared simply and economically and should provide all the information it considers pertinent to its qualifications for the Specifications listed herein. Emphasis should be placed on completeness of services offered and clarity of content.

The proposal must be submitted no later than 4:00PM on February 16 2018, to the following email address: jeremy@laycca.org, Attn: Request for Proposal for Cleaning Services.

- a) Proposal Content - A completed proposal must contain the following:
 - Proposal Form & Signature Page – the proposal form and signature page must be completed and signed by an individual authorized to bind the vendor. All proposals submitted without such proposal form and signature page may be deemed nonresponsive.
 - References – Proposals shall include a list of three (3) references including name, address, phone number and contact person
- b) Proposal Period – Services are to start on March 6, 2018.
- c) Proposal Award - It is the intent of the school to accept the lowest responsible proposal, provided it has been submitted in accordance with the proposal documents. If a proposal is selected it will be the most advantageous regarding price, quality of service, the vendors qualifications and capabilities to provide the specified service, and other factors which LAYC Career Academy may consider. The school reserves the right to accept or reject any or all proposals and to waive irregularities therein
- d) Term and Renewal – The term of the Contract shall be for one (1) year unless earlier terminated. The Contract may be terminated by either party with a ninety (90) day written notice. The services are to start March 6, 2018.
- e) Basis of Payment – Payment will be made to the contractor within 30 days upon receiving the contractor's monthly invoice. The invoice shall state the date the service was performed.

Specifications

The specifications outline the requirements for cleaning services for the building. A walkthrough can be scheduled by appointment to view the buildings beforehand. Building includes approximately 21,500 Square Feet among 4 floors and a basement, and includes a cafeteria.

Responsibilities of the Contractor:

Provide 1 unarmed security guard for 8 hours per day that the building is open. Hours will be 8 AM to 4 PM

Duties will include:

- Greet all guests and students entering
- Utilize hand wand metal detector
- Perform building walk throughs when necessary
- Respond to emergency or security situations
- Participate in fire drills and building evacuations
- Use “walkie talkie” to communicate with staff
- Ensure general building safety
- Treat all guests with respect and courtesy

Pricing should be inclusive of all staffing, labor, and necessary supplies. Pricing should reflect per hour price of actual services rendered.

**THE NOT-FOR-PROFIT HOSPITAL CORPORATION
BOARD OF DIRECTORS
NOTICE OF EMERGENCY TELECONFERENCE MEETING**

LARUBY Z. MAY, BOARD CHAIR

The Board of Directors of the Not-for-Profit Hospital Corporation, an independent instrumentality of the District of Columbia government, will hold an emergency teleconference meeting on Friday, January 19, 2018 at 10AM on the campus of United Medical Center, 1310 Southern Avenue, SE, Washington, DC 20032. For reasons stated on the draft agenda below, the Board anticipates entering a closed executive session. Notice will be posted in the Hospital and or on the United Medical Center's website (www.united-medicalcenter.com).

DRAFT AGENDA

- I. CALL TO ORDER**
- II. DETERMINATION OF A QUORUM**
- III. APPROVAL OF AGENDA**
- IV. ROLL CALL VOTE TO ENTER EXECUTIVE CLOSED SESSION**
- V. EXECUTIVE CLOSED SESSION (NON-PUBLIC):** to discuss contract terms pursuant to D.C. Official Code § 2-575(b)(2); and to seek the legal advice pursuant to D.C. Official Code § 2-575(b)(4); to discuss disciplinary matters pursuant to D.C. Official Code § 2-575(b)(9); to discuss personnel matters pursuant to D. C. Official Code § 2-575(b)(10); to discuss investigations pursuant to D. C. Official Code § 2-575(b)(14).
- VI. RESUMPTION OF THE PUBLIC MEETING**
- VII. ADJOURNMENT**

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

REVISED 2018 SCHEDULE OF COMMISSION OPEN MEETINGS

The Public Service Commission of the District of Columbia (“Commission”) hereby gives notice, pursuant to D.C. Official Code Section 2-576, of the Commission’s 2018 Schedule of Open Meetings to consider formal case matters and other applications that require the Commission’s action. The proposed agenda and time for each meeting will be posted on the Commission’s website (www.dcpssc.org) and in the Commission Secretary’s Office not less than 48 hours before each meeting. The Meetings are scheduled to convene at 2:00 p.m. and will be held in the Commission’s Hearing Room, 1325 G Street, NW, Suite 800, Washington, D.C.

20005:

January 17, 2018
January 31, 2018

July 25, 2018

February 14, 2018
February 21, 2018

August 8, 2018

March 7, 2018
March 21, 2018

September 5, 2018
September 26, 2018

April 4, 2018
April 18, 2018

October 10, 2018
October 24, 2018

May 2, 2018
May 23, 2018

November 21, 2018

June 6, 2018
June 20, 2018

December 5, 2018
December 19, 2018

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA
RECOMMENDATIONS FOR APPOINTMENTS AS NOTARIES PUBLIC

Notice is hereby given that the following named persons have been recommended for appointment as Notaries Public in and for the District of Columbia, effective on or after March 1, 2018.

Comments on these potential appointments should be submitted, in writing, to the Office of Notary Commissions and Authentications, 441 4th Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on February 2, 2018. Additional copies of this list are available at the above address or the website of the Office of the Secretary at www.os.dc.gov.

**D.C. Office of the Secretary
Recommendations for Appointments as DC Notaries Public**

Effective: March 1, 2018

Page 2

Akalu	Bethelehem	PNC Bank 1050 Connecticut Avenue, NW	20036
Anders-Kraus	Brigitte	District Equities Real Estate, LLC 1333 V Street, NW	20009
Andrews	Laura M.	Smithsonian Institution 425 3rd Street, SW, Suite 850	20024
Ashton-Bankhead	Felicia	Munger Tolles & Olson, LLP 1155 F Street, NW, Suite 700	20004
Asmuth	Margot	Martone Construction 5165 MacArthur Boulevard, NW	20016
Beato	Matthew Walker	Self 1920 14th Street, NW	20009
Bell	Brian C.	PNC Bank 1050 Connecticut Avenue, NW	20036
Benfield	Gisele	WKM Solutions, LLC 1020 16th Street, NW, Suite 602	20036
Bogue	Janet L.	Self 3601 Connecticut Avenue, NW, Apartment 506	20008
Brooks	Toshiba	Brustein & Manasevit, PLLC 1023 15th Street, NW, Suite 500	20005
Brown Jr.	Lincoln G.	Howard University Employee Federal Credit Union 525 Bryant Street, NW	20059
Buzard	Janice K.	Trout Cacheris & Janis, PLLC 1350 Connecticut Avenue, NW, Suite 300	20036
Cantor	Noah	KVS Title, LLC 230 6th Street, NE	20002
Carrion	Tiffany Sabrina	Agriculture Federal Credit Union 14th and Independence Avenue, SW	20024

**D.C. Office of the Secretary
Recommendations for Appointments as DC Notaries Public**

Effective: March 1, 2018

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Carter	Jameka M.	Overseas Private Investment Corporation 1100 New York Avenue, NW	20527
Catalano	Susan	DHA Group, Inc 1299 Pennsylvania Avenue, NW, Suite 425	20004
Chesley Jr.	Lloyd E.	Lloyd E. Chesley Jr. Insurance 3500 12th Street, NE	20017
Clare Fraser	Casey	Optoro 1001 G Street, NW, Suite 1200	20001
Cohen	Stephanie L.	Wilson Walsh & Eskovitz, LLP 2001 M Street, NW, 10th Floor	20036
Cullinan	Joseph	Self 1718 Newton Street, NE	20018
Davis	Judy A.	Federal Maritime Commission 800 North Capitol Street, NW	20573
Davis	Patricia M.	Self 455 Massachusetts Avenue, NW, Suite 150	20001
Deckelbaum	Todd S.	Settlementcorp 5301 Wisconsin Avenue, NW, Suite 710	20015
del Cuadro- Zimmerman	Judith	del Cuadro-Zimmerman & Mount, PLLC 718 7th Street, NW, 2nd Floor	20001
Dennis	Kevin L.	Dennis Signing Services 612 Whittier Street, NW	20012
Dheming	Mercy V.	State Department Federal Credit Union 2201 C Street, NW, Room B641	20520
Dombrowski	Edward Joseph	Food & Friends 219 Riggs Road, NE	20011

D.C. Office of the Secretary
Recommendations for Appointments as DC Notaries PublicEffective: March 1, 2018
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Dunn	Nadine M.	Foote Properties, LLC, DBA, The Jocelyn Group 2711 12th Street, NE	20018
Edwards	Meredith	Vanda Pharmaceuticals 2200 Pennsylvania Avenue, NW, Suite 300E	20037
Edwards	Nicole	Lloyd Chesley Jr. State Farm Insurance 3500 12th Street, NE	20017
Ellenberger	Geraldine C.	Cleary Gottlieb Steen & Hamilton, LLP 2000 Pennsylvania Avenue, NW	20006
El-Tayef	Ethel	World Wildlife Fund, Inc 1250 24th Street, NW	20037
Encarnacion	Tomas E.	Self 2209 1st Street, NW	20001
Felder	Kim Y.	Crowell & Moring, LLP 1001 Pennsylvania Avenue, NW	20004
Fintor	Shelley	Goodwin Procter, LLP 901 New York Avenue, NW	20001
Francis	Tessa	Sughrue Mion, PLLC 2100 Pennsylvania Avenue, NW	20001
Gadson	Wendy A.	Long and Foster Real Estate 3527 12th Street, NE	20017
Gibbs	Tanora	Self (Dual) 1605 Montana Avenue, NE	20018
Grandy	Sherri P.	Pepco Federal Credit Union 701 Ninth Street, NW, Suite 6230	20068
Gray	Nakeesha R.	Self 2001 Tremont Street, SE	20020
Green	Cydney J.	PNC Bank 4249 Wisconsin Avenue, NW	20016

**D.C. Office of the Secretary
Recommendations for Appointments as DC Notaries Public**

Effective: March 1, 2018

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Griffin	Marie	Wells Fargo Bank 1200 First Street, NE	20002
Gurdon	Emily Hughes	Breast Care For Washington 4 Atlantic Street, SW	20032
Hackerson	Keviousna	TD Bank 801 7th Street, NW	20006
Haney	Susan	Beer Institute 440 1st Street, NW, Suite 350	20001
Hill	Dana E.	Broughton Construction Company, LLC 4832 Nannie Helen Burroughs Avenue, NE	20019
Huang	Larry Y.	Self (Dual) 1436 Foxhall Road, NW	20001
Ingram-White	Cheryl A.	University Legal Services 220 I Street, NE, Suite 130	20002
Irwin	Corinne S.	Self 560 N Street, SW, Suite N402	20024
Jackson	Ivana	Blue Skye Construction 5125 MacArthur Boulevard, NW	20016
Johnson	Tracy	Davis Wright Tremaine, LLP 1919 Pennsylvania Avenue, NW, Suite 800	20006
Jones	Catherine	Self 4734 Blaine Street, NE	20019
Jones	Charlene M.	Outten & Golden, LLP 601 Massachusetts Avenue, NW, Suite 200W	20001
Jones	Janet	Self 617 21st Street, NE	20002
Jones	Nicole V.	Self 2822 31st Street, SE, Apartment C726	20020

**D.C. Office of the Secretary
Recommendations for Appointments as DC Notaries Public**

Effective: March 1, 2018

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Kozub	Arielle	Enlightened, Inc. 1101 Connecticut Avenue, NW, Suite 800	20036
Lawson	Toni Monae	Arnold & Porter Kaye Scholer, LLP 601 Massachusetts Avenue, NW	20001
Lee	Elyse M.	U.S. Immigration and Customs Enforcement 1201 Maryland Avenue, SW, Suite 400	20024
Lyons	Carolyn L.	Cohen, Dippell and Everist, P.C 1420 N Street, NW, Suite One	20005
Madden	Brian H.	Academic Search, Inc 1015 18th Street, NW, Suite 510	20036
Manuel	Ashley Elisabeth	Outten & Golden, LLP 601 Massachusetts Avenue, NW, Suite 200W	20001
Marcus	Samantha C.	Richards Kibbe & Orbe, LLC 701 8th Street, NW	20001
Martin	Colleen J.	Self 3770 McKinley Street, NW	20015
Martirosian	Alexis	BSA Legal Group 1250 Connecticut Avenue, NW, Suite 200	20036
Massac	Yasmine	Self 7417 16th Street, NW	20012
McCray	Adrienne	Lee and Associates, Inc 638 Eye Street, NW	20001
Miree	Camilla L.	Providence Health Systems 1150 Varnum Street, NE	20017
Mitropoulos	Christina Gianna	American Apparel & Footwear Association 740 6th Street, NW	20001
Mulligan	Carol V.	The World Bank 1818 H Street, NW	20433

D.C. Office of the Secretary
 Recommendations for Appointments as DC Notaries Public

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O'Keefe	Patrick J.	Wilson Walsh & Eskovitz, LLP 2001 M Street, NW, 10th Floor	20036
Osborne	Tiffany M.	Venable, LLP 600 Massachusetts Avenue, NW	20001
Perez-Lopez	Isis M.	Bank Fund Staff Federal Credit Union 1725 I Street, NW, Suite 105	20006
Peshkoff	Svetlana A.	Shaw, Bransford & Roth, P.C. 1100 Connecticut Avenue, Suite 900	20036
Peterson	Sandra	The Veterans Consortium Pro Bono Program 2101 L Street, NW	20037
Polite	Susan	Miller & Chevalier Chartered 900 16th Street, NW	20006
Rembert	Philisha C.	Self (Dual) 111 Rock Creek Church Road, NW	20011
Rivera Perez	Laly	Democratic Attorneys General Association 1401 H Street, NW, Suite 750	20005
Rodriguez	Digna J.	United States Secret Service 245 Murray Lane, SW, Building T-5	20223
Rowe	Darlene Denise	Superior Court of the District of Columbia 500 Indiana Avenue, NW	20001
Seth	Maria M.	Sonosky, Chambers, Sachse, Endreson & Perry, LLP 1425 K Street, NW	20005
Simmons	Virginia	Finnegan, Henderson, Farabow, Garrett & Dunner, LLP 901 New York Avenue, NW	20001
Smith	Mariama	M&T Bank 1899 L Street, NW	20036
Stiles	Shannon	The Veterans Consortium Pro Bono Program 2101 L Street, NW	20037

**D.C. Office of the Secretary
Recommendations for Appointments as DC Notaries Public**

Effective: March 1, 2018

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Sullivan	Jennifer L.	Ain & Bank, PC 1900 M Street, NW, Suite 600	20036
Summerville Jr.	Charles	PNC Bank 4249 Wisconsin Avenue, NW	20016
Sushner	Steven M.	District Title 1150 Connecticut Avenue, NW, Suite 201	20036
Thompson	Myra	Bank Fund Staff Federal Credit Union 1725 I Street, NW, Suite 150	20006
Ticas	Flor V.	Lafayette Federal Credit Union 1300 Pennsylvania Avenue, NW, Room C1-80	20523
Toney	Jeffrey J.	Office of Tax and Revenue 1101 4th Street, SW	20024
Viands	Kim M.	57 Stars, LLP 616 H Street, NW, Suite 450	20001
Vickery	Denise Dobner	Esquire Solutions 1025 Vermont Avenue, NW, Suite 503	20005
Ward	Pamela	Self 221 63rd Street, NE	20019
Washington	Anastasia	United States Postal Services 475 L'Enfant Plaza, SW, Room 1P830	0
Wiggins	Tommy E.	Self 1401 Hamilton Street, NW	20002
Williams	Tony	Department of Health and Human Services 64 New York Avenue, NE	20002
Wilson	Jennifer L.	TD Bank 2000 K Street, NW	20006
Wilson Sr.	Kevin	BB&T 1909 K Street, NW	20006

**D.C. Office of the Secretary
Recommendations for Appointments as DC Notaries Public****Effective: March 1, 2018****Page 9**

Wright	Cortanai Deone	Citi Bank 2221 I Street, NW, Suite 400	20037
Wright	Josiah A.	BB & T Bank 1099 New York Avenue, NW, Suite 100	20001
Yoon	Catherine C.	Smithsonian National Museum of Natural History 10th Street and Constitution Avenue, NW	20560
Zeager	Curtis L.	Woodland Estate & Title 3729 Carpenter Street, SE	20020

**WASHINGTON CONVENTION AND SPORTS AUTHORITY
(T/A EVENTS DC)**

NOTICE OF EMERGENCY MEETING

The Board of Directors of the Washington Convention and Sports Authority (t/a Events DC), in accordance with the District of Columbia Self-Government and Governmental Reorganization Act of 1973, D.C. Official Code §1-207.42 (2006 Repl., 2011 Supp.), and the District of Columbia Administrative Procedure Act of 1968, as amended by the Open Meetings Amendment Act of 2010, D.C. Official Code §2-576(5) (2011 Repl., 2011 Supp.), hereby gives notice that it has scheduled an Emergency Meeting for Wednesday, January 24, 2018, for the purpose of receiving a report from its Finance Committee.

The meeting will take place in the Dr. Charlene Drew Jarvis Board Room of the Walter E. Washington Convention Center, 801 Mount Vernon Place, N.W., Washington, D.C. 20001, beginning at 11:30 a.m.

For additional information, please contact:

Sean Sands
Chief of Staff
Washington Convention and Sports Authority
t/a Events DC

(202) 249-3012
sean.sands@eventsdc.com

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Environmental Quality and Operations Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Environmental Quality and Operations Committee will be holding a meeting on Thursday, February 15, 2018 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dcwater.com.

DRAFT AGENDA

- | | | |
|-----|-------------------------------|---|
| 1. | Call to Order | Committee Chairperson |
| 2. | AWTP Status Updates | Assistant General Manager,
Plant Operations |
| | 1. BPAWTP Performance | |
| 3. | Status Updates | Chief Engineer |
| 4. | Project Status Updates | Director, Engineering &
Technical Services |
| 5. | Action Items | Chief Engineer |
| | - Joint Use | |
| | - Non-Joint Use | |
| 6. | Water Quality Monitoring | Assistant General Manager,
Consumer Services |
| 7. | Action Items | Chief Engineer
Assistant General Manager,
Consumer Services |
| 8. | Emerging Items/Other Business | |
| 9. | Executive Session | |
| 10. | Adjournment | Committee Chairperson |

OFFICE ON WOMEN’S POLICY AND INITIATIVES
DISTRICT OF COLUMBIA COMMISSION FOR WOMEN

NOTICE OF PUBLIC MEETING

John A. Wilson Building, 1350 Pennsylvania Ave. Room 527, Washington, DC 20004
Conference Call #: 1-712-770-4700
Participant Code: 428857#
Tuesday, February 6, 2018
6:45 PM- 8:00 PM

AGENDA

Call to Order..... Commissioner Carolyn B. Rudd, Chair

Roll Call.....Commissioner Jacquelyn Glover,
Secretary

Approval of Minutes from January 9, 2018 Meeting

Correspondence/Notification(s)

Unfinished Business

New Business

- Report from the Commission Chair
- Committee Reports
- 2018 Leadership Conference
- Updates from the Director of MOWPI
- Other items for consideration

Announcements/Good of the Order

Next Meeting Date

Adjournment

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Appeal No. 19274 of Advisory Neighborhood Commission 3D, pursuant to 11 DCMR §§ 3100 and 3101,¹ from a March 24, 2016 determination letter issued by the Zoning Administrator, Department of Consumer and Regulatory Affairs, pertaining to the proposed redevelopment of the Spring Valley Shopping Center, located at the 4800 block of Massachusetts Avenue, N.W. in the C-2-A Zone (Square 1500, Lots 1-3).

HEARING DATES: June 14, 2016, June 28, 2016, and July 6, 2016²

DECISION DATE: July 6, 2016

ORDER DENYING APPEAL

This appeal was submitted on April 4, 2016 by the Advisory Neighborhood Commission (“ANC”) 3D, to challenge a letter issued by the Zoning Administrator (“ZA”), at the Department of Consumer and Regulatory Affairs (“DCRA”), issued March 24, 2016, determining that a proposed redevelopment of the Spring Valley Shopping Center was compliant with the parking requirements of the Zoning Regulations (“Determination Letter”). Following a full public hearing, the Board of Zoning Adjustment (the “Board”) voted to affirm the decision of the ZA and deny the appeal.

PRELIMINARY MATTERS

Notice of Public Hearing

The Office of Zoning scheduled a hearing on June 14, 2016. In accordance with 11 DCMR §§ 3112.13 and 3112.14, the Office of Zoning mailed notice of the hearing to the Appellants, to DCRA, and to the owner of the subject property, Washington Real Estate Investment Trust (“REIT”) (“the Owner”).

¹ All references to Title 11 DCMR within the body of this order are to provisions that were in effect on the date the case was decided by the Board of Zoning Adjustment (the “1958 Zoning Regulations”), but which were repealed as of September 6, 2016 and replaced by new text (the “2016 Zoning Regulations”). The repeal and adoption of the replacement text has no effect on the validity of the Board’s decisions in this case or of this order.

² The initial hearing was administratively rescheduled to June 28, 2016, then the hearing was postponed to July 6, 2016 at the Appellant’s request.

Parties

Appellant

The Appellant is ANC 3D, the ANC for the area within which the property that is the subject of the appeal is located. The Appellant was represented by the ANC Chairperson, Thomas M. Smith.

DCRA

DCRA was represented by its Office of the General Counsel, Maximillian Tondro, Esq. The Zoning Division of DCRA is headed by the Zoning Administrator (“ZA”), Matthew LeGrant, and is charged with administering the Zoning Regulations. Mr. LeGrant issued the Determination Letter in question and testified at the public hearing on behalf of DCRA.

Property Owner

As the owner of the subject property, Washington REIT is automatically a party under 11 DCMR § 3199.1, and will be referred to as the Owner. The Owner was represented by Goulston & Storrs, Allison Prince, Esq. and Christine Roddy, Esq.

ANC 3D Report

In a resolution dated February 2, 2016, issued after a regularly scheduled meeting with a quorum present, the ANC voted to appeal “any decision by the [ZA] to issue permits without first requiring [the Owner] to file and secure a parking variance from the BZA.” (Exhibit 5.) Prior to the appeal being heard, the ANC made an additional filing in which it amplified its statement for challenging the ZA’s Determination Letter of March 24, 2016. (Exhibit 27.) Because the ANC is the appellant in this case, the ANC participated fully during the appeal.

Motion to Intervene

On June 9, 2016, the Spring Valley-Wesley Heights Citizen Association filed a Motion to Intervene as a party in support of the appeal. (Exhibit 24.) However, at the public hearing on July 6, 2016, Jeffrey Kraskin, the Citizen Association’s representative, agreed to join with the ANC in making its case to the Board. (Hearing Transcript “Tr.,” p. 8.)

FINDINGS OF FACT

The Property

1. The property which is the subject of this appeal is known as the Spring Valley Shopping Center (“the Property”).
2. The Property consists of three lots (Lots 1, 2, and 3) which comprise the entirety of Square 1500.
3. The Property is in the C-2-A Zone District.
4. The Property was designated as a historic landmark by the District of Columbia Historic Preservation Review Board (“HPRB”) on July 19, 1989.
5. The Property currently has five buildings, three of which are attached (buildings located at 4872, 4866 and 4860 Massachusetts Avenue), totaling approximately 75,265 sf gross floor area spread over the three record lots. The remainder of the land area provides accessory parking spaces. The buildings and parking were constructed prior to the adoption of the 1958 Zoning Regulations, which became effective in May 12, 1958.
6. The Owner intends to combine the three existing record lots into a single record lot, and construct a new infill building of approximately 15,159 total sf gross floor (“the Addition”) to be devoted to retail uses.
7. The Property currently has 72 parking spaces, eight of which extend into the public space along 49th Street, N.W. The Owner proposed to provide 65 parking spaces entirely within the Property’s new lot lines.

The Parking Issues

A. Whether additional spaces are needed.

8. Pursuant to 11 DCMR § 2101.1 the off-street parking spaces required for the Addition’s retail use is “[i]n excess of 3,000 sq. ft., 1 for each additional 300 sq. ft. of gross floor area and cellar floor area.” With a proposed square footage of 15,159, the Addition would ordinarily be required to provide 41 new parking spaces.
9. However, § 2120.3 provides that “a historic resource and any additions thereto are exempt from providing additional parking unless: (a) the gross floor area of the historic resource is being increased by 50% or more, and (b) where parking requirement attributable to the increase in gross floor area is at least four (4) spaces.”

10. Having been landmarked, the Property is a “historic resource” within the meaning of 11 DCMR § 2120.2,³ and the Addition is an “addition thereto.”
11. As to the two circumstances that preclude the Addition from the exemption, the first condition does not apply because the new square footage is far less than 50% of the Property’s existing gross floor area.
12. The Appellant notes that exemption does “not apply to new unattached structures constructed on the same lot as a historic resource,” (11 DCMR § 2120.1), and contends that the Addition meets that description.
13. The Owner submitted into the record a portion of the plans and elevations for the project submitted to Historic Preservation Review Board as part of the Owner’s application for conceptual review (“the HPRB Plans”).
14. The HPRB Plans show that the facade of the Addition would be fastened to the 4860 Massachusetts Avenue building through mortar joints (Details 2 and 5 on Sheet A3.01 of the plans, contained in Attachment B to Exhibit 25, of the Owner’s Pre-Hearing Statement.).
15. After the HPRB granted its conceptual approval, but before the issuance of the Determination Letter, the Owner and its legal Counsel met with the ZA to confirm the validity of its proposed parking plan.
16. The ZA was not provided with the HPRB plans, but was furnished with a land title survey, an “Existing Site Plan” dated September 25, 2015 and a “Proposed Site Plan.”
17. The Proposed Site Plan showed that the Addition would be attached to the 4860 Massachusetts Avenue building.
18. At the hearing, the ZA indicated that he “looked at those plans and ... said, okay ... I don't see any gaps between portions of the structure that ... did not have a level of detail that of course we see today. But my recollection is it was presented to me as attached and I didn't dwell too much on that point at that point in time.” (Tr., pp. 55-56.) The ZA explained that “later at the building permit stage this will have to be verified.” (Tr., p. 54.)⁴

³ 2120.2 For the purposes of this section, a historic resource is a building or structure listed in the District of Columbia Inventory of Historic Sites or a building or structure certified in writing by the State Historic Preservation Officer as contributing to the character of the historic district in which it is located.

⁴ Because this and other determination letters are non-binding, the Board has held that they are subject to being dismissed. *See* Appeal No. 18522 of Washington Harbour Condominium Unit Owners’ Association. The Board dismissed Appeal No. 18522 based upon the ZA’s representation that “at the time a building permit application and plan set is submitted, even in the case where there was a prior determination letter ... that application [gets] the same

19. The ZA's complete ruling on the exemption issue is as follows:

Pursuant to Section 2120.3 of the Zoning Regulations, an addition to 'a historic resource' does not trigger a parking requirement unless the gross floor area of the historic resource is increased by at least 50% and the increase triggers a requirement of at least 4 spaces. Under Section 2120.2, the 'historic resource' is that listed in the D.C. Inventory - in this case, 'Square 1500' or the entire Property of the five existing buildings. The Addition consists of approximately 15,159 square feet, which increases the Property's existing 75,265 square foot gross floor area by just over 20%, far below the 50% threshold established by Section 2120.3. Therefore, the Addition does not trigger a parking requirement under Section 2101.1, as I previously confirmed in my Letter dated January 15, 2015.

(Exhibit 27.)

20. The land survey, the Existing Site Plan, and the Proposed Site Plan were attached to the letter.
21. Although the ZA made no explicit finding as to whether the Addition would be attached, the Board concludes from his testimony that the ZA made that finding, subject to future verification, and that the finding formed a basis for the Determination Letter.

B. Whether the parking spaces now provided are being reduced.

22. Subsection 2100.1 provides in pertinent part that "all buildings or structures erected on or after May 12, 1958 [i.e. the effective date of the 1958 Zoning Regulations] shall be provided with parking spaces to the extent specified in § 2101."
23. Although § 2101.1 grandfathered properties with less than the number of parking spaces that became required as of May 12, 1958, the Zoning Regulations also required that "if the existing number of parking spaces *now provided* is less than or equal to the minimum number of parking spaces *now required* by this chapter, the number of parking spaces cannot be reduced." (Emphasis added).
24. For the reasons stated in the conclusions of law, the Board concludes the phrases "now provided" and "now required" refer to parking provided and required as of May 12, 1958.
25. The parties agree that as of May 12, 1958, the number of parking spaces that served the buildings on the Property was less than required by § 2101.1.

thorough vetting analysis." However, since neither DCRA nor the Owner moved to dismiss the instant appeal, the Board heard and decided it, but reserves its right to dismiss similar appeals in the future whether or not a motion is made.

26. The parties also agree that: (a) as of May 12, 1958, eight of these spaces extended beyond the Property's front lot line on to the public space along 49th Street; (b) that this configuration exists at present; (c) that a public space permit was and still is required for the occupation of such public space; and (d) no public space permit has been issued for the eight spaces.
27. The parties further agree that these eight spaces do not comply with the Zoning Regulations. (Tr., pp. 15-16, and 31.)
28. As previously found, the Owner met with the Zoning Administrator to discuss its proposed parking plan. At that meeting, the ZA was provided an Existing Site Plan showing September 25, 2015 and a Proposed Site Plan.
29. The Existing Site Plan showed 64 parking spaces within the Property's lot lines and eight parking spaces extending into the public right of way. The Proposed Site Plan, in addition to showing that the Addition would be attached, showed 65 parking spaces located entirely within the Property's lot lines. The Owner asked the ZA to confirm that the eight spaces shown on the "Existing Site Plan" as extending into the public space should not be counted towards "the existing number of parking spaces now provided."
30. In the Determination Letter, the Zoning Administrator stated that he "agreed that the eight spaces that straddle the street lot line along 49th Street, and which intrude partly into the public right of way do not count as existing parking subject to Section 2100.10." He concluded that the "spaces violate at least the intent of Section 2116.4's bar on parking between street lot lines and the nearest building facades⁵ and lack the requisite public space permit." The ZA thus concluded that "the number of existing parking spaces required to be retained under Section 2100.10(a) on the Property is 64." Since that was less than 65 spaces shown in the Proposed Parking Plan, the ZA concluded the plan would comply with the Zoning Regulations.
31. At the hearing, the ZA noted that his decision not to count noncompliant parking spaces against a building's minimum parking requirement is a longstanding practice and through prior experience learned that the District Department of Transportation (DDOT) will require the removal of parking spaces that extend from private property onto public space when redevelopment occurs. (Tr., p. 50.)

⁵ Subsection 2116.4 provides:

2116.4 Parking spaces shall not be located in the following areas:

- (a) Between a building restriction line and a lot line abutting a street; or
- (b) Except in an Industrial District or a building used solely as a parking attendant shelter, between a lot line abutting a street and the more restrictive of either a building façade or a line extending from and parallel to a building façade.

32. In an email dated June 24, 2016 to the Owner's legal counsel, a DDOT Senior Transportation Planner/Engineer confirmed that the Owner was advised by DDOT that the eight parking spaces that intruded into the public space violate District regulations and that the Owner was expected (and had agreed) to remove them.
33. The Board finds that the 2015 Existing Site Plan provides the best evidence of the parking that was provided on the Property as of May 12, 1958.
34. The Appellant claims that there were at least 80 spaces at that time based upon aerial photographs it claims were taken in 1957 and 1963. (Exhibit 10.) However, these photographs do not show sufficient detail to support the assertion.
35. The Appellant has submitted "Engineering Designs" in support of its claim that in 1987 the Property had (plus or minus) 76 spaces. Although one of the documents states "Existing Spaces 76," there is no evidence that such spaces ever existed and none of the spaces depicted extend into the 49th Street right-of-way. That same document also states "Proposed Spaces 90," but no evidence was presented showing the plan's implementation and the Board credits the Owner's assertion that it was not.

C. Whether bicycle spaces are required.

36. The minimum bicycle parking requirements of § 2119.2 are tied to an automobile parking requirement. Since the ZA's Determination Letter found (as does the Board) that the Addition is exempt from providing additional automobile parking spaces, the ZA found that the § 2119.2 requirement does not apply either.

CONCLUSIONS OF LAW

The Board is authorized by the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to hear and decide appeals when it is alleged by the appellant that there is an error in any decision made by an administrative officer in the administration of the Zoning Regulations. (11 DCMR §§ 3100.2 and 3200.2.) In an appeal, the Board may reverse or affirm, in whole or in part, or modify the decision appealed from. (11 DCMR § 3100.4.) After considering the pleadings, the evidence in the record and the argument by the parties, the Board is not persuaded by the Appellant that the ZA erred in finding the proposed parking plan to be valid.

The Addition is exempt from providing additional parking under § 2120.3

The Appellant does not contest that the Addition is a historic resource or that it will increase the gross floor area of the existing buildings on the landmarked site by 50% or more. Rather, the Appellant contends that the exemption is not available because the Addition is a "new unattached structure" within the meaning of § 2120.1. Although the proposed infill development is certainly new, it is also definitely attached.

The terms “attached” and “unattached” are not defined in the Zoning Regulations. Therefore, under § 199.2 of the Regulations, the Board must apply the definition contained in Webster’s Unabridged Dictionary.⁶

The definition of “attached” in Webster’s includes the concepts of “fastening”, “joining”, and “connecting”. As the plans and elevations approved by HPRB show, the facade of the Addition will be fastened to the 4860 Massachusetts Avenue building by mortar joints. (See, Finding of Fact 14.) However, the ZA’s finding that the exemption was available was not based upon these plans, but the Proposed Site Plan. Although the Proposed Site Plan did not show the degree of detail as the HPRB Plans entered in the record of this case, the Proposed Site Plan clearly showed that the new and existing buildings would be attached. In any event, the Appellant did not object to the introduction of the HPRB Plans. And although the Board’s decision remains primarily based upon the facts available to the ZA at the time the Determination Letter was issued, such additional materials “have proven useful in ‘confirming our view as to the proper disposition of this case.’” *Appeal No. 16998 of Advisory Neighborhood Commission 5B* (2004), quoting, *George Washington University v. D.C. Board of Zoning Adjustment*, 831 A.2d 921, 945 n22 (2003).

Thus, the Board concludes that the Addition is not a “new unattached structure” within the meaning of § 2120.1 and the parking exemption therefore applies.

The ZA correctly determined that 64 existing parking spaces were being provided.

As noted in the finding of facts, § 2100.10(a) disallows the reduction of existing parking spaces “now provided” when a property’s parking is less than what the Zoning Regulations “now required.” The provision became effective on May 12, 1958. Therefore, the phrases “now provided” and “now required” either refer to that date or the date upon which the Zoning Administrator determines compliance with the provision. To find that the latter date applies would mean that an Owner could at any point after 1958 reduce the parking on its property and then later claim that the reduced parking should be considered the spaces “now provided.” The point of § 2100.10 is to freeze grandfathered parking as of the date increased parking became required. And for this site, that date is May 12, 1958.⁷

⁶ At the public hearing, Appellant argued that, instead of utilizing Webster’s as a guide, the Board should look to various definitions in the 2016 Zoning Regulations (regulations which were adopted, but not yet in effect at the time of the hearing), and zoning regulations from Philadelphia and a county in California. (Tr., p. 20) to conclude that the addition would be “unattached.” However, as explained, that would be contrary to the directive in § 199.2 of the zoning regulations in effect when the Determination Letter was issued. Further, the Board would have been ill advised to rely upon regulations that were not in effect, particularly since the Commission made over 100 changes to the adopted rules prior to September 6 effective date. See Z.C. Orders 08-06C through E.

⁷ The Board has reviewed its prior decisions involving § 2100.10 and found all but one to be summary orders, and the one full order granted relief from the provision without determining the applicable timeframe.

The Appellant claims that this benchmark date is superseded by § 2120.4, which provides that “[a]ny parking provided for a historic resource in excess of that which existed at the time the historic resource was listed in the District of Columbia Inventory of Historic Sites or the historic district was created shall be exempt from § 2115, and §§ 2117.5 and 2117.6.” The Board agrees with DCRA that the date that a property is listed in the registry is only germane to the limited exemption § 2120.4 provides from certain location and size requirements and does not alter the benchmark time for determining whether a property is providing less parking than required and what the existing parking is.

Although the Appellant focused on the parking in existence as of the Property’s listing date, it did argue that approximately 80 spaces were in existence as of May 12, 1958. The proffered aerial photographs are not sufficiently clear to demonstrate what parking existed on that date. The 1987 plans purporting to show 76 existing spaces and 90 proposed spaces were conceptual in nature and never effectuated. Indeed, the plans do not show any spaces extending into the 49th Street right-of-way, even though Appellant agrees that this configuration existed long before 1958 and has not changed since.

The earliest evidence in the record that unequivocally shows the parking that existed on the Property is the 2015 Existing Site Plan, which shows an existing parking layout of 72 spaces, with eight of those spaces partially within the public space right-of-way along 49th Street. The Appellant does not dispute that those eight spaces violate both the Zoning and Public Space Regulations. Nevertheless, the Appellant claims that these spaces should be counted as “now provided” claiming that it is counterintuitive to ignore a parking space based upon its legal status, particularly when doing so absolves an owner of the need to seek variance relief.

The Board agrees with the Zoning Administrator that the Zoning Regulations should be applied in a consistent manner. The Board further finds that the ZA has customarily refused to count noncompliant spaces towards a property’s parking requirement. The ZA explained that it is often the case after a property is purchased for redevelopment, the new owner discovers that some of the parking spaces extend into public space. The ZA indicated that based upon his experience he knows “that in the course of the redevelopment, when they get to public space they’re not going to be allowed.” (Tr., p. 40.) Therefore, when presented with a development with parking spaces that extend into the public space, the Owner is told “to take those off their count and they revise their plans to show that they’re eliminated. That’s just been my practice. Not only in this case, but in other cases.” *Id.*

This is a reasonable interpretation of the Zoning Regulations and should be consistently applied, both when additional parking is required or, as in the case here, when the property is exempt from compliance.

No bicycle parking is required at the Property.

Lastly, the Appellant claims that the parking plan does not provide for the required bicycle

parking. Again, the Appellant is incorrect. No bicycle parking is required under the Zoning Regulations. Subsection 2119.2 of the Regulations requires bicycle parking spaces equal to at least five percent (5%) of the number of parking spaces required under § 2101.1 (the parking schedule). However, as discussed previously, as a historic resource, the Property is exempted from providing additional parking spaces under § 2120.3.

ANC Great Weight.

The Board is required to give “great weight” to the issues and concerns raised by the affected ANC (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code §1.309.10(d) (2012 Repl.)).) In this case, ANC 3C was the appellant and submitted a resolution in support of the appeal. For the reasons discussed above, the Board does not find the ANC’s advice to be persuasive.

Based on the evidence of record and the submissions of the parties, the Board concludes that DCRA did not err when it issued its Determination Letter finding that the proposed parking plan did not require zoning relief. It is therefore **ORDERED** that the ZA’s determination is **SUSTAINED**, and this appeal is **DENIED**.

It is therefore **ORDERED** that this appeal is hereby **DENIED**.

VOTE: **3-1-1** (Frederick L. Hill, Anita Butani D’Souza, Jeffrey L. Hinkle to DENY the Appeal and SUSTAIN the Zoning Administrator’s decision; Robert E. Miller opposed to the motion; Marnique Y. Heath not participating.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: January 22, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19600 of Team Washington, Inc. d/b/a Domino's Pizza, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 513.1(c), and pursuant to Subtitle X, Chapter 10, for a variance from the use conditions of Subtitle U § 513.1(c)(1), to establish a fast food and food delivery establishment in the MU-27 and R-13 zones at premises 2330 Wisconsin Avenue N.W. (Square 1300, Lot 815).¹

HEARING DATES: November 8, 2017 and December 20, 2017²
DECISION DATE: January 17, 2018

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 2.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 3B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3B, which is automatically a party to this application. The ANC submitted a timely report in support of the application. The ANC report indicated that at a duly noticed and scheduled public meeting on November 2, 2017³, at which a quorum was

¹ This self-certified application for a special exception under Subtitle U § 513.1(c)(1) is to allow a fast food establishment and food delivery service in an existing building, with variances from two conditions of Subtitle U § 513.1(c)(1) relating to distance from an R zone and the proposed garbage enclosure. The property is split zoned MU-27 / R-13, with the building located in the MU portion and the R portion used as a parking lot for the building's retail tenants. The parking lot was approved by the BZA, subject to five conditions, in Case No. 18752. The Board previously approved another fast food establishment in a separate portion of the same building (See, Case Nos. 18137 and 2010).

² The case was administratively postponed from October 25, 2017 to November 8, 2017 (Exhibits 36, 40, and 48) and further postponed to the hearing of December 20, 2017 at the Applicant's request (Exhibit 41). The Board of Zoning Adjustment granted that request. (Exhibit 43.) The case was heard on December 20, 2017 and scheduled for decision on January 17, 2018.

³ The ANC's resolution indicated that the Applicant appeared before the ANC on September 14, 2017 and October 12, 2017 and allowed the comment period to extend to the November 2nd meeting as well.

present, the ANC voted 5-0-0 in support of the application with six conditions. The ANC's report stated no issues or concerns. (Exhibit 49.) The Board adopted the ANC's conditions in this order.

The Office of Planning ("OP") submitted two timely reports in regard to this case. In its second, supplemental report, dated January 12, 2018, OP recommended approval of the application, based on post-hearing information submitted by the Applicant, in the record at Exhibit 61, further justifying their request. (Exhibit 62.) In the initial OP report, OP recommended denial of the application, and recommended adoption of the conditions proposed by the ANC in the event the application was approved. (Exhibit 56.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application.⁴ (Exhibit 38.)

The National Capital Planning Commission ("NCPC") submitted a report indicating that the proposal is not inconsistent with the Federal Elements of the Comprehensive Plan. (Exhibit 50.)

Letters and a petition in opposition to the application from neighbors were submitted to the record. (Exhibits 30, 34, 45, 58, 59.) At the December 20, 2017 hearing, Adriana Radulescu and Matthew Wexler testified in opposition to the application.

Variance Relief

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for an area variance from the use conditions of Subtitle U § 513.1(c)(1), to establish a fast food and food delivery establishment in the MU-27 and R-13 zones. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking a variance from 11 DCMR Subtitle U § 513.1(c)(1), the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief

⁴ In its report, DDOT noted that the Applicant will not be allowed to block travel lanes on Wisconsin Avenue, N.W. as part of their pick-up, drop-off, and delivery operations.

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle U § 513.1(c), to establish a fast food and food delivery establishment in the MU-27 and R-13 zones. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2 and Subtitle U § 513.1(c), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 3 AND WITH THE FOLLOWING CONDITIONS:**

1. Delivery drivers shall park in the rear parking lot until 10:30 p.m., after which time the drivers will first attempt to park in front of the store, along Wisconsin Avenue, to pick up orders for delivery. If no available parking spaces are available in the front of the store after 10:30 p.m. at night, the delivery drivers may park in the rear parking lot. The Applicant shall ensure that at least one reserved parking space in the parking lot on the property will be available for delivery drivers picking up delivery orders from the store.
2. The Applicant shall train all of its employees regarding proper trash disposal in the dumpster area behind the store so as to minimize odors and prevent rodents in the rear parking lot and trash area on the property. The Applicant shall keep the trash area clean and free from loose debris and trash at all times.
3. The Applicant shall place large trash cans outside of the store and the Applicant shall clean up trash left by customers three times a day in the vicinity of the store as part of the opening, pre-dinner, and closing checklists.
4. The Applicant shall be limited to one sign comparable to other signage for the Calvert Center along 37th Street.

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5. The Applicant shall instruct its delivery truck drivers to turn off the truck engine and refrigeration unit on the delivery truck during store deliveries to significantly minimize the noise level associated with deliveries.
6. The Applicant shall work with the landlord to install a mirror at the driveway entrance to the parking lot on the property from 37th Street.

VOTE: **4-0-1** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Anthony J. Hood to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: January 22, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF

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ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19628 of Leila Adler, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201 from the rear yard requirements of Subtitle E § 5004.1, to permit an existing rear garage in the RF-1 Zone at premises 1829 L Street N.E. (Square 4474, Lot 117).

HEARING DATE: January 10, 2018
DECISION DATE: January 10, 2018

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated August 4, 2017, from the Zoning Administrator, certifying the required relief. (Exhibit 6.)

The Board of Zoning Adjustment (“Board” or “BZA”) provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 5D and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5D, which is automatically a party to this application. The ANC did not submit an official report related to the application. However, a letter signed by four ANC commissioners expressing support for the application was submitted to the record (Exhibit 12) and at the hearing, the Applicant testified that after she presented the project at the ANC, the ANC voted 4-1 in support of the application. The Single Member District Commissioner for ANC 5D-05 – the district in which the property sits - testified at the hearing expressing her opposition to the application.

The Office of Planning (“OP”) submitted a timely report recommending approval of the application. (Exhibit 31.)

The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 32.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle E § 5201 from the rear yard requirements of Subtitle E § 5004.1, to permit an existing rear garage in the RF-1 Zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to this

application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report¹, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2 and Subtitle E §§ 5201 and 5004.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 7 – ARCHITETURAL PLANS AND ELEVATIONS.**

VOTE: 4-0-1 (Frederick L. Hill, Michael G. Turnbull, Carlton E. Hart, and Lesylleé M. White to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: January 16, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE

¹ Because no official written report was received from the ANC, there is no report to which great weight can be afforded.

APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19661 of Seth and Megan Shapiro, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 504.1, and from the non-conforming structure requirements of Subtitle C § 202.2, to construct a two-story rear covered porch on an existing flat in the RF-3 Zone at premises 506 2nd Street, S.E. (Square 765, Lot 59).

HEARING DATE: January 17, 2018

DECISION DATE: January 17, 2018

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 5 – original; 12 – first revised, and 32 – final revised.¹) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on December 12, 2017, at which a quorum was present, the ANC voted 10-0-0 to support the application. (Exhibit 35.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application. (Exhibit 38.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 37.)

¹ The revised self-certification forms updated the computations, but no revision was made to the relief requested and noticed.

Consistent with Subtitle E § 5202.2, the application was referred to the Architect of the Capitol (“AOC”) for review and report on November 29, 2017. (Exhibit 19.) The AOC did not comment on the application.

A support letter was filed by the Capitol Hill Restoration Society. (Exhibit 41.) Three letters of support from neighbors were submitted to the record. (Exhibits 29, 30, and 31.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 504.1, and from the non-conforming structure requirements of Subtitle C § 202.2, to construct a two-story rear covered porch on an existing flat in the RF-3 Zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle E §§ 5201 and 504.1, and Subtitle C § 202.2, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 7 – ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: 4-0-1 (Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, and Anthony J. Hood to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: January 19, 2018

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PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19663 of Alexandra McDougald and Robert Norris, as amended¹, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle D § 5201, from the lot occupancy requirements of Subtitle D § 304.1, and the nonconforming structure requirements of Subtitle C § 202.2, to construct a two-story rear addition and add an accessory dwelling unit to an existing one-family dwelling in the R-3 Zone at premises 4517 New Hampshire Avenue N.W. (Square 3308, Lot 47).

HEARING DATE: Applicant waived right to a public hearing

DECISION DATE: January 17, 2018 (Expedited Review Calendar)

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibits 7 (original) and 40 (revised).)² In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

Pursuant to 11 DCMR Subtitle Y § 401, this application was tentatively placed on the Board's expedited review calendar for decision without hearing as a result of the applicant's waiver of its right to a hearing. (Exhibit 2.)

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 4C, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4C, which is automatically a party to this application. The ANC submitted a report indicating that at a regularly scheduled and properly noticed meeting on January 10, 2018, at which a quorum was in attendance, ANC 4C voted 9-0-0 to support the application. (Exhibit 36.)

¹The original application included a request for lot dimension relief under Subtitle D § 302.1 which was withdrawn at the Office of Planning's recommendation. A request for relief from the nonconforming structure requirements of Subtitle C § 202.2 was added at the recommendation of the Office of the Attorney General. The caption has been amended accordingly.

²The Applicant was asked to provide a revised self-certification, but provided a revised burden of proof instead. (Exhibit 40.) The Board accepted the revised burden of proof as an amendment of the application.

The Office of Planning (“OP”) submitted a timely report dated January 5, 2018, in support of the application. (Exhibit 34.) The District Department of Transportation (“DDOT”) submitted a timely report, dated January 3, 2018, expressing no objection to the approval of the application. (Exhibit 32.)

Twenty-five letters of support for the application from neighbors were submitted to the record. (Exhibits 15, 37, and 38.)

No objections to expedited calendar consideration were made by any person or entity entitled to do by Subtitle Y §§ 401.7 and 401.8. The matter was therefore called on the Board’s expedited calendar for the date referenced above and the Board voted to grant the application.

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions under Subtitle D § 5201, from the lot occupancy requirements of Subtitle D § 304.1, and the nonconforming structure requirements of Subtitle C § 202.2, to construct a two-story rear addition and add an accessory dwelling unit to an existing one-family dwelling in the R-3 Zone. No parties appeared at the public meeting in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR, Subtitle X §§ 901.2, for special exceptions under Subtitle D §§ 5201 and 304.1, and Subtitle C § 202.2, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR, Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 13.**

VOTE: 4-0-1 (Frederick L. Hill, Anthony J. Hood, Carlton E. Hart, and Lesylleé M. White to APPROVE; one Board seat vacant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

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FINAL DATE OF ORDER: January 23, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

BZA APPLICATION NO. 19663

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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19670 of Luke and Hope Grande, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201 from the rear yard requirements of Subtitle D § 306.1 and from the side yard setback requirement of Subtitle D § 307.1, to construct a rear addition to an existing one-family dwelling in the R-1-B Zone at premises 3709 Corey Place N.W. (Square 1525, Lot 60).

HEARING DATE: Applicant waived right to a public hearing

DECISION DATE: January 17, 2018 (Expedited Review Calendar)

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated September 28, 2017, from the Zoning Administrator, certifying the required relief. (Exhibit 8.)

Pursuant to 11 DCMR Subtitle Y § 401, this application was tentatively placed on the Board of Zoning Adjustment's ("Board" or "BZA") expedited review calendar for decision without hearing as a result of the applicant's waiver of its right to a hearing. (Exhibit 2.)

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 3D, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3D, which is automatically a party to this application. The ANC submitted a report indicating that at a regularly scheduled and properly noticed meeting on January 10, 2018, at which a quorum was in attendance, ANC 3D voted 5-0-0 to support the application. (Exhibit 36.)

The Office of Planning ("OP") submitted a timely report dated January 5, 2018, in support of the application. (Exhibit 33.) The District Department of Transportation ("DDOT") submitted a timely report, dated January 3, 2018, expressing no objection to the approval of the application. (Exhibit 34.)

A letter of support for the application signed by 18 neighbors was submitted to the record (Exhibit 35.)

No objections to expedited calendar consideration were made by any person or entity entitled to do by Subtitle Y §§ 401.7 and 401.8. The matter was therefore called on the Board's expedited calendar for the date referenced above and the Board voted to grant the application.

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle D § 5201 from the rear yard requirements of Subtitle D § 306.1 and from the side yard setback requirement of Subtitle D § 307.1, to construct a rear addition to an existing one-family dwelling in the R-1-B Zone. No parties appeared at the public meeting in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR, Subtitle X § 901.2 and Subtitle D §§ 5201, 306.1, and 307.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR, Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 6.**

VOTE: **4-0-1** (Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, and Anthony G. Hood to APPROVE; one Board seat vacant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: January 18, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE

BZA APPLICATION NO. 19670

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APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-23B
Z.C. CASE NO. 05-23B
151 Q Street Residential, LLC
(PUD Minor Modification @ Square 3576, Lots 816-820)
August 8, 2016

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a special public meeting on August 8, 2016 to consider the request of 151 Q Street Residential, LLC (“Applicant”)¹ for a modification of the consolidated planned unit development (“PUD”) approved in Z.C. Case Nos. 05-23 and 05-23A. The property that is the subject of Z.C. Order Nos. 05-23 and 05-23A is located at Eckington Place, N.E. and Harry Thomas Way, N.E. and is known as Lots 816-820, Square 3576 (“Property”). The special public meeting was held in accordance with the Consent Calendar provisions of 11 DCMR § 3030, which allow the Commission to make minor modifications and technical corrections to previously approved final orders without a public hearing. The Commission considered the application pursuant to the planned unit development procedures contained in 11 DCMR §§ 2400 *et seq.* The Commission took action to approve the minor modification application at the August 8, 2016 special public meeting.

The instant Order relates to the final action taken at the same special public meeting on the application for a consolidated PUD and Zoning Map amendment by JBG/Boundary 1500 Harry Thomas Way, LLC and JBG/Boundary Eckington Place, LLC (collectively, the “Adjacent Applicant”) for property located at 1500 Harry Thomas Way, N.E. (Square 3576, Lot 814) and 1611-1625 Eckington Place, N.E. (Square 3576, Lots 2001-2008) (collectively, the “Adjacent Property”) in Z.C. Case No. 15-15.

FINDINGS OF FACT

1. Z.C. Case No. 05-23 included consolidated PUD and Zoning Map amendment approval. Z.C. Order No. 05-23 (the “Original Order”), which became final and effective on June 22, 2007, approved a consolidated PUD for a project with 739,951 square feet of residential area and 15,084 square feet of retail area (a range of 585-636 residential units located over retail in the three buildings) along with 27 piggyback townhouse units and five four-story single family townhouses. The Original Order also approved a Zoning Map amendment for the Property from the M Zone District to C-3-C Zone District.
2. Z.C. Case No. 05-23A included the approval of a modification to the consolidated PUD approved by the Original Order along with a Zoning Map amendment approval. Z.C. Order No. 05-23A (the “Modified Order”, together with the Original Order, the “Orders”), which became final and effective on January 25, 2008, approved a

¹ The original application (Z.C. Case No. 05-23) was filed by CSX Realty Development Corporation and FF Realty, LLC and was modified in Z.C. Case No. 05-23A by NoMa West Residential I, LLC. The current owner is 151 Q Street Residential, LLC.

modification to a consolidated PUD for a project with approximately 592,610 gross square feet (including approximately 1,000 gross square feet of retail use and approximately 600 dwelling units) spread across three buildings, with a maximum building height of 64 feet, six inches (collectively, the "Project"). The Modification Order also approved a Zoning Map amendment for the Property from the M Zone District to the C-3-A Zone District.

3. On April 14, 2016, the Applicant submitted an application for a minor modification to the Orders and the plans approved thereby to allow for revisions to the design of the Project. The proposed revisions do not seek to alter the Project's height, floor area ratio ("FAR"), or design intent beyond what was allowed pursuant to the Orders. The specific elements of the minor modification are detailed in the record and below. (Exhibit ["Ex."]1.)
4. This minor modification was requested as the result of coordination with the project set forth in the PUD and Zoning Map amendment application for the Adjacent Property under Z.C. Case No. 15-15. Both the Applicant and the Adjacent Applicant designed the plans of their respective projects to create a more ideal vehicular and pedestrian circulation configuration at both sites. Such coordination of the adjacent facilities resulted in part from communications between the Applicant, the Adjacent Applicant, and the surrounding community. These efforts led to coordination of several elements between the Project and the project on the Adjacent Property, including shared loading space, a shared parking entrance from Q Street, and a connective pedestrian alley, as described further below. Specifically, the Applicant sought approval of the following modifications to the plans approved in Z.C. Case Nos. 05-23 and 05-23A:
 - a. Shared Loading – The proposed modification would allow for the minor reconfiguration and expansion of the northeast ground-level loading dock at the Property and the minor reconfiguration of one ground-level loading dock along with the extension of a covered roof at the northeast of the Property to allow for utilization of both facilities by the Adjacent Property.

The loading dock at the northwest of the Property will be connected to the building on the Adjacent Property by an enclosed building connection (as shown on page 125 of Ex. 2C and on Ex. 2D). The northwest loading dock will expand by approximately 300 square feet and provide seamless shared loading via a passage between that dock and the building on the Adjacent Property. The expanded loading dock would use an existing curb cut.

The loading dock at the northeast of the Property will be connected to the building on the Adjacent Property by a roof over the existing sidewalk (as shown on page 129 of Exhibit 2C and on Exhibit 2D). The northeast loading dock will expand by approximately 60 square feet and provide shared loading via an outdoor passage. The covered area would contribute to a minor increase in the Project's FAR.

Together, the changes to the loading facilities will be minimal in scope, as illustrated. (Ex. 2C, 2D.) However, by jointly handling loading for the adjacent

projects, the number of curb cuts and traffic entry and exit points has been reduced, decreasing the overall impact on the surrounding community and removing some loading frequency from the alley at the northeast of Eckington Yards (as requested by neighbors);

- b. North/South Pedestrian Walkway – The proposed modification would allow for the construction of a walkway that would connect the Project’s Q Street segment to the pedestrian promenade located on the Adjacent Property (that continues Quincy Place, N.E.) and will allow for pedestrian access.

Such access through the Property does not change the site plan or the layout of the Property, but allows for improved pedestrian connectivity in the surrounding neighborhood; and (Ex. 2C, p. 129; Ex. 2D, p. 201.)

- c. Parking Access – The proposed modification would allow for the modification of the Project’s underground garage and the construction of a below-grade connection between the Project’s garage and the garage on the Adjacent Property. Such connection will permit entry to the Adjacent Property’s garage from the existing sloping driveway located at the north side of Q Street.

This modification allows for the reduction in curb cuts at both the Property and the Adjacent Property and increases the efficiency of the ramping solution beneath the Adjacent Property, while having no detrimental effect on the Project, the Property, or adjacent property. (Ex. 2C, 2D.) This proposal does not change the configuration of the Project’s parking garage. It will allow additional users (of the Adjacent Property) access through the Property to improve the efficient use of land and infrastructure.

(Ex. 1, 2C, 2D.)

5. Under the Orders, the Project was approved to have a density of 3.3 FAR and a lot occupancy of 63%. The minor modification to the Project will not increase the FAR or lot occupancy above these levels. Currently, the Project has an FAR of approximately 3.0 and a lot occupancy of approximately 55.5%. The addition of the building connections adjacent to the shared loading areas would only create an additional 360 gross square feet on the Property. This is an increase of approximately 0.0019 FAR and approximately 0.19% of lot occupancy, resulting in an FAR of approximately 3.0019 and a lot occupancy of approximately 55.69%. Both of these revised figures are well within the limitations put in place by the Orders. These calculations, and the extent of the proposed modifications, are shown on Page A1.09 of Exhibit 2D. (Ex. 1, 2D.)
6. The Applicant noted that otherwise, the Project will remain the same as that approved by the Order. No other substantive changes to the benefits and amenities package was incorporated into this modification application. (Ex. 1.)

7. The Applicant served the application on Advisory Neighborhood Commission (“ANC”) 5E. (Ex. 1.)
8. At the Commission's August 8, 2016 special public meeting, the Commission approved the Applicant’s minor modification request citing the advantages of the ability for adjacent project to utilize the same loading and curb cuts.

AGENCY REPORTS

9. The Office of Planning (“OP”) submitted its report on May 3, 2016. OP confirmed that the request is a minor modification to Z.C. Order No. 05-23, but recommended that the Commission deferred taking action to approve until final action was scheduled for Z.C. Case No. 15-15. (Ex. 4.)
10. No other agency reports were received nor required in the record.

ADVISORY NEIGHBORHOOD COMMISSION

11. The Applicant presented the modification to the ANC as part of the presentation of the project on the Adjacent Property on April 19, 2016. The ANC did not submit a letter into the record for Z.C. Case No. 05-23B and therefore did not express any issues and concerns regarding the minor modification application. The ANC did submit a letter of support for Z.C. Case No. 15-15 for the Adjacent Property. Though the letter did not express any issues and concerns, it noted that the ANC’s support was contingent on the receipt of an executed amenities agreement which was received as of the letter date. The ANC also noted that the joint use of the loading facilities of the Project by the Adjacent Property was, in part the result from community requests to reduce loading from the alley at the northeast of the Property. (Ex. 37 of Z.C. Case No. 15-15.)

CONCLUSIONS OF LAW

The proposed minor modifications to the approved PUD project satisfy the standards of 11 DCMR § 3030.13 in that the proposed modifications are consistent with the intent of the Commission in approving the original order and shall not substantially impair the intent, purpose, or integrity of the zone plan or map. Upon consideration of the record of this application, the Commission concludes that the Applicant’s modifications to the approved plans are consistent with the intent of the previous PUD approval made in the Orders. The Commission acknowledges that the proposed modifications would have no greater impact on the surrounding community than the originally approved concept. In fact, the proposed modifications will reduce the number of curb cuts and multiple entry and exit points for parking and loading at the Property and the Adjacent Property, thus creating a more efficient circulation plan at both locations.

The proposed minor modification to the approved PUD does not impact or alter the approved PUD’s benefits and amenities package. Moreover, the Commission recognizes that the modification does not seek to alter the Project’s height, floor area ratio, or design intent beyond

what was allowed pursuant to the Orders. Rather, they are minor changes driven by the desire to work with neighboring properties and create a more holistically planned environment. The Commission concludes that the proposed modifications are in the best interest of the District of Columbia and are consistent with the intent, purpose, and integrity of the Zoning Regulations and the Zoning Act. The Commission also concludes that the approval of the modification application is not inconsistent with the Comprehensive Plan. Subsection 2409.9 of the Zoning Regulations authorizes the Commission to approve proposed modifications to an approved PUD that are beyond the limited scope of authority granted to the Zoning Administrator. Furthermore, § 3030 of the Zoning Regulations provides for an expedited “Consent Calendar” procedure, allowing the Commission to make minor modifications and technical corrections to an approved PUD Order without need for a public hearing. Pursuant to § 3030.2, “minor modifications” are those modifications of little or no consequence. The Commission concludes the requested modification can be approved without a hearing because of the minor consequences of the proposed changes. The modifications do not alter the Project’s structures or the design concept that was approved by the Commission in any significant way.

The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give “great weight” to the issues and concerns raised in the written report of the affected ANC, if any. ANC 5E was served with the application, but ANC 5E did not submit a letter to the record directly relating to this application. Therefore, there are no issues and concerns for the Commission to give great weight to.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations. OP recommended deferral of action on the application and further related review until final action on Z.C. Case No. 15-15 and the Commission so deferred and reviewed this application.

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 a minor modification of the approved consolidated PUD.

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

In accordance with the provisions of 11-Z DCMR § 604.8, this Order shall become final and effective upon publication in the *D.C. Register* on February 2, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-34G
Z.C. Case No. 08-34G
Capitol Crossing I, LLC and Capitol Crossing II, LLC
(PUD Minor Modification @ Square 564, Lots 858 and 859)
September 11, 2017

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on September 11, 2017. At the meeting, the Commission approved an application of Capitol Crossing I, LLC and Capitol Crossing II, LLC¹ (“Applicant”) for a minor modification to an approved planned unit development (“PUD”) for property consisting of Lots 858 and 859 (Record Lot 59) in Square 564 (“North Block”). Because the modification was deemed minor, a public hearing was not conducted. The Commission determined that the application was properly before it under the provisions of Subtitle Z § 703 and Subtitle C § 1504.3 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”).

FINDINGS OF FACT

1. Pursuant to Z.C. Order No. 08-34, dated May 23, 2011, and effective on July 1, 2011, the Commission approved (i) a first-stage PUD for land and air rights above the Center Leg Freeway (“Freeway”) in an area generally bounded by Massachusetts Avenue, N.W. to the north, 2nd Street, N.W. to the east, E Street, N.W. to the south, and 3rd Street, N.W. to the west (“Overall PUD Site”); (ii) a consolidated PUD for a portion of the Overall PUD Site; and (iii) a Zoning Map amendment to the C-4 Zone District for the Overall PUD Site. The North Block was approved to incorporate a single building that reads as three towers, separated by a “Pedestrian Way” constructed generally above Freeway. The east portion of the building extends from Massachusetts Avenue along 2nd Street to G Street and has a maximum height of 130 feet (“East Building”). The west portion of the building fronts on Massachusetts Avenue, extending along 3rd Street to G Street, and incorporates two distinct floor plates above the fourth floor level, each having a maximum height of 130 feet (“Northwest Building” and “Southwest Building” or collectively “West Building”).
2. Pursuant to Z.C. Order No. 08-34E, dated June 30, 2014, and effective August 1, 2014, the Commission approved modifications to the North Block that generally included the following: redesigning the west lobby and entrance from 3rd Street; replacing the covered pedestrian connection at the ground floor with a pedestrian bridge at the second floor; refining the Pedestrian Way; relocating the entrance to the below-grade parking facility from 3rd Street to the proposed extension of G Street; redesigning the roof structures; and refining architectural features.
3. By letter dated July 28, 2017 (Exhibit [“Ex.”] 1), the Applicant requested a minor modification to the architectural drawings approved in Z.C. Order No. 08-34E. The

¹ The original applicant in Z.C. Case No. 08-34E was Center Place Holdings, LLC and Property Group Partners.

requested modifications were to add penthouse habitable space to the East and West Buildings within the North Block, revise the location of the terrace and trellis on the roof of the East Building, and refine the layout of the green roof, landscape, and skylights on the 4th and 5th floor terrace roofs based on the final design of the interior floorplate.

4. The proposed penthouse habitable space would contain tenant-specific office and conference room uses. The East Building would contain approximately 7,630 square feet of penthouse habitable space; the Northwest Building would contain approximately 6,680 square feet of penthouse habitable space; and the Southwest Building would contain approximately 2,580 square feet of penthouse habitable space. The combined floor area ratio (“FAR”) of the proposed penthouse habitable space on the North Block would be approximately 16,890 square feet, or approximately 0.16 FAR.
5. The penthouse heights and setbacks comply with the requirements set forth in the penthouse regulations of 11-C DCMR § 1502. The penthouses, trellis structures, guardrails, and roof decks are all setback a minimum of 1:1 from the edge of the roof upon which they are located, in accordance with 11-C DCMR § 1502.1. The penthouses have a primary maximum height of 18 feet, six inches, with a second height of 10 feet for the habitable space in accordance with 11-C DCMR § 1500.9 and 11-X DCMR § 303.18.
6. No additional parking or loading is generated by the additional penthouse habitable space. With respect to parking, the original Commission order approved a total number of parking spaces for the overall project based on the office use. Since that time, and with the approval of the second-stage PUD for the South Block (Z.C. Order Nos. 08-34A and 08-34F), the overall square footage of the project’s office use has decreased by more than the proposed amount of penthouse habitable space proposed (16,890 square feet), with no corresponding reduction in the parking provided. Therefore, no additional parking is required. The additional square footage of penthouse habitable space also does not trigger additional required loading.
7. Incorporating penthouse habitable space into the project requires the Applicant to contribute to the production of affordable housing. Accordingly, the Applicant will make a contribution to the Housing Production Trust Fund in accordance with the formula set forth in 11-C DCMR §§ 1505.13 through 1505.16. The final amount of the total contribution will be determined no earlier than 30 days prior to the date of the building permit application to construct the penthouse habitable space. No less than one-half of the required total financial contribution will be made prior to the issuance of a building permit for construction of the penthouse habitable space, and the balance will be made prior to the issuance of a certificate of occupancy for the penthouse habitable space.
8. Pursuant 11-Z DCMR § 703.13, the Applicant was required to formally serve a copy of the application on all parties to the original proceeding at the same time that it filed the application with the Office of Zoning. Advisory Neighborhood Commissions (“ANCs”) 2C and 6C were the only parties to the original proceeding. As noted in the Certificate of Service, the Applicant properly served the application on ANCs 2C and 6C. (Ex. 1, p. 6.)

9. On July 10, 2017, the Applicant presented the application to ANC 2C at its regularly scheduled and duly noticed public meeting at which a quorum of commissioners was present. At that meeting, ANC 2C voted unanimously to support the application. (Ex. 1E.)
10. Prior to submitting the application, the Applicant also communicated with ANC 6C, which informed the Applicant that it did not need to consider the application request and indicated that it would leave the matter to ANC 2C to decide.
11. Pursuant to 11-C DCMR § 1504.4(c), the Applicant was also required to serve a copy of the application on all affected ANCs, which, pursuant to 11-B DCMR § 100.2, includes ANCs that are located across the street from a property. In this case, ANC 6E is located across Massachusetts Avenue from the North Block. Therefore, although ANC 6E was not a party to the original proceeding and was not previously involved in this PUD, the Applicant served a copy of the application on ANC 6E on August 2, 2017. (Ex. 4.) ANC 6E did not submit anything to the case record on this application.
12. The Office of Planning (“OP”) reviewed the request for a minor modification. By report dated September 1, 2017, OP did not oppose the minor modification request. (Ex. 5.)
13. On September 11, 2017, at its regular monthly meeting, the Commission reviewed the request and granted approval of the requested minor modification to the approved PUD.
14. The Commission finds that the requested modifications are minor, and further finds that approval of the modifications is appropriate and not inconsistent with its approval of the original PUD.

CONCLUSIONS OF LAW

Pursuant to 11-Z DCMR § 703, the Commission is authorized to approve minor modifications to previously approved final orders and plans through a consent calendar procedure without a public hearing. Pursuant to 11-Z DCMR § 703.2, minor modifications are those modifications that do not change the material facts upon which the Commission based its original approval of the application or petition. In addition, 11-C DCMR § 1504.3 provides that a request to add penthouse habitable space to a building approved by the Commission as a PUD prior to January 8, 2016 may be filed as a minor modification for placement on the Commission’s consent calendar, provided that (a) the item shall not be placed on a consent calendar for a period of 30 days minimum following the filing of the application; and (b) OP shall submit a report with recommendation a minimum of 7 days in advance of the meeting.

The Commission concludes that the modifications described herein do not change the material facts upon which the Commission based its original approval of the application. Further, the proposed modifications are to add penthouse habitable space to a building approved as a PUD prior to January 8, 2016, and will slightly refine the roof layouts. Accordingly, the Commission finds that the request falls within the scope of a minor modification made pursuant to 11-Z DCMR § 703 and 11-C DCMR § 1504.3.

The Commission is required by § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to the recommendations of OP. OP recommended approval of the request as a Minor Modification, and the Commission concurs in this recommendation. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A)(2012 Repl.) to give “great weight” to the issues and concerns contained in the written report of an affected ANC. In this case, ANC 2C submitted a report stating its unanimous vote in support of the request, and the report noted no issues and concerns. Because the ANC 2C expressed no issues and concerns, there is nothing for the Commission to give great weight to. As previously noted, the other affected ANC’s, 6C and 6E, did not submit written reports to the case record regarding the request.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a minor modification to add penthouse habitable space to the East and West Buildings within the North Block, to revise the location of the terrace and trellis on the roof of the East Building, and to refine the layout of the green roof, landscape, and skylights on the 4th and 5th floor terrace roofs, consistent with the architectural plans and elevations included in the record at Exhibit 1D1-1D2.

The Modification is granted subject to the following condition:

1. The Applicant shall make a contribution to the Housing Production Trust Fund in accordance with the formula set forth in 11-C DCMR §§ 1505.13 through 1505.16. The final amount of the total contribution shall be determined no earlier than **30 days prior to the date of the building permit application** to construct the penthouse habitable space. No less than one-half of the required total financial contribution shall be made **prior to the issuance of a building permit** for construction of the penthouse habitable space, and the balance shall be made **prior to the issuance of a certificate of occupancy for the penthouse habitable space**

At its public meeting on September 11, 2017, upon the motion of Commissioner Turnbull, as seconded by Commissioner Shapiro, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application 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, this Order shall become final and effective upon publication in the *D.C. Register*; that is on February 2, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 09-03E**

Z.C. Case No. 09-03E

Skyland Holdings, LLC

(Time Extension – Consolidated PUD @ Square 5633)

September 25, 2017

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on September 25, 2017. At that meeting, the Commission approved the request of Skyland Holdings, LLC (“Applicant”) for a one-year time extension, until September 10, 2018, in which to start construction of the building on Block 2 of the Skyland Town Center project, and an extension of the time in which it was required to make certain financial contributions and construct and maintain a pocket park at 25th Street, S.E. and Naylor Road, S.E., as approved by Z.C. Order No. 09-03, as amended and extended by Z.C. Order Nos. 09-03A, 09-03B, 09-03C, and 09-03D. The property (Lot 22 in Square 5633) that is the subject of this application is bound by Good Hope Road, S.E., Naylor Road, S.E. and Alabama Avenue, S.E. (“Property”). The time extension request was made pursuant to 11-Z DCMR § 705.2 of the District of Columbia Zoning Regulations.

FINDINGS OF FACT

BACKGROUND INFORMATION

1. The Property was rezoned to the C-3-A Zone District pursuant to Z.C. Order No. 09-03. The PUD approved in Z.C. Order No. 09-03 created a Town Center with mixed-use retail and residential buildings, accompanying parking facilities, and townhouses on five different Blocks. The original PUD project consisted of approximately 311,000 square feet of retail- and service-related uses and a large format retail store, as well as neighborhood serving retailers. The residential component of the original PUD project created 450-500 residential units, including a number of affordable housing units, and 20 townhouses. The original PUD project also included significant transportation infrastructure improvements to foster safe pedestrian and vehicular interaction along the adjacent major streets (Good Hope Road, Naylor Road, and Alabama Avenue). Z.C. Order No. 09-03 became effective on September 10, 2010.
2. On November 8, 2012, the Applicant filed a request to modify the original PUD project. The PUD modification application, Z.C. Case No. 09-03A, did not propose significant changes to the original PUD project. The number of residential units in the modified PUD project remained in the approved range of 450-500 units and the amount of retail- and service-related uses is approximately 342,000 square feet. The modified PUD project included modifications to all five Blocks. The majority of the Zoning Commission’s attention to these modifications focused on the proposed Walmart shopping center to be located on Block 1 and the mixed-use residential building located along Block 2, which included frontage along Naylor Road, S.E. and Good Hope Road, S.E. Z.C. Order No. 09-03A became effective on January 17, 2014.

3. On November 9, 2012, the Applicant requested a time extension of the period of approval for the modified PUD project. Condition No. 17 of Z.C. Order No. 09-03 stated that the “PUD shall be valid for a period of three years from the effective date of this Order [September 10, 2010]. Within such time, an application must be filed for a building permit for the construction of a building on Block 1, 2, 3, or 4 as specified in 11 DCMR § 2409.1, and construction must start within four years of the effective date of this Order to remain valid.” The Applicant requested that the Commission extend the time period in which it is required to file a building permit application for the construction of a building on Block 1, 2, 3, or 4 until September 10, 2015 and that construction of that building must start by September 10, 2016. The Commission approved this time extension request and Z.C. Order No. 09-03B became effective on January 17, 2014.
4. On August 31, 2016, the Applicant requested a one-year time extension of the Consolidated PUD approved in Z.C. Order Nos. 09-03 and 09-03A, and extended in Z.C. Order No. 09-03B. The Applicant requested that the validity of the consolidated PUD be extended until September 10, 2017, by which time the Applicant must start construction of the building on Block 2 for the PUD to remain valid. The Commission approved this time extension request and Z.C. Order No. 09-03C became effective on December 16, 2016.
5. On January 27, 2017, the Applicant filed a modification of consequence related to the plans that were approved for Block 2. The Applicant sought a modification to: remove three levels of above-grade parking in the center of Block 2; re-design the treatment of the top level of the parking structure; and move the pool to the courtyard level of the residential building. The Commission approved the modification of consequence application and Z.C. Order No. 09-03D became effective on June 30, 2017.

CURRENT APPLICATION

6. The Applicant filed the current request on August 7, 2017. The Applicant requested that it be allowed until September 10, 2018 to start construction of the building located on Block 2 of the approved Skyland Town Center. The Applicant requested that the time period for the financial contributions, and construction and maintenance requirements outlined in Condition Nos. 2(a), 2(e), and 2(f) of Z.C. Order No. 09-03, which are required to be made by September 10, 2017, also be extended. In addition, the Applicant requested that the Commission waive the requirements of § 705.5 and approve this third time extension request. (Exhibit [“Ex.”] 1 p. 3.)
7. In Z.C. Order No. 09-03B, the Commission extended the validity of the original order two years to September 10, 2015, by which time the Applicant was required to file an application for a building permit for Block 1, 2, 3, or 4. The effect of this time extension was to extend all of the time periods in the original order, including any time periods in the conditions. (Ex. 1, pp. 3-4.)
8. Condition Nos. 2(a), 2(e), and 2(f) of Z.C. Order No. 09-03 required the following:

Financial Support for Schools (\$200,000) (Condition 2(a))

This condition requires that, starting one year after the effective date of the order (i.e., September 10, 2013 with the extension) and annually thereafter, the Applicant must provide evidence of any contributions. At least 75% of the total amount must be made within five years of the effective date of the order, which equates to September 10, 2017 with the extension. The Applicant stated it had contributed \$500 to schools pursuant to this condition. The Applicant requested that it be allowed until September 10, 2018 to reach the 75% threshold.

Anacostia and Francis Gregory Libraries (\$50,000) (Condition 2(e))

This condition requires that, starting one year after the effective date of the order (i.e., September 10, 2013) and annually thereafter, the Applicant must provide evidence of any contributions. At least 50% of the total amount must be made within five years of the effective date of the Order (i.e., by September 10, 2017). As of the date of the request, the Applicant has not contributed any funds pursuant to this condition. The Applicant noted that since the Commission's original approval of the project in 2010, both of these libraries have undergone significant renovations. The Applicant requested that it be allowed until September 10, 2018 to reach the 50% threshold.

Pocket Park at 25th Street and Naylor Road (\$50,000) (Condition 2(f))

This condition requires that the Applicant construct and maintain improvements to the pocket park within five years of the effective date of the Order (i.e., by September 10, 2017). The Applicant stated that land development, which includes all of the improvements to the pocket park, is currently underway. The pocket park improvements will be coordinated during the other public space work along Naylor and Good Hope Roads. The Applicant noted that the work related to the installation of the right-turn lane, new sidewalks, and utility improvements will be completed by September 10, 2018, and the installation of hardscape and landscape improvements will be completed by May 1, 2020 (the expected delivery of the Block 2 Building). (Ex. 1, p. 4.)

9. The Applicant provided a certificate of service which noted that the time extension application was served on all parties to the original PUD, Advisory Neighborhood Commissions ("ANC") 7B and 8B, and the Ft. Baker Drive Party ("FBDP"), and all parties were allowed 30 days to respond. (Ex. 1, p. 5.)
10. The Applicant indicated that there has been no substantial change of material facts that affect the Property since the Commission's approval of the PUD modification and time extension applications. In fact, since these approvals, the Applicant has undertaken significant demolition, site preparation, and grading work in order to prepare the Property for the development of the Skyland Town Center project. In the Applicant's August 31, 2016 submission to the Commission in Z.C. Case No. 09-03C, the Applicant stated that it had spent approximately \$17,410,946 in order to bring the Skyland Town Center project closer to reality. In the past year alone, the Applicant has spent an additional \$9,783,309

on costs attributable to: continued land development activities (including demolition of the CVS structure, utility construction, excavation, and grading); professional services; permit fees; real estate taxes; and interest payments. (Ex. 1, p. 5.)

11. The Applicant stated that it was unable to start construction of the amended building on Block 2 due to its inability to obtain sufficient project financing despite its good faith efforts to obtain such financing. At the time of the Applicant's request for a one-year time extension to start construction of the building on Block 2 (August 31, 2016 - the subject of Z.C. Case No. 09-03C), the Applicant had approached several lenders about the opportunity to finance Block 2. Since that time, the Applicant found that lenders are becoming increasingly selective with their placement of construction debt and are offering much more conservative loan terms, especially due to the concern of oversupply in the rental market. The Applicant also noted that the Skyland Town Center project is considered to be a pioneering project in an emerging market, an area where a new market-rate multi-family rental building has not been constructed in a considerable amount of time. Conventional bank construction loans that the Applicant was pursuing resulted in construction loan terms that were not financially feasible. (Ex. 1, p. 5; 1C.)

As a result, the Applicant pursued other financing options such as the HUD 221(d)(4) mortgage insurance program. In December 2016, the Applicant engaged Walker & Dunlop to pursue the HUD insured financing. Walker & Dunlop and the Applicant submitted a concept package to HUD in January 2017 and subsequently attended a HUD concept meeting at the HUD office in Baltimore. In addition, in January of 2017, the Applicant closed on \$58.5 million in EB-5 financing to fund a portion of land development activities and retail portion of the building on Block 2. The Applicant stated that the HUD construction loan that will finance the residential portion of Block 2 is the final piece of the project's financing sources to be put in place in order to commence Block 2 construction. (Ex. 1, p. 5; 1C.)

12. The Applicant also requested a waiver of § 705.5 of the Zoning Regulations. While the Applicant seeks a time extension for the construction of the first building in the multi-building Skyland Town Center project, the Applicant has undertaken significant and costly site preparation work and has completed numerous construction milestones in order for the site to be ready to commence vertical construction on Block 2. As noted above, the Applicant has closed on the financing of the retail portion of the building on Block 2 and the Applicant has shown that it has diligently attempted to obtain construction financing for the residential portion of the building on Block 2. The Applicant expects that such financing will be in place by the end of 2017, which will allow construction of Block 2 to begin in 2018. (Ex. 1 p. 6.)
13. ANC 7B submitted a letter, dated September 21, 2017, into the record. The letter stated that at a regularly scheduled public meeting, with a quorum present, ANC 7B adopted a unanimous vote (6-0) to support the Applicant's request for a time extension for the start of construction on Block 2 and the construction and maintenance of the Pocket Park, but did not support the time extension for the financial contributions to the local schools and the Anacostia and Francis Gregory Libraries. (Ex. 6.)

14. ANC 8B did not submit a letter into the record to indicate their support or opposition to this application.
15. FBBDP did not submit a letter into the record to indicate their support or opposition to this application.
16. The Office of Planning (“OP”) submitted a report on September 15, 2017. The OP report stated that OP had no objection to the PUD time extension request. In regard to the time extension for the financial contributions, the OP report noted that the Applicant had made over \$657,000 in payments, goods and services to a very successful Skyland Workforce Center located at 2509 Good Hope Road, S.E. (Ex. 5.)

CONCLUSIONS OF LAW

The Commission may extend the time period of an approved PUD provided the requirements of 11-Z DCMR § 705.2 are satisfied. Subsection 705.2(a) requires that the applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. ANCs 7B and 8B were served with this time extension request, as was FBBDP. Neither ANC 8B or FBBDP responded to this request. ANC 7B submitted a letter which supported the time extension request for the start of construction on Block 2 and the construction and maintenance of the Pocket Park, but did not support the time extension for the financial contributions to the local schools and the Anacostia and Francis Gregory Libraries.

Subtitle Z § 705.2(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission’s justification for approving the original PUD. Based on the information provided by the Applicant and OP, the Commission concludes that extending the time period of approval for the consolidated PUD is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original consolidated PUD application.

Subtitle Z § 705.2(c) requires that the applicant demonstrate with substantial evidence one or more of the following criteria:

- (a) An inability to obtain sufficient project financing for the development, following an applicant’s diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond the applicant’s reasonable control;
- (b) An inability to secure all required governmental agency approvals for a development by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant’s reasonable control; or
- (c) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant’s reasonable control that renders the applicant unable to comply with the time limits of the order.

The Commission finds that there is good cause shown to extend the period of time in which the Applicant is required to start construction of the building on Block 2, make the financial contributions noted in Condition Nos. 2a and 2e of Z.C. Order No. 09-03, and construct and maintain the improvements of the pocket park noted in Condition No. 2f of Z.C. Order No 09-03. Despite the Applicant's good faith efforts to obtain sufficient project financing, such financing was not available to start construction of the building on Block 2 prior to September 10, 2017. The Commission notes the Applicant's statement that it is confident that with the closing of the HUD loan by the end of 2017, the Applicant will be able to start construction of the mixed-use building on Block 2 in 2018. The Commission also agrees that extending the time period to make the financial contributions and to construct and maintain the pocket park noted above is appropriate, as the development of Block 2 will be the first vertical construction activity for the Project. Therefore, the Commission finds that one year is an appropriate amount of time to grant the extension. In accordance with Subtitle Z § 705.2(c)(1), the Applicant has provided substantial evidence to show that it was unable to obtain sufficient project financing prior to the September 10, 2017 deadline.

In regard to the Applicant's request for a waiver of Subtitle Z § 705.5 of the Zoning Regulations, pursuant to Subtitle Z § 101.9, the Commission may waive any provision of Subtitle Z if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law. The Commission finds that the Applicant has undertaken significant and costly site preparation work and has completed numerous construction milestones in order for the site to be ready to commence vertical construction on Block 2. As noted above, the Applicant has closed on the financing of the retail portion of the building on Block 2 and the Applicant has shown that it has diligently attempted to obtain construction financing for the residential portion of the building on Block 2. In the Commission's judgment, granting a waiver to allow for approval of a third time extension will not prejudice the rights of any party and it is not otherwise prohibited by law. For these reasons, the Commission concludes that it is appropriate to grant the requested waiver.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations. OP had no objection to the time extension request.

The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and concerns raised in an affected ANC's written report. As noted, ANC 8B did not submit a written report. The Commission notes that ANC 7B did not support the time extension request for the financial contributions to the local schools and the Anacostia and Francis Gregory Libraries. In its letter, ANC 7B was also concerned that the Applicant's request for more time to finance Block 2, a mixed-use residential building, was evidence of a lack of attention to Block 1, the Walmart anchor unit; and in the ANC's view, a delay in one aspect fundamentally changes the purpose of the overall development.

The Commission discussed ANC 7B's concerns regarding the Applicant's time extension request and gave great weight to each concern in its deliberations. The Commission noted the financial

difficulties that this project has faced to date and the contribution of \$657,000 that has been made to the Skyland Workforce Center as a result of this application.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of Z.C. Case No. 09-03E for a one-year time extension of the consolidated PUD application approved in Z.C. Order Nos. 09-03, 09-3A, and 09-03D and extended in Z.C. Order Nos. 09-03B and 09-03C. The validity of the consolidated PUD approved by the Commission is extended until September 10, 2018, by which time the Applicant must start construction of the building on Block 2 for the PUD to remain valid. Condition No. 17 of Z.C. Order No. 09-03, as modified by Z.C. Order No. 09-03A, sets forth the Applicant's obligation to file building permit applications for and commence construction of the remaining portions of the PUD and the timeframe for doing so. The Condition Nos. 2(a), 2(e), and 2(f) of Z.C. Order No. 09-03 are revised to read as follows;(deleted text is shown in ~~striketrough~~ text and new text is shown in **bold** and underlined text.)¹

2. (a) Financial Support to Schools: The Applicant shall make in-kind service or financial contributions, with a value of \$200,000, to support schools located within the geographic boundaries of ANCs 7B, 8B, and 8A for aesthetic improvements and to participate in initiatives such as "Buff and Scrub". The Applicant expects that these in-kind service or financial contributions will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Zoning Administrator ("ZA") and the Office of Zoning ("OZ") as to whether any in-kind service or financial contributions were made for this purpose, the recipient of those funds and the outstanding balance of this contribution. Not less than 75% of the total amount of this contribution (\$150,000) (whether in the form of in-kind services, monetary contributions, or a combination of the two) shall be made by the Applicant ~~within five years of the effective date of this Order~~ **by September 10, 2018**. Notwithstanding Condition No. 17, this Order will expire as of that date if these payments/services have not been provided. The full amount of this contribution (whether in the form of in-kind services, monetary contributions, or a combination of the two) shall be made by the Applicant no later than ~~10 years after the effective date of this Order~~ **September 10, 2022**, or the date the last application for a building permit is filed for the project, whichever is sooner;

...

¹ The revisions to these conditions ordinarily would require the Applicant to seek a modification of consequence to Z.C. Order No. 09-03 pursuant to 11-Z DCMR § 703. In this instance, the Commission found a sufficient correlation between need to extend the validity of Z.C. Order No. 09-03 and the need to revise these conditions. However, in the future, the Commission expects applicants seeking any modification to a condition to do so through either Subtitle Z § 703 or §704, as applicable.

- (e) Anacostia and Francis Gregory Libraries: The Applicant shall provide up to \$50,000 to perform capital improvements, upgrade computers, and provide other services for the Anacostia and Francis Gregory Libraries. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and the OZ as to whether any contributions were made for this purpose, the recipient of those funds and the outstanding balance of this contribution. Not less than 50% of the total amount of this contribution (\$25,000) shall be made by the Applicant ~~within five years of the effective date of this Order~~ **by September 10, 2018**. Notwithstanding Condition No. 17, this Order will expire as of that date if these payments/**services** have not been provided. The full amount of this contribution shall be made by the Applicant no later than ~~10 years after the effective date of this Order~~ **September 10, 2022**, or the date the last application for a building permit is filed for the project, whichever is sooner;
- (f) Pocket Park at 25th Street & Naylor Road: The Applicant shall improve and maintain, at a value of \$50,000, the existing triangular pocket park at 25th Street and Naylor Road. The maintenance of the pocket park will be provided over the entire time period of the development of the project, as discussed in Condition No. 17. The maintenance obligation will commence immediately after the improvements are made. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and the OZ as to whether any improvements were made for this purpose. ~~The Applicant will construct the improvements to the pocket park within five years of the effective date of this Order.~~ **The work related to the installation of the right turn lane, new sidewalks, and utility improvements will be completed by September 10, 2018. The installation of hardscape and landscape improvements will be completed by May 1, 2020.**

On September 25, 2017, upon motion by Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** this 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 this Order shall become final and effective upon publication in the *D.C. Register* on February 2, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 13-09B
Z.C. Case No. 13-09B
Stanton Commons II, LLC
(Time Extension of First-Stage PUD @ Square 5877)
July 10, 2017

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on July 10, 2017. At that meeting, the Commission approved the request of Stanton Commons II, LLC¹ (“Applicant”) for a time extension of the approval of the first-stage planned unit development (“PUD”), approved by Z.C. Order No. 13-09, until May 20, 2020. The property (Lot 1077 in Square 5877 – part of former Lot 126) that is the subject of this application is located along Elvans Road, S.E. (“Property”) and is adjacent to the Community Service Center Campus that was approved in Z.C. Case Nos. 13-09 and 13-09A. The time extension request was made pursuant to § 705.2 of the Commission’s Rules of Practice and Procedure as set forth in Subtitle Z of Title 11 DCMR.

FINDINGS OF FACT

BACKGROUND INFORMATION

1. The Commission approved the development of a Community Service Center Campus on the Property as part of Z.C. Order No. 13-09. The consolidated PUD approval included a building on the Community Service Center Campus of approximately 54,000 square feet that will be occupied by Martha’s Table and Community of Hope. Martha’s Table will use approximately 42,000 square feet of the building for early childhood programming, nutrition and wellness services, and after-school programming. Community of Hope and other complementary non-profit organizations will use approximately 12,000 square feet of the building for employment and behavioral services counseling. In Z.C. Case No. 13-09A, the Commission approved an application for a modification of consequence that was solely related to redesign and relocation of certain architectural elements of the Martha’s Table and Community of Hope building that was approved as part of the consolidated PUD approval.
2. The Commission’s first-stage PUD approval in Z.C. Case No. 13-09 was solely related to a second building on the Community Service Center Campus. The first-stage PUD application approved a second building with a height of approximately 45 feet, a density of approximately 0.92 floor area ratio (“FAR”), and a surface parking lot with approximately 24 parking spaces.

TIME EXTENSION REQUEST

¹ The Applicant in Z.C. Case Nos. 13-09 and 13-09A was Stanton Square, LLC. On February 8, 2017, Stanton Square, LLC transferred its interest in the Property and all development plans and approvals that are the subject of the first-stage PUD approval to Stanton Commons II, LLC.

3. On May 18, 2017, the Applicant filed the present application requesting a three-year extension of the time period for approval of the first-stage PUD. The Applicant also requested a waiver of § 705.3 of Subtitle Z of Title 11 DCMR, which limits the Commission's ability to grant a first-time extension request for no more than two years. The Applicant requested that the first-stage PUD approval be extended for three years from May 20, 2017 until May 20, 2020. Prior to May 20, 2020, the Applicant will file a second-stage PUD application with the Commission.
4. At the June 26, 2017 Public Meeting, the Commission noted that ANC 8B and ANC 8A had not submitted anything into the record regarding this application. The Commission decided to allow ANC 8B and 8A additional time to submit a response to this application and re-scheduled the case for a decision on July 10, 2017. The Office of Zoning sent an e-mail to representatives of ANC 8B and 8A on June 27, 2017 informing them of the opportunity to comment on this application. (Exhibit ["Ex."]. 5.)
5. In its written statement, the Applicant stated that since the Commission's approval of the application, it has been actively working on the development of the building permit plans and materials necessary for the construction of the Martha's Table/Community of Hope building on the Community Service Center Campus approved in the consolidated PUD application. The Applicant commenced site preparation activities on August 19, 2016, filed the building permit application for that building on December 1, 2016, and the building permit was issued on March 23, 2017. In addition, the Applicant created separate assessment and taxation lots for the buildings to be located on the Community Service Center Campus. The Applicant also noted that construction activity was feverishly occurring on the site and the Applicant expects that Martha's Table and Community of Hope will be ready to occupy the building in July, 2018. (Ex. 2, p. 3.)
6. The Applicant also stated that all of the uses on the Community Service Center Campus are intended to create a coherent and complementary experience for all members of the Community Service Center Campus community. Based on discussions among the existing Community Service Center Campus members, the Applicant determined that the most prudent way to help assure that the uses in the second building will be complementary to the initial uses is to allow Martha's Table and Community of Hope to operate for a year. After that first year, the Applicant will be able to determine what additional community serving uses would be appropriate for the Community Service Center Campus and will best serve the needs of the surrounding community and neighborhood. (Ex. 2, pp. 3-4.)
7. The Applicant noted that the proposed three-year time extension (until May 20, 2020), is based on Martha's Table and Community of Hope beginning operations in the Fall of 2018. The Applicant anticipated that by the end of 2019, it will have a better sense of how the Community Service Center Campus is operating and will be in a position to seek proposals from other potential tenants. This would then allow the Applicant to select tenants for the second building on the Community Service Center Campus, and tailor the building to their specific needs, during the first quarter of 2020. A second-stage PUD application could then be filed by May 20, 2020. (Ex. 2, p. 4.)

8. The Applicant concluded that granting the three-year time extension will be sufficient to prevent the first-stage PUD from expiring on May 20, 2017; and allow the Applicant to return to the Commission with a well-planned and fully vetted second-stage PUD application for the second building on the Community Service Center Campus prior to May 20, 2020. (Ex. 2, p. 4.)
9. In its June 9, 2017 report to the Commission, the Office of Planning (“OP”) recommended approval of the three-year time extension for the first-stage PUD application in order “to allow for assessment of programming needs for the community service center on the upper western portion of the site, projected for completion in Fall 2018.” (Ex. 4.)
10. On July 10, 2017, the Chairperson of ANC 8B submitted a letter into to the record of this case which noted that while ANC 8B had not taken a formal vote on this application at a regularly scheduled monthly public meeting, the application was reviewed by the Executive Committee of ANC 8B. ANC 8B supported the application for the following reasons:
 - It makes sense to allow Martha’s Table and Community of Hope to operate for a year on the property before determining what additional types of uses should be included in the second phase of the Stanton Commons community service center;
 - After that first year, the applicant will be able to determine, with input from ANC 8B, what additional community serving uses will best serve the needs of our community and surrounding neighborhood; and
 - ANC 8B understands that it will have the opportunity to review the proposal for the second stage of development on the Stanton Commons when the second-stage PUD application is filed and processed with the Commission. ANC 8B looks forward to working with the applicant to make that project a success for the entire community. (Ex. 6.)
11. ANC 8A did not submit anything into the record in this case.
12. On July 10, 2017, the Applicant submitted a letter to the Commission which detailed the actions it had taken in contacting representatives of ANC 8B and ANC 8A regarding this application. (Ex. 7.)

CONCLUSIONS OF LAW

The Commission may extend the time period of an approved PUD provided the requirements of 11-Z DCMR § 705.2 are satisfied. Section 705.2(a) requires that the applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. The only party in Z.C. Case No. 13-09 was ANC 8B. The boundaries of ANC 8A are located across the street from a portion of the property that was the subject of Z.C. Case No. 13-09. Therefore, ANC 8A meets the definition of “affected ANC” as stated at 11-B DCMR § 100.1.

The Applicant properly served both ANC 8B and 8A with a copy of this application and those ANCs were provided 30 days to respond. The Commission notes that while ANC 8B did not take a formal vote on this application at a regularly scheduled public meeting, ANC 8B did submit into the record of this case a letter noting that the application had been reviewed by the Executive Committee of ANC 8B and that ANC 8B supported the application. ANC 8A did not participate in this case.

11-Z DCMR § 705.2(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD. The Commission notes, in the one year since the approval of the consolidated and first-stage PUD, there has been no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD.

11-Z DCMR § 705.2(c) requires that the Applicant demonstrate with substantial evidence one or more of the following criteria:

1. An inability to obtain sufficient project financing for the development, following an applicant's diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond the applicant's reasonable control;
2. An inability to secure all required governmental agency approvals for a development by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or
3. The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the order.

The Commission finds that there is good cause shown to support extending the period of time in which the first-stage PUD is valid because the Applicant has demonstrated that a factor beyond its reasonable control renders it unable to comply with the time limits of the original order. The Commission agrees that it is ultimately in the best interest of the Community Service Center Campus members and the surrounding community and neighborhood to allow the Martha's Table and Community of Hope uses to be operational for at least a year before the Applicant is required to file a second-stage PUD application the uses and design of the second building on the Community Service Center Campus. This additional time will allow the Applicant and all members of the Community Service Center Campus an appropriate amount of time to determine what additional uses will be complementary and accretive to the Community Service Center Campus and the neighboring community. For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11-Z DCMR § 705.2(c)(3).

In regards to the Applicant's request for a waiver from 11-Z DCMR § 705.3, the Commission may, for good cause shown, waive any of the provisions of Subtitle Z if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law (See 11-Z DCMR § 101.9.) The Commission believes that granting a three-year time

extension, rather than a two-year time extension, is appropriate for the reasons discussed above, and in the Commission's judgment the waiver will neither prejudice the rights of any party nor is it otherwise prohibited by law.

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A)(2012 Repl.) to give "great weight" to the issues and concerns contained in the written report of the affected ANC. Both ANCs, 8A and 8B, meet the definition of "affected ANC" as set forth in 11-B § 100.1. However, the ANC 8B letter submitted into the record in this case noted that no official vote was taken by ANC 8B at a duly noticed public meeting with a quorum present; and the letter did not note any issues and concerns. Therefore, ANC 8B's support is noted by the Zoning Commission, but there is nothing to give great weight to because the ANC did not express any issues and concerns. As noted in the Findings of Fact, ANC 8A did not participate in this case.

The Commission is required to give great weight to the recommendations of OP (See D.C. Official Code § 6-623.04 (2012 Repl.)). The Commission concurs with OP's recommendation to approve this time extension request. The Applicant is also subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a time extension of the first-stage PUD application approved in Z.C. Order No. 13-09. The first-stage PUD approved by the Commission shall be valid until May 20, 2020, within which time the Applicant will be required to file a second-stage PUD application the second building on the Community Service Center with the Commission.

On July 10, 2017, upon the motion of Commissioner Shapiro, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Peter A. Shapiro, Robert E. Miller, Peter G. May, Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.8 this Order shall become final and effective upon publication in the *D.C. Register* on February 2, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 13-18A**

Z.C. Case No. 13-18A

WBG Wheeler Road, LLC

(Time Extension for Planned Unit Development @ Square 5925, Lot 65)

April 24, 2017

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on April 24, 2017. At that meeting, the Commission approved the request of WBG Wheeler Road, LLC for a time extension in which to file a building permit application for the planned unit development (“PUD”), approved by Z.C. Order No. 13-18, until April 17, 2019. The property is situated in Ward 8 and has a combined land area of approximately 32,092 square feet. The property is located at the intersection of Wheeler Road and Barnaby Street, S.E., in the Washington Highlands neighborhood. The property includes approximately 210 feet of linear frontage along Wheeler Road, S.E. and 139 feet of linear frontage along Barnaby Street, S.E. Square 5925, is located in the southeast quadrant of the District and is bounded roughly by Wahler Place to the north, Wheeler Road to the east, Barnaby Street, S.E. to the south and 9th Street to the west (“Property”). The time extension request was made pursuant to § 705.2 of the Commission’s Rules of Practice and Procedure as set forth in Subtitle Z of Title 11 DCMR.

FINDINGS OF FACT

BACKGROUND INFORMATION

1. On December 30, 2013, the Applicant filed an application with the Commission for the consolidated review and approval of a PUD and a related zoning map amendment seeking to rezone the Property from the C-1 Zone District to the C-3-A Zone District. On February 21, 2014, the Applicant submitted an amended application and updated architectural plans, seeking to rezone the Property from the C-1 Zone District to the C-2-B Zone District. The property is situated in Ward 8 and has a combined land area of approximately 32,092 square feet. Fifteen-foot building restriction lines are located along both Wheeler Road, S.E. and Barnaby Street, S.E. Part of the property is currently improved with a barber shop, convenience store, liquor store, pharmacy, and cell phone retailer along Wheeler Road, S.E.
2. The project will be a mixed-use development composed of retail and residential uses. The overall project will have a density of 3.56 floor area ratio (“FAR”), less than the maximum permitted of 6.0 under the C-2-B PUD requirements, and will include approximately 99,205 square feet of residential uses comprising 85 units, and approximately 15,566 square feet of commercial space. The building will be constructed to a maximum height of 83.5 feet with a maximum of seven stories. The project will have an overall lot occupancy of approximately 67.5% and will include 25 surface parking spaces.
3. Pursuant to Z.C. Order No. 13-18, the Commission granted the consolidated review and approval of a PUD and a related zoning map amendment to rezone Lot 65 in Square 5925

from the C-1 Zone District to the C-2-B Zone District for the construction of a mixed-used development composed of retail and residential uses on the property. The order became effective upon publication in the *D.C. Register* on April 17, 2015. The order requires the Applicant to file a building permit application for the first phase of the development no later than April 17, 2017. Construction of the first phase must begin no later than April 17, 2018.

CURRENT REQUEST

4. The Applicant filed the present time extension request on March 16, 2017 requesting that it be allowed a three-year PUD time extension¹ to file a building permit application pursuant to Subtitle Z § 705.3. (Exhibit [“Ex.”] 1-2D.)
5. The Applicant noted that the only party in the original case was Advisory Neighborhood Commission (“ANC”) 8E. ANC 8E was served a copy of the time extension request and allowed 30 days to respond.
6. The Applicant stated that there has been no substantial change of material facts upon which the Commission based its original approval of the PUD that would undermine the Commission’s justification for approving the original PUD in 2015.
7. The Applicant submitted evidence that the project has experienced delay beyond the Applicant’s control because of an inability to obtain sufficient project financing for the development. The Applicant has taken many steps to move forward with the development which is the subject of this application, including the following good faith efforts to obtain financing:
 - Working diligently with various existing retailers currently in operation at the property to renegotiate their existing leases in a manner feasible to all parties that will enable development of the site. The Applicant has come to agreement with Wheeler Market, Wheeler Liquor, Metro PCS, Harkum’s Barber & Beauty Salon, and Healing Touch Pharmacy;
 - Engaged in discussions with numerous potential lenders to finance the project such as City First Bank of DC, Lancaster Pollard, and Amalgamated Bank;
 - Sought funding from a number of institutional lenders and capital sources through Horizon Real Estate Group and AreaProbe, both of which have experience in commercial real estate marketing and funding;
 - Engaged in discussions with a number experienced residential developers, including Gilbane Development, Flaherty & Collins, Dantes Partners, Anacostia Economic Development Corporation (AEDC), and ROSS Development & Investment, to determine their interest in partnering to develop the project; and

¹ The Applicant applied for a three-year time extension but was granted a two-year time extension.

- Spent approximately \$900,000 in preparing the necessary plans and securing PUD approval.
8. In its April 14, 2017 report to the Commission, the Office of Planning (“OP”) recommended approval of a PUD time extension request for two years. OP concluded that the Applicant satisfied the relevant standards of Subtitle Z § 705.2 and that based on the commitment exhibited by the Applicant, the granting of a two-year extension pursuant to § 705.3 was reasonable. (Ex. 4.)

CONCLUSIONS OF LAW

The Commission may extend the time period of an approved PUD provided the requirements of 11-Z DCMR § 705.2 are satisfied.

11-Z DCMR §705.2(a) requires that the applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. As previously noted, ANC 8E, the only party in the original case, was served with a copy of the time extension request and allowed 30 days to respond.

11-Z DCMR § 705.2(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission’s justification for approving the original PUD. Based on the information provided by the Applicant and OP, the Commission concludes that extending the time period of approval for the approved PUD is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original PUD application.

11-Z DCMR § 705.2(c) requires that the applicant demonstrate with substantial evidence one or more of the following criteria:

- (1) An inability to obtain sufficient project financing for the development, following an applicant’s diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond the applicant’s reasonable control;
- (2) An inability to secure all required governmental agency approvals for a development by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant’s reasonable control; or
- (3) The existence of pending litigation or such other condition, circumstance or factor beyond the applicant’s reasonable control that renders the applicant unable to comply with the time limits of the order.

The Commission finds that there is good cause shown to extend the period of time in which the Applicant is required to file a building permit application. The Commission concludes that the Applicant has not been able to obtain sufficient project financing for the development due to market conditions outside of its control. For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11-Z DCMR § 705.2(c)(1).

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.) to give “great weight” to the issues and concerns contained in the written report of an affected ANC. ANC 8E did not submit a written response regarding the Applicant’s time extension request therefore there is nothing for the Commission to give great weight to. The Commission is required to give great weight to the recommendations of OP (See D.C. Official Code § 6-623.04 (2012 Repl.)). OP recommended approval of a two-year time extension request, and the Commission concurs in its recommendation. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a two-year time extension of the PUD application approved in Z.C. Order No. 13-18. The consolidated PUD approved by the Commission shall be valid until April 17, 2019, within which time the Applicant will be required to file a building permit application to construct the approved PUD, and construction of the PUD must start no later than April 17, 2020.

On April 24, 2017, upon motion by Commissioner May, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.8 this Order shall become final and effective upon publication in the *D. C. Register* on February 2, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-18A
Z.C. Case No. 15-18A
Initio, LP
(PUD Minor Modification @ Square 1194, Lot 811)
September 11, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public meeting on September 11, 2017 to consider an application by Initio, LP (“Applicant”) for a minor modification of consolidated planned unit development (“PUD”) by approved by Z.C. Order No. 15-18 for the parcel located at 2715 Pennsylvania Avenue, N.W., and more particularly identified as Square 1194, Lot 811 (“Property”). The minor modification request was made pursuant to Subtitle Z, Chapter 7, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

A. The Applications, Parties, Hearing, and Post-Hearing Filings

1. Pursuant to Z.C. Order No. 15-18, dated January 30, 2017, and effective March 10, 2017 (“Order”), the Commission approved an application for consolidated review of a PUD and a related Zoning Map amendment from the C-2-A Zone District/unzoned to the W-2 Zone District for the Property in order to permit the redevelopment of the Property with a mixed-use building that has a restaurant on the ground floor and a four-story apartment house with seven residential units above. The proposed building will have a height of 60 feet and density of a 3.5 floor area ratio (“FAR”).
2. As a result of the PUD-related map amendment, the Property was rezoned to W-2. Pursuant to § 2401.1(c) of the 1958 Zoning Regulations, a PUD in the W-2 District must occupy a minimum land area of 15,000 square feet, except § 2401.2 authorizes the Commission to waive not more than 50% of the minimum area requirement, provided:
 - (a) The Commission shall find after public hearing that the development is of exceptional merit and in the best interest of the city or country; and
 - (b) The Commission shall find one of the following:
 - (i) If the development is to be located outside the Central Employment Area, at least 80% of the gross floor area of the development shall be used exclusively for dwelling units and uses accessory thereto; or
 - (ii) If the development is to be located in a portion of the Central Employment area which is in an HR Overlay District, the

development shall contain a minimum 2.0 FAR devoted to hotel or apartment house use.

3. A full 50% waiver of the requirement under § 2401.2 would result in a minimum required land area of 7,500 square feet; and with only 7,413 square feet of land area, the Property would not meet that requirement. Therefore, the application also included a request for a waiver from the limits of § 2401.2.
4. In support of its waiver request, the Applicant noted that the Commission adopted a replacement version of Title 11 DCMR (“2016 Regulations”) that would become effective on September 6, 2016. The 2016 Regulations would continue to require the same minimum land area for this PUD, but at the time of the application, the yet-to-be effective Subtitle X § 301.2 permitted the Commission to waive an unlimited percentage of this requirement. Although the provision did not apply to this application, the Applicant argued that the rationale that prompted the Commission’s decision to adopt it applied equally to the instant case. At its public meeting on April 11, 2016, the Commission decided to set down this application for a hearing without deciding whether the 50% limitation should be waived, but instead determined that the Applicant must present its case for the waiver at the public hearing, while also demonstrating that the prerequisites of Subtitle X § 301.2 have been met.
5. The public hearing on the application was held on July 21, 2016. The parties to the case were the Applicant and ANC 2E.
6. Larry Hargrove of the Committee of 100 on the Federal City (“Committee of 100”) testified at the public hearing, and the Committee of 100 also submitted a letter into the record. (Ex. 42.) The Committee’s comments related to the adopted, but not yet effective Subtitle X § 301.2, which would have permitted the Commission to fully waive the minimum lot area requirements for PUDs. Mr. Hargrove asserted that the rule adopted was different from the text proposed in the Notice of Proposed Rulemaking and therefore should not be considered of relevance. The Committee of 100 also asserted that the Commission could not waive its own rule limiting the percentage of land area that could be waived to 50% of the required minimum land area.
7. After the hearing on July 21, 2016, but before the effective date of the 2016 Zoning Regulations, the Commission issued Z.C. Order No. 08-06E, which among other things, amended Subtitle X § 301.2 to reinstate the 50% land waiver limit. The Commission concluded that it would be better to hold a specific public meeting on whether to allow unlimited land area waivers, and therefore agreed to set down for hearing Z.C. Case 08-06F, which proposed a full land area waiver.
8. On September 6, 2016, the 2016 Zoning Regulations became effective, together with changes to the existing zone names. Among those changes was the re-designation of the W-2 zone as MU-13. However, because the application was

not subject to ZR16, that change did not affect the W-2 map amendment sought for this PUD.

9. The application was first scheduled for proposed action on September 12, 2016, but was removed from the agenda. On September 26, 2016, and again on October 17, 2016, the Commission, recognizing the potential significance of Z.C. Case No. 08-06F, deferred taking proposed action until it decided that case.
10. At its public meeting on December 19, 2016, the Commission took final action to approve Z.C. Case No. 08-06F, including amendments to Subtitle X § 301. The amendments, as adopted, differed from the amendments originally advertised. The Commission amended Subtitle X § 301.2 to retain the 50% limitation for some zone districts, while for others, including the MU-13 zone, it added new subsection, Subtitle X § 301.3 to allow for more than a 50% waiver, but not to less than 5,000 square feet. In both instances, the Commission would have to find after a public hearing that: (i) the development is of exceptional merit and is in the best interests of the District of Columbia or the country; and (ii) if the development is to be located outside the Central Employment Area, at least 80% of the gross floor area of the development shall be used exclusively for dwelling units and uses accessory thereto.
11. Had the PUD application been filed after September 6, 2016, the Property would have been rezoned to MU-13, and it would have been eligible for a minimum land waiver to 7,413 square feet pursuant to Subtitle X §301.3.
12. The Commission concluded that although new Subtitle X § 301.3 did not "technically" apply to the PUD because it was filed under the previous regulations, the rationale that prompted the Commission to adopt it are equally relevant to the Commission's determination of this request. Since the Commission determined that an MU-13 property of less than 15,000 square feet is eligible to request a land waiver to not less than 5,000 square feet, the Commission determined that the PUD should be similarly eligible. For that reason, and the other reasons set forth in Z.C. Order No. 15-18, the Commission concluded the application met the requirements for a waiver under both § 2402.2 and the new Subtitle X § 301.3, and the Commission waived the 50% limitation of the former and granted a land area waiver to 7,413 square feet.

B. Appeal of ZC Order No. 15-18

13. The Committee of 100 filed a Petition for Review of Z.C. Order No. 15-18 with the D.C. Court of Appeals on April 3, 2017. Since that time, the Applicant has been in contact with representatives of the Committee of 100, and has confirmed that the bases of the appeal are: (i) the Commission's purported retroactive application of its rules to grant the PUD an exception to the minimum lot area requirement of 7,500 square feet based upon application of ZR16 regulations, even though the application was evaluated under the 1958 Zoning Regulations;

and (ii) the Commission's purported disregard of the plain language of § 2401.2 limiting waivers to 50% of the minimum area requirement.¹

14. During the course of the discussions, it became clear to the parties that, if the Commission were to modify the approval such that the minimum area requirements were evaluated under ZR16 and vacate those portions of the Order dealing with the waiver under the 1958 Zoning Regulations, the bases for the appeal would be resolved, and that the appeal could be dismissed.² The parties specifically note that as a result of Z.C. Order No. 08-06F, the minimum lot area for a PUD in the MU-13 zone can be reduced to 5,000 square feet. (*See* 11 DCMR Subtitle X §§ 301.1 and 301.3.

C. Modification Request

15. On August 29, 2017, the Applicant filed an application with the Commission seeking a technical correction or minor modification to Z.C. Order No. 15-18 to apply the minimum land area requirements in Subtitle X § 301.1 to the PUD; to waive the minimum land area requirement pursuant to Subtitle X § 301.3; and vacate those portions of the Order dealing with the waiver under the 1958 Zoning Regulations.
16. Under ZR16, the W-2 Zone District was converted to the MU-13 zone. For purposes of the PUD minimum land area requirements, the MU-13 zone is in Zone Group 6, which has a minimum land area requirement of 15,000 square feet. (Subtitle X § 301.1.)
17. Pursuant to Subtitle X § 301.3, the Commission may waive the minimum area requirement to no less than 5,000 square feet for applications in Zone Group 6, provided the Commission shall find after the public hearing that the development is of exceptional merit and is in the best interest of the District of Columbia or the country and one (1) of the following:
 - (i) The development is identified in an approved Small Area Plan and will be generally not inconsistent with the Small Area Plan;

¹ The Commission did neither of these things, and continues to believe in the validity of the waiver granted in the Order.

² The Applicant had the option to file the PUD under the 1958 Zoning Regulations or ZR16, but not pick and choose rules/standards from both sets of regulations to apply to the project. Because of the issue raised on appeal by the Committee of 100, and because the Applicant demonstrated compliance for the waiver of the minimum land area requirements under both sets of regulations at the time of the original PUD approval, the Commission finds it appropriate to apply the requirements of Subtitle X §§ 301.1 and 301.13 of ZR16 to the PUD in accordance with its inherent authority to waive its administrative rules.

- (ii) The development will be constructed or operated by the District of Columbia or federal government and serves a compelling government interest; or
 - (iii) If the development is to be located outside the Central Employment Area, at least 80% of the gross floor area of the development shall be used exclusively for dwelling units and uses accessory thereto.
18. As previously stated in Finding of Fact No. 38 of the Order, the Commission finds that the PUD meets the requirements for a waiver under Subtitle X § 301.3. The standard of review and the Applicant's rationale for the required waiver is the same as when the PUD was originally approved. Further, the Applicant does not propose any changes to the approved PUD plans with this modification request.
19. The Commission, at its public meeting on December 12, 2017, determined that this application was properly a minor modification within the meaning of 11-Z DCMR § 703.2, and that no public hearing was necessary pursuant to 11-Z DCMR § 703.1.
20. In satisfaction of 11-Z DCMR § 703.13, the Applicant provided a Certificate of Service, which noted that ANC 2E was served with the application.
21. OP submitted a report on September 5, 2017. (Ex. 4.) The OP report stated that it "... does not oppose the proposed modification." OP also stated that it "...does not consider this to be setting a precedent for any other case, and [] does not oppose the minor modification for this specific case only."

CONCLUSIONS OF LAW

1. Pursuant to 11-Z DCMR § 703.1, the Commission, in the interest of efficiency, is authorized to make minor modifications to final orders and plans without a public hearing. A minor modification "is one that does not change the material facts upon which the Commission based is original approval of the application or petition." (11-Z DCMR § 703.2.)
2. The Commission concludes that the modification requested and as described in the above Findings of Fact, is a minor modification and therefore can be granted without a public hearing.
3. Pursuant to this modification, the relief granted to the Applicant rests within the four corners of Subtitle X § 301.3 and does not resort to granting relief beyond the plain meaning of any regulation.

4. The 2016 Regulations govern modifications to PUDs initially determined under the 1958 Regulations.
5. As a result of this minor modification, the Property is eligible for a land waiver to not less than 5,000 square feet, pursuant to Subtitle X § 301.3. The Commission finds that the development is of exceptional merit and is in the best interests of the District of Columbia or the country and, being, located outside the Central Employment Area, at least 80% of the gross floor area of the development shall be used exclusively for dwelling units and uses accessory thereto.

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 a minor modification to the PUD approved in Z.C. Case No. 15-18 as follows:

1. Findings of Fact Nos. 37 and 38 in Z.C. Order No. 15-18 though not erroneous are hereby vacated.
2. Conclusion of Law No. 4 in Z.C. Order No. 15-18 though not erroneous is hereby vacated.
3. The PUD is subject to the minimum area requirements in Subtitle X § 301.1, which requires a minimum land area for the PUD of 15,000 square feet.
4. The Property is granted a waiver to have a minimum lot area of 7,413 square feet, pursuant to Subtitle X § 301.3, because the Commission finds that the development is of exceptional merit and is in the best interest of the District of Columbia, and 80% of the gross floor area of the development is used exclusively for dwelling units and uses accessory thereto.

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

On September 11, 2017, upon the motion of Vice Chairman Miller, as seconded by Commissioner Shapiro, the Zoning Commission took **FINAL ACTION** to **APPROVE** the

application 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, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on February 2, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-17**

Z.C. Case No. 16-17

EYA Development, LLC

(Consolidated PUD and Related Map Amendment @ Square 3917)

September 11, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing (“Public Hearing”) on April 27, 2017 and continued in part to May 18, 2017 to consider an application (“Application”) from EYA Development, LLC (“Applicant”) for review and approval of a consolidated planned unit development and related Zoning Map amendment (collectively, a “PUD”). 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

I. Procedural Summary

1. The property that is the subject of this PUD is Lot 800 in Square 3917 (“Property”), which has a street address of 1200 Varnum Street, N.E. and is located in Ward 5. (Exhibit [“Ex.”] 2 at 3). The Property is a contiguous and includes nearly all of the block bounded by Allison Street, N.E. to the north; 13th Street, N.E. and Sargent Road, N.E. to the east; 12th Street, N.E. to the west; and Varnum Street, N.E. to the south. (Id. at 3, 26.) The Property is approximately 349,294 square feet (8.017 acres) in area. (Id. at 3.) The Applicant proposes to redevelop the Property with 80 townhouses; the preservation of significant open spaces; the creation of new parks, private roads, alleys, and parking; the maintenance of the existing Seminary building; and the provision of certain other public benefits associated therewith (collectively, the “Project”). (Id.) The Property is currently owned by St. Joseph’s Society of the Sacred Heart, Inc. (“Josephites”). (Ex. 2B2.)
2. On May 26, 2016, the Applicant delivered a notice of its intent to file a zoning application to all owners of property within 200 feet of the perimeter of the Property as well as to Advisory Neighborhood Commissions (“ANC”) 5A and 5B pursuant to § 300.7 of Subtitle Z of the Zoning Regulations. (Ex. 2C.) The Applicant filed the Application materials (“Initial Statement”) on August 2, 2016, and the Application was accepted as complete by the Office of Zoning on August 9, 2016. (Ex. 1, 4.) The Applicant certified the Application satisfied the PUD filing requirements. (Ex. 2D, 15E.) The Office of Zoning (“OZ”) referred the Application to the ANCs, the Councilmember for Ward 5, and the District Office of Planning (“OP”), and notice of the filing of the Application was published in the *D.C. Register*. (Ex. 5-9.)

3. On October 7, 2016, OP delivered a report (“OP Setdown Report”) on the Application, recommended that the Commission set the Application down for public hearing, and requested additional information from the Applicant. (Ex. 11.)
4. At a public meeting on October 17, 2016 (“Setdown”), OP presented the OP Setdown Report. (October 17, 2016 Transcript [“Tr. 1”] of the Commission Regular Public Meeting at 66-68.) The Commission then requested additional information from the Applicant. (*Id.* at 68-77.)
5. On February 8, 2017, the Applicant filed its pre-hearing statement (“PHS”), which included updated plans and information in response to the requests from OP and the Commission and paid the requisite hearing fee. (Ex. 15-16.) On February 28, 2017, the Applicant filed a comprehensive transportation review for the Project (“CTR”). (Ex. 21-22.)
6. Notice of the Public Hearing was published in the *D.C. Register* on February 24, 2017, and was mailed to the ANC and to owners of property within 200 feet of the Property. (Ex. 18-19, 23-25.) On March 16, 2017, the Applicant posted notice of the Public Hearing at the Property. (Ex. 26.) On April 24, 2017, the Applicant filed an affidavit describing the maintenance of such posted notice. (Ex. 62.)
7. Pursuant to the Zoning Regulations, 11-X DCMR (“X”) § 405.3,¹ OP requested comments on the Project from the District Department of Energy and the Environment (“DOEE”), the District Department of Transportation (“DDOT”), DC Water, the Department of Housing and Community Development (“DHCD”), the Department of Parks and Recreation, the Department of Public Works, DC Public Schools, the Fire and Emergency Medical Services Department (“FEMS”), and Metropolitan Police Department (“MPD”). (Ex. 11 at 13.)
8. On April 7, 2017, the Applicant filed a supplemental statement (“20-Day Statement”) providing additional information requested from OP and the Commission and providing updated architectural plans, drawings, and renderings. (Ex. 30.)
9. OP, DOEE, DDOT, the Urban Forestry Administration (“UFA”), DC Water, and FEMS each submitted a final report (respectively, the “OP Final Report”, “DOEE Report”, “DDOT Report”, “UFA Report”, “DC Water Memo”, and “FEMS Memo”). (Ex. 36-37, 220A, 134, 210, 213.) The Commission *sua sponte* granted UFA and DC Water a waiver from the requirement that agency reports be filed no less than 10 days before the Public Hearing. DOEE requested a waiver to file its report late and the Commission granted that waiver. (Ex. 220.) DDOT filed a supplemental report (“DDOT Supplemental Report”) which responded to the Applicant’s post-hearing submission, and the Commission granted a waiver to allow that report into the record. (Ex. 218.)

¹ This Application proceeds under the provisions of the Zoning Regulations in effect as of September 6, 2016. Accordingly, the provisions of 11 DCMR §§ 2407.3 and 2408.3 are inapplicable to the instant proceeding.

10. The ANCs are automatically a party to this proceeding. (11-Z DCMR (“Z”) § 403.5(b).) ANC 5A filed its report on this Application on April 19, 2017 and ANC 5B filed its report on February 21, 2017. (Ex. 41, 20.)
11. By letter dated April 10, 2017, the Residents for Responsible Development of St. Joseph’s (“Residents”) filed a request for advanced party status. (Ex. 31.) The Residents requested their party status request be heard in advance of the Public Hearing. (Ex. 31A.) On April 12, 2017 Robert and Kelly Perl (“Perls”) filed a request for party status. (Ex. 32.) The Perls did not seek advanced party status. (*Id.*) No other requests for party status were filed.
12. On April 17, 2017, the Applicant filed a response to the two requests for party status and requested that the two requests be combined. The Applicant did not otherwise object to either party status request. (Ex. 33.)
13. At a public meeting on April 24, 2017, the Commission granted the Residents’ advanced party status request and waiver from the filing provisions with respect to the same. At that time, the Commission declined to take action on the Perls’ request for party status. (April 24, 2017 Transcript [“Tr. 2”] of the Regular Public Meeting at 22-30.)
14. On April 27, 2017, the Commission conducted the Public Hearing in accordance with Subtitle Z of the Zoning Regulations. (April 27, 2017 Transcript [“Tr. 3”] of the Commission Public Hearing at 3-5.)
15. As a preliminary matter prior to the Applicant’s testimony, the Commission voted to deny the Perls’ party status. (*Id.* at 7-9.) The Perls spoke in opposition to the Project as non-party opponents. (Tr. 3 at 243-245.) As a second preliminary matter, the Commission accepted Mr. Daniel Van Pelt, the Applicant’s witness in transportation engineering, as an expert. (*Id.* at 9.) The Applicant did not offer an expert in the field of architecture and withdrew its request for an expert in the field of landscape architecture. (*Id.* at 10.)
16. At the Public Hearing, the Applicant provided testimony from Evan Goldman and Greg Schron, both as representatives of the Applicant; Bishop Tom Frank on behalf of the Josephites; and Mr. Van Pelt. (*Id.* at 11-55.) ANC 5B and the Residents each cross-examined the Applicant’s testimony. (*Id.* at 120-128.) ANC 5A did not cross-examine the Applicant. (*Id.* at 121.)
17. OP presented its report at the Public Hearing. (*Id.* at 128-130.) DDOT presented its report as well. (*Id.* at 130-134.) ANC 5B cross-examined OP. (*Id.* at 135-37.) No other cross-examination of the agencies was undertaken at the Public Hearing. (*Id.* at 135-138.) At the Public Hearing, ANC 5A presented its resolution in support of the Application and ANC 5B presented its resolution in opposition to the Application. (*Id.* at 137-147.) There was no cross-examination of the ANCs.
18. Thirteen persons or organizations spoke in support of the Application at the Public Hearing; and many others entered written testimony (collectively, the “Supporters”). (*Id.* at 152-88) (*See* Findings of Fact (“FF”) ¶¶ 110-111.) ANC 5B cross-examined those

- speaking in support of the Application from Casey Trees and Coalition for Smart Growth. (Tr. 3 at 178.) No other cross-examination was taken of Supporters. (*Id.* at 178, 188.)
19. At the Public Hearing, the Residents presented their testimony. (*Id.* at 188-226.) Neither the Applicant nor the ANCs cross-examined the Residents. (*Id.* at 228.)
 20. Twelve persons or organizations spoke in opposition to the Application at the Public Hearing; others entered written testimony (collectively, the “Opponents”). (*Id.* at 229-266) (*See* FF ¶¶ 116-19.) No cross-examination was taken of Opponents. (Tr. 3 at 250, 266.)
 21. At the conclusion of the Public Hearing, the Commission closed the record except with respect to those items of information requested and except with respect to the Applicant’s rebuttal and closing. (*Id.* at 269.)
 22. On May 18, 2017, the Commission resumed the Public Hearing on the Application to hear the Applicant’s rebuttal testimony and closing (“Rebuttal Hearing”). (May 18, 2017 Transcript [“Tr. 4”] of the Commission Public Hearing at 3.) The Applicant provided additional testimony and a written response to the Residents’ concerns. (“Rebuttal Memo”). (Ex. 209.) At the Rebuttal Hearing, the Commission advised that it would consider the testimony of the Applicant’s witness, Mr. Charles Hewlett, as regular testimony rather than expert testimony because Mr. Hewlett was neither proffered nor accepted as an expert. (Tr. 4 at 41-42.) The Residents and ANC 5B cross-examined the Applicant. (Tr. 4 at 37-43.) At the conclusion of cross-examination, the Commission, the Applicant, and the Residents agreed to allow the Residents the opportunity to respond further in writing to the Applicant’s written rebuttal testimony and to allow the Applicant the opportunity to reply in writing to the Residents’ response. (*Id.* at 45-47.) The Residents filed a written response to the Applicant’s Rebuttal Memo. “Residents’ Memo”). (Ex. 212.) Prior to his participation in the Rebuttal Hearing, Commissioner Shapiro stated that he had reviewed the entire record. (*Id.* at 3-4.)
 23. On June 1, 2017, the Applicant filed a written post-hearing submission in response to items requested by this Commission (“Post-Hearing Submission”), and Residents filed the Residents’ Memo. (Ex. 211, 212.)
 24. On June 8, the Applicant filed a draft order and a written reply to the Residents’ response to the Applicant’s rebuttal testimony (“Reply Memo”). (Ex. 217A, 216) Also on June 8, 2017, the Residents submitted proposed Findings of Fact and Conclusions of Law. (Ex. 215.) ANC 5B filed a response to the Post-Hearing Submission. (Ex. 214.)
 25. On June 9, 2017, ANC 5A filed a rebuttal to allegations made by the Residents and Opponents. (Ex. 219.)
 26. On June 26, 2017, the Commission noted the submission of reports from four agencies: DC Water; FEMS; DOEE; and DDOT (Supplemental Report) which were received after the conclusion of the Public Hearing and the Rebuttal Hearing in this case. Prior to engaging in substantive deliberations in this case, the Commission determined that it was

- necessary to allow the Applicant, the Residents, ANC 5A, and ANC 5B the opportunity to respond to the reports from the four agencies. Therefore, the Commission postponed taking proposed action in this case until the July 10, 2017 Public Meeting. (June 26, 2017 Transcript [“Tr. 5”] of the Commission Regular Public Meeting at 15-19.)
27. On July 3, 2017, the Applicant responded to the four agency reports. (Ex. 221.) ANC 5B requested a waiver to allow its late submission to the DDOT Supplemental Report be accepted into the record. The Commission granted that request. (Ex. 222, 223.)
 28. On July 10, 2017, the Commission took proposed action (“Proposed Action”) to approve the Application. (July 10, 2017 Transcript [“Tr. 6”] of the Commission Regular Public Meeting at 68.) The Commission requested that DDOT provide an additional report that was responsive to the issues and concerns stated in ANC 5B’s comments.
 29. On July 17, 2017, the Applicant provided final proffers and draft conditions pursuant to X § 308.8. (Ex. 225.)
 30. On July 31, 2017 the Applicant filed its revised and final list of proffers and conditions pursuant to X § 308.12. (Ex. 226A.) The Commission granted the Applicant leave to revise its draft order and for the other parties to submit comments on the Applicant’s revised draft order. (Tr. 6 at 69-70.)
 31. DDOT submitted the requested report (“DDOT Second Supplemental Report”) on August 11, 2017. (Ex. 227.)
 32. The Applicant submitted a revised order on August 15, 2017. (Ex. 228A.) The Commission reopened the record for the limited purpose of allowing the Applicant to file a consolidated set of plans and drawings reflecting the final revisions to the Project resulting from discussions at the Public Hearing and Rebuttal Hearing, at Proposed Action, and as described in the Post-Hearing Submission (“Final Plans”). (Tr. 6 at 68-69.) The Applicant submitted its Final Plans with its revised order on August 15, 2017. (Ex. 228B.)
 33. The proposed action of this Commission was referred to the National Capital Planning Commission (“NCPC”) pursuant to Z § 603.1 on July 11, 2017. (Ex. 224.) NCPC filed a letter in the record on September 8, 2017. (Ex. 229.) Attached to the letter was a delegated action dated August 31, 2017, and signed by NCPC’s Executive Director finding that the PUD is not inconsistent with the Federal Elements of the Comprehensive Plan or any other identified federal interest.
 34. On September 11, 2017, this Commission took final action to approve the Application.

II. Summary of the Application

35. The Application seeks the Commission’s review and approval for the Project under the standards for a consolidated PUD and related amendment of the Zoning Map with respect to the development of the Project on the Property. (Ex. 2A1, 2A2.) The Zoning Map

amendment (“Map Amendment”) would change the zoning for the Property from the current R-2 zone to the RA-1 zone. (Ex. 2 at 4.)

Overview of the Property and Surrounding Area

36. The Property that is the subject of this PUD Application is located in the northeast quadrant of the District, consists of the entire existing Josephites’ campus, and includes the existing Josephites’ Seminary building (“Seminary”) and grounds. (*Id.*) The irregularly shaped Property takes up virtually the entirety of Square 3917 except for the block’s northeastern corner, which currently has six attached single-family residences. (*Id.* at 11.)
37. The Property is situated near the border of the Michigan Park, North Michigan Park, and Brookland neighborhoods and is within Single Member District 5A03 of ANC 5A in Ward 5. (*Id.*) Varnum Street, N.E., which runs along the southern border of the Property, is the southern border of ANC 5A. On the southern side of Varnum Street, N.E. is Single Member District 5B05 of ANC 5B. (*Id.*) The Property is not located within any historic district. (*Id.*)
38. The Seminary is a 57-foot-tall, four-story brick and limestone building. Initial construction on the Seminary was finished in 1930, and the Seminary now contains approximately 103,750 square feet of gross floor area. (*Id.*) In 1958, the Josephites added a chapel wing to the western side of the Seminary, and the Seminary has been expanded to the east several times since it first opened. (*Id.* at 9.) The grounds of the Seminary campus and the surrounding streets have undergone changes, some quite extensive, in the time since the Seminary first opened. (*Id.*) The existing Seminary grounds are covered with well-kept grassy lawns and include some underutilized and partially overgrown recreation areas on the northern portion of the Property. (*Id.*) The grounds north of the Seminary are currently fenced off with an approximately six-foot-tall chain link fence on the northern, eastern, and western sides. (*Id.* at 12.) The Property is generally flat with a high point at and around the Seminary. (*Id.*) The Property slopes gently in all directions from the Seminary to the surrounding streets. (*Id.*) The Seminary’s front lawn along Varnum Street, N.E. expresses the greatest slopes with an elevation change of approximately 20 feet from the street up to the front steps of the Seminary. (*Id.*) The Property currently contains on-site surface parking serving the Seminary, and such parking is accessible via existing curb cuts from both 12th Street, N.E. and 13th Street, N.E. (*Id.* at 11-12.) Along the southern portion of the Property (i.e., along Varnum Street, N.E.) and in front of the existing building, is a magnificent lawn which presents the public face of the Seminary. The Seminary is not currently a designated historic landmark. (*Id.*)
39. The areas immediately surrounding the Property are a mix of institutional and residential uses. (*Id.* at 12.) Providence Hospital (the “Hospital”) is located immediately across 12th Street, N.E. to the west of the Property. (*Id.*) The Hospital comprises the entire block west of the Property (and several blocks to the west beyond), and its main building is six to

- eight stories. (*Id.*) There are no existing residences opposite the western boundary of the Property. (*Id.*)
40. The Seminary is one of many religiously-affiliated institutional campuses in the Northeast quadrant of the District. (*Id.*) The Property is located within a few blocks of the Washington Jesuit Academy, the home of the Carmelite Sisters, the Lt. Joseph P. Kennedy Institute of Catholic Charities, St. Anselm's Abbey School, the White Friars Hall School, Boys Town Washington DC, the Howard University School of Divinity, and the Franciscan Monastery, among many others. (*Id.*) The Seminary is approximately one mile away from Catholic University, Trinity Washington University, Saint John Paul II National Shrine, and other longstanding institutions along the North Capitol Street corridor. (*Id.*)
41. The blocks immediately north, south, and east of the Property have a residential character, with attached two- and three-story single-family dwellings with masonry exteriors being the dominant vernacular. (*Id.* at 13.) Numerous triplex homes are located along the immediately surrounding streets, and two sets of triplex houses are located at the corner of Sargent Road, N.E. and Allison Street, N.E. on the same block as the Property. (*Id.* at 13.) Fully detached houses are located across Sargent Road, N.E. from the six homes adjacent to the Property. Houses in the neighborhoods surrounding the Property are generally set close to the street, and are generally separated by modest front yards, gardens, porches, and pedestrian walks leading to sidewalks. (*Id.*) The houses adjacent to the Property are set back 60-70 feet from Sargent Road, N.E. (*Id.*) A mature canopy of street trees lines many streets in the blocks surrounding the Property. (*Id.*)
42. Apart from 12th Street, N.E., which serves the Hospital, the streets in the neighborhoods surrounding the Property include on-street parking and relatively few curb cuts, all in keeping with the residential nature of the neighborhood. (*Id.*) Virtually all of the surrounding residential blocks are served by rear alleys. Webster Street, N.E. currently stops at a "T" intersection at the transition from 13th Street, N.E. and Sargent Road, N.E. at the midblock point on the eastern border of the Property. (*Id.* at 11.)
43. The Property is less than a one-mile walk to the Brookland-CUA Metrorail station. (*Id.*) The Property is also served by the Number 80 WMATA Bus, which has stops along 12th Street, N.E. immediately adjacent to the Property. (*Id.*) Additional bus stops along South Dakota Avenue, N.E. and Michigan Avenue, N.E. are served by multiple WMATA bus lines and are within a two or three block walk from the Property. (*Id.*)
44. Existing active recreational spaces near the Property include the Turkey Thicket Recreation Area and North Michigan Park Recreation Center, both of which include outdoor active recreation areas including ball fields and playgrounds. (*Id.* at 13.) Although the neighborhoods around the Property are well-served by these active recreation facilities, there are comparatively few opportunities for passive recreation other than on private grounds of the various nearby institutions. (*Id.*) As a result, the grounds of the various institutional campuses, including the Property, are used for recreation by nearby residents with varying degrees of permission and formality. (*Id.*)

45. New development in the neighborhoods around the Property has generally been incremental in recent years, and there have not been any PUDs approved for the blocks surrounding the Property. (*Id.*)
46. Home prices in the vicinity of the Property have increased dramatically in recent years and at rates that exceed price increases in the District generally. (Ex. 208 at 1-2.)

The Josephites

47. The Josephites, the current owners of the Property, have owned and occupied the Property for nearly 90 years. (Ex. 2 at 15.) The Seminary is used for religious education and clerical residence, and the Josephites' plan to continue with the current uses for the indefinite future. (*Id.*) The proposed development of portions of the Property as part of this PUD help makes it possible for the Josephites to continue their mission in Ward 5. (*Id.*) That is, the Josephites are engaging in the development of the Property in order to raise funds to allow them to continue their mission in the Seminary. (Tr. 3 at 15-18.) The Josephites have invested significantly in the maintenance of the Seminary, which continues to fulfill its original mission as the primary teaching institution for the Josephites. (*Id.* at 9.)

The Project

48. Overview. The Project entails (i) construction of 80 townhouses composed of three-story, attached and semi-detached single-family townhouses plus related circulation, parking, and landscaping on the northern portion of the Property, (ii) preservation of significant amounts of open space on the Property, including the lawns immediately to the south, west, and east of the Seminary building for use and recreation by the general public, and (iii) maintenance of the Seminary and associated grounds for continued use by the Josephites.
49. Program. The Project's total gross floor area ("GFA") is approximately 179,892 square feet of new townhouse gross floor area plus the existing approximately 103,750 square feet of gross floor area in the Seminary, which equates to a total floor area ratio ("FAR") of approximately 0.95 when excluding from the lot area the area of new streets and alleys. (Ex. 30A at 18A, 18B.) The Project's overall FAR is well below the maximum FAR of 1.296 allowed in the RA-1 zone under a PUD and indeed is below the 1.08 FAR allowed by right pursuant to compliance with the Inclusionary Zoning ("IZ") regulations. (11-C DCMR § 1002.3; X § 303.3.) The Project's townhouses have heights of between 34 feet and 42 feet, less than the 60-foot maximum height permitted under a PUD in the RA-1 zone and approximately the same as the 40-foot height limit in the existing R-2 zone. (Ex. 30A at 18A, 18B; 11-D DCMR § 302.1.) The Project's overall lot occupancy is approximately 29%. (*Id.*) The Project's individual townhouses generally do not comply with the rear and side yard requirements of the theoretical lots on which they are located. (*Id.*)

50. Affordable Housing. The Project includes ten affordable townhouses that would participate in the District's IZ program. (Ex. 30B.) The IZ townhouses equal 12.5% of the townhouses and 11.2% of the residential square footage. (*Id.*) Each IZ townhouse has at least three bedrooms and some have four, consistent with the other townhouses in the Project. (*Id.*) The IZ townhouses are dispersed throughout so as to be indistinguishable from the market-rate townhouses. (Ex. 211B.)
51. Site Plan. The Property, at more than eight acres, is currently the size of two full blocks. (Ex. 190A at 11.) The proposed extension of Webster Street, N.E. divides the Property as follows:
- (a) A new private north-south street further divides the northern residential block. Each of the three new blocks is comparable in scale to other residential blocks in the neighborhood, whereas the existing block comprising the Property is not. The northern blocks of the Property include a mix of residential uses and formalized community open space; and
 - (b) The southern side of the extended Webster Street, N.E. is lined with townhouses in a manner consistent with the design of the surrounding residential streets. Rear yards, fencing, trees, and landscaping separate the new townhouses south of the extended Webster Street, N.E. from the rear of the Seminary. The Seminary, its parking and loading, and its lawn and grounds, which are also partially formalized into publicly-accessible open space, comprise the balance of the southern block.
52. Townhouses. The Project's new townhouses are all located north of the Seminary, are designed to accommodate families, fit the context of the surrounding neighborhoods, and create an active and pedestrian-friendly streetscape:
- (a) All of the new townhouse models have at least three bedrooms, and the majority (64 of 80) have four. (Ex. 2 at 4; Tr. 3 at 93.) Most models provide three bedrooms on one level, which is an attractive feature for families with young children. (Ex. 2 at 4.) One quarter of the Project's townhouses include backyards. (Ex. 190A at 11.) On the ground floor of the majority of the townhouses is a foyer and bedroom/den in the front and a two-car garage in the rear. (Ex. 2 at 19.) For most townhouses, the main floor, which is located on the second level, has a kitchen along with dining and living areas; the third level typically has three bedrooms and two baths. (*Id.*) A limited number of townhouses, limited to those 20 immediately south of Webster Street, N.E. have no internal garages and therefore have the opportunity for one additional bedroom as an option; (Tr. 3 at 93.)
 - (b) The Project's exterior architecture utilizes the vocabulary of the existing community and respects the historic character of the Seminary. The townhouses are each three stories with a maximum height of no more than 42 feet. (Ex. 30A at 18A, 18B.) All but eight are 40 feet or less. (*Id.*) The proposed townhouses are a

mix of 64 twenty-foot-wide units and 16-foot-wide units, with a typical depth of 34 feet; (Tr. 3 at 27.)

- (c) The townhouses' façades feature a porch-front vernacular with massing and roof forms that are common to the area. (Ex. 2 at 19.) In keeping with the surroundings, the Project's public-facing façades are all brick, with slight color variations of red consistent with the surrounding community. (*Id.*) Each façade and color scheme is predetermined and master planned to ensure an appealing streetscape and limit repetition. (*Id.*) Windows and architectural detailing reflect the traditional palette of the area and introduce limited contemporary materials and elements. (*Id.*) The façades of the homes are detailed and constructed with full brick and precast materials for all the publicly visible façades, with siding being used only along certain private alleys at the rear of the townhouses. (*Id.*; Ex. 216 at 3.) The rear façades of the homes south of Webster Street, N.E. are constructed with full brick because they will be visible from the public realm and the historic Seminary. (Ex. 2 at 19.) Groups of attached townhouses range from two to eight townhouses, and the design of each group is further broken down into pairs and triples to be consistent with the duplexes and triplexes in the surrounding neighborhoods. (Ex. 15 at 4.) Each pair or triple has consistent color and design features to distinguish it from the next set of attached townhouses; (Tr. 3 at 42.)
- (d) Vehicular access for those townhouses with garages is located to the rear and accessed via alleys; and (Ex. 190A at 11.)
- (e) The majority of the Project's townhouses do not have private rear yards; instead, the green space that ordinarily might have been reserved for individual lot owners is "pooled" into communal yards to be shared with existing residents. (*Id.*) The twenty new townhouses facing onto the extension of Webster Street, N.E. and backing up against the Seminary do have private rear yards because those rear yards are meant to function as a transition between the residential and Seminary uses. (*Id.*) The Seminary's existing rear courtyard remains a private space.

53. Circulation. The Project introduces new circulation onto the Property and creates a series of private streets and alleys to provide vehicular, pedestrian, and bicycle access to the new townhouses:

- (a) The Project extends Webster Street, N.E. through the middle of the Property from its current terminus at Sargent Road, N.E./13th Street, N.E. to 12th Street, N.E. (Ex. 228B.) The travel way for the new Webster Street, N.E., with parallel parking on both sides, is a minimum of 36 feet, and travel way for the new north-south street, with parking on one side, is 28 feet. (*Id.*) Along the extension of Webster Street, N.E. the distance between buildings is no less than 75 feet; (*Id.*)
- (b) The new private north-south street runs from Allison Street, N.E. to intersect with the new portion of Webster Street, N.E.; (*Id.*)

- (c) New private alleys run behind the new townhouses. (*Id.*) The private alleys have an 18-foot minimum actual pavement width; and (*Id.*)
 - (d) The new streets and alleys increase neighborhood connectivity in a manner consistent with the pedestrian and residential character of the surrounding neighborhood streets. The Project creates new curb cuts along Allison Street, N.E. and 12th Street, N.E. and Sargent Road, N.E./13th Street, N.E. in order to create the new through streets and alleys (including the extension of Webster Street, N.E.). (*Id.*) No new alleys require curb cuts onto existing streets. (*Id.*)
54. Parking. Each new townhouse includes dedicated parking. (Ex. 2 at 20.) The majority of the new townhouses—all except for the 20 that abut the Seminary—have enclosed garage parking spaces within the townhouse. (Ex. 228B.) All garage parking spaces are accessed from alleys at the rear of the townhouses. (*Id.*) The townhouses without garage parking spaces instead each have one dedicated surface parking among the newly created parallel parking spaces throughout the road system of the Project. The Project provides a total of 43 new street parking spaces, a portion of which are assigned to the 20 townhouses without garages and the balance of which accommodate visitors and guests. (Tr. 3 at 63.) The PUD contains a total of 154 parking spaces for the new townhouses, resulting in a ratio of 1.93 spaces per new unit. (Ex. 228B.) The RA-1 zone requires one parking space for every single-family dwelling unit, resulting in a minimum of 80 spaces required under the Zoning Regulations.
55. Webster Street, N.E. The exclusion of on-lot parking for the townhouses on the south side of Webster Street, N.E. is explained as follows: (Ex. 2 at 20.)
- (a) The Project prioritizes pedestrian use of the sidewalk and therefore does not provide for garages or individual lot vehicular access via a curb cut. In order to avoid an unattractive public realm along Webster Street, N.E., with driveways essentially running the entire length of the street from 13th Street, N.E. to 12th Street, N.E., garage entrances are not provided to the townhouses along the south side of Webster Street, N.E.;
 - (b) The lack of garage parking for the Webster Street, N.E. townhouses alleviates the need to provide an alley between the new houses south of Webster Street, N.E. and the Seminary building and provides a more attractive transition from the historic building and the new development to the north; and
 - (c) The decision to place parking on-street for those Webster Street, N.E. townhouses is a key reason that the Applicant has proposed the new roads as private roads. The reserved spaces on the private roads ensure that occupants of such townhouse have adequate parking and will not require public street parking.
56. Preservation. A substantial component of the Project is the formalization of a portion of the existing open space on the Property into a series of publicly accessible parks: (*Id.* at 17-18; Tr. 3 at 35, 44.)

- (a) A new public neighborhood green on the north side of Webster Street, N.E. is for recreational use for use by residents of the new townhouses and neighbors (“Neighborhood Green”);
- (b) Across Webster Street, N.E. from the “neighborhood green” is a more contemplative garden-like open space directly north of the Josephites’ meditation garden (“Contemplative Garden”);
- (c) The grounds to the immediate west of the Seminary along 12th Street, N.E. become a playground for neighborhood children with attractive landscaping and sitting areas (“Playground” and together with the Neighborhood Green and Contemplative Garden, the “Project Parks”);
- (d) The grounds to the east of the Seminary remains in its current state, serving as the entrance to the Sister’s Abbey and the loading area; and
- (e) The great lawn in front of the Seminary along Varnum Street, N.E. will remain as the centerpiece of the Seminary’s expression to the neighborhood and an area of contemplation and respite for the neighborhood.

The Project’s newly formalized open spaces will be publicly accessible from dawn until dusk pursuant to a public access easement (“Easement”), allowing both the existing residents in the neighborhood as well as the new homeowners to use these spaces. (Ex. 211E.)

57. Landscaping. The Applicant devoted considerable attention to the Project’s landscaping and tree plan. Consistent with the character of other residential streets in the neighborhood, the Project provides street trees and landscaping between the new townhouses and the surrounding streets, both existing and new. (Ex. 2 at 17.) The Project’s landscaping generally blends seamlessly into the fabric of the surrounding neighborhood with continuous sidewalks, intensive plantings, and an extension of the neighborhood’s tree canopy. (*Id.* at 18.) The Project preserves the healthy existing mature trees on 12th Street, N.E. and nearly all of the trees surrounding the Seminary building to the east, south, and west. (*Id.*) All but one of the healthy mature trees in front of and to the sides of the Seminary building are preserved as are trees on the Seminary’s front lawn recently planted by Casey Trees and members of the surrounding community. (*Id.*) The existing 53-inch-diameter red oak tree (“Oak Tree”) approximately 60 feet from the Seminary’s northwest corner is also preserved, and the Project’s site plan accommodates the survival of such tree. (*Id.*) The Applicant proposes to preserve 11 healthy street trees along 12th Street, N.E., which requires boring under the tree roots when installing water and sewer connections. (*Id.*) For every tree that is removed to accommodate the Project, the Applicant has committed to planting three new trees. (*Id.*)
58. Materials. The Applicant presented information at the Public Hearing regarding the proposed materials that will comprise the Project’s townhouses. (Tr. 3 at 41-43; Ex. 2H, 228B.) The Commission reviewed the Applicant’s presentation of those materials and

reviewed physical sample materials presented at the Public Hearing. (Ex. 190 at 40.) The Commission finds that with only limited exceptions (regarding certain of the fencing materials), the Project's materials are of high quality and supportive of the Project's exemplary architecture.

59. Seminary. The Project does not entail any modifications to the Seminary, and no changes are proposed to the existing vehicular access points to the Seminary building. (Ex. 2 at 3.) The Josephites anticipate continuing the religious education institutional use in the Seminary as part of the Project. (*Id.* at 15.) No material changes are anticipated with respect to amount, configuration, and access for the parking and loading serving the Seminary. Forty-seven parking spaces are available exclusively for the Josephites' use on the Seminary portion of the Property, and no change is currently proposed to the parking available for such portion of the Project. (Ex. 2 at 20.)
60. Development Timeline. The Applicant anticipates that the total construction period will last approximately 30 months. (*Id.* at 25.) The Applicant intends to construct the new townhouses in one overall phase, a few at a time and in accordance with demand. (Ex. 209 at 10.)
61. Applicant Community Outreach. The Applicant has engaged in significant outreach to the surrounding community. Since the Project development process commenced in October 2015, the Applicant has held or presented at numerous public meetings with both ANCs and numerous civic associations in the vicinity of the Property, hosted tours of EYA's completed communities for neighbors of the Project, held open house-style events at the Seminary, attended and shared information at two neighborhood-wide events, and met with many community stakeholders including the Greater Brookland Business Association ("GBBA"), the Hospital, the Brookland Community Development Corporation, Casey Trees, local artists and historians, and many interested neighbors individually and in small groups. (Ex. 2E, 15C, 190A at 10; Tr. 3 at 25-27.) The Applicant also met with numerous District agencies including OP, the District Historic Preservation Office ("HPO"), DDOT, UFA, DOEE, DHCD, MPD, and others. (*Id.*)
62. The Project reflects the extensive Applicant-led community outreach:
 - (a) As a result of the meetings referenced above and the feedback the Applicant has received, the Applicant has redesigned the Project, has significantly reduced the number of townhouses from 150 to 80 and increased the amount of open space to more than two and one half acres; (Ex. 15.)
 - (b) In addition to the reduction in the number of townhouses, the Applicant reduced the maximum height of the proposed townhouses from four stories to three; (*Id.*)
 - (c) The Applicant has also incorporated the community's feedback that the Project should blend in and feel connected with the existing neighborhood by maintaining larger building setbacks for homes facing existing streets, using carefully designed contextual architecture, and committing to preserve nearly all healthy

full growth street trees surrounding the Seminary building to the south, east, and west, and along 12th Street, N.E.; (Ex. 2 at 7.)

- (d) The Applicant made considerable effort to reach out to a vast cross-section of the community and used non-traditional and innovative ways for doing so that led to improvements to the Project; and (Tr. 3 at 21.)
- (e) The preferences and desires of numerous community groups shaped the Project's package of public benefits ("Public Benefits").

The Commission finds that the all of the Applicant's filings and testimony were credible and thorough.

Summary of Public Benefits

63. The Applicant has proffered the following Public Benefits: (a) superior urban design, architecture, and landscaping; (b) efficient site planning; (c) a public art installation to be created by a local artist at a cost of up to \$25,000.00; (d) historic preservation of the Seminary and associated grounds; (e) provision of three- and four-bedroom townhouses in excess of the amount available as a matter of right; (f) provision of IZ townhouses in excess of the relevant requirements and at deeper levels of affordability than is required; (g) job shadowing opportunities for high school students and outreach to local construction tradesmen and businesses; (h) continuation of the Josephites' social mission; (i) a robust tree preservation and planting plan in excess of what is required under the applicable regulations; (j) creation of parks and open spaces and the Playground and maintenance of such areas; (k) transportation infrastructure improvements; (l) a Capital Bikeshare station and reserved car-share parking space; (m) installation of a water connection at a local park; and (n) contribution of \$10,000.00 to Housing Counseling Services, Inc. ("HCS"), a non-profit organization for the administration of property tax counseling and relief (the "Tax Relief Fund") to low-income residents living near the Property. (Ex. 30F; FF ¶¶ 191-204.)

III. Commission Comments and Questions

64. After reviewing of the Initial Statement, at Setdown, the Commission provided the following comments: The Commission stated that it was concerned that there were potentially too many townhouses being squeezed on to the site, that the Applicant was facing an uphill battle for approval, and encouraged continued community outreach. The Commission expressed concern about how the Applicant would assure it that the remainder of the property that was shown as undeveloped on the plans remained that way. With respect to the design of the townhouses, the Commission stated that additional design work was needed on the end units (particularly at the roof and the windows). The Commission further stated that the plans should be refined to show garage locations, provided more information on the roof decks and on the accessibility to the garages, and to provided additional context views. Finally, the Commission noted the traffic issues in the area. The Commissioners requested: (a) information on whether the undeveloped

portion of the Property will be subject to a covenant against further development; (b) that the IZ townhouses be made more indistinguishable from the market-rate townhouses; (c) information on various of the Project's garages with respect to certain interior and dead-end alley townhouses; (d) changes to the side façade and gabling of end townhouses; (e) information on the rooftop decks; (f) changes to the Project's architecture and detailing to better incorporate elements in the neighborhood; (g) further information on and justification for the proposed density of the Project; (h) information on whether an earlier version of the Project was withdrawn from Commission review; (i) additional context renderings; (j) information on traffic issues, especially with respect to Allison Street, N.E.; (k) information on the function of the Playground; and (l) the Applicant to continue to engage in community outreach. (Tr. 1 at 69-77.)

65. The Applicant provided in its PHS, 20-Day Statement, and at the Public Hearing responses to the Commission's questions and comments at Setdown:
- (a) Covenant Precluding Further Development. In the PHS, the Applicant confirmed that in addition to the required PUD covenant, it would record the Easement in the District's land records. The Easement ensures that no further development beyond the Project could occur on the Property and that the Property's open space remain available to the public in perpetuity; (Ex. 15 at 7; 211E.)
 - (b) Location of IZ Townhouses. Following Setdown, the Applicant revised the location of the Project's IZ townhouses on the overall site plan, spread such townhouses out more evenly throughout the Project, and distributed such townhouses more evenly relative to the market-rate townhouses with respect to garage parking; (Ex. 211B.)
 - (c) Garage Function. The Applicant revised the Project to reconfigure all of the garages about which the Commission expressed concerns; (Ex. 15 at 8.)
 - (d) End Façades and Gabling. The Applicant redesigned the side façades and gabling of the end townhouses that front on streets. (*Id.* at 7.) In addition, the Final Plans show that the roof lines of such townhouses have been modified so that the slopes are symmetrical without differentiation between the front and rear of the townhouse; (*Id.*; Ex. 211 at 4.)
 - (e) Rooftop Decks. The Applicant provided additional details depicting the look and function of the Project's rooftop decks. (Ex. 211D.) In addition, the Applicant agreed to restrict rooftop decks from being constructed on townhouses 70 and 73, the two townhouses that flank the meditation garden and frame the view of the Seminary Building from the north. (Ex. 15 at 8.) While the rooftop deck access is generally hidden by the sloped front roof of the townhouses, the sides of townhouses 70 and 73 would be visible from the open spaces provided as part of the Project; (*Id.*)

- (f) Architectural Details from Surrounding Neighborhood. The Applicant revised the townhouse architecture in response to the Commission's comments regarding the finer architectural details of the surrounding neighborhood. (*Id.*) The Applicant revised details such as window openings, cornice lines, brick banding, bay windows and dormers and added an overall richer level of architectural detail to make the townhouses more consistent in character with the existing homes in the neighborhood. (*Id.* at 7-8.) In addition, the Applicant revised the townhouses' roof design to make the slope symmetrical; (*Id.*)
 - (g) Project Density. The Applicant provided extensive justification for the requested density shown in the Final Plans. (*Id.* at 1-4; Ex. 209 at 1-5.) The Applicant's density rationale is summarized in the "Findings on Core Contested Issues"; (*See* FF ¶¶ 124-142 ("Core Issues").)
 - (h) Earlier Version of the Project. The Applicant confirmed that it had not presented this Project to the Commission prior to filing the instant Application; (Ex. 15 at 11, n. 4.)
 - (i) Additional Renderings. The Applicant included additional renderings in the PHS, 20-Day Statement, and in its materials at the Public Hearing and Rebuttal Hearing; (Ex. 15H, 30A, 190A, 206.)
 - (j) Traffic Concerns. The Applicant also provided additional information regarding traffic issues in response to the request from the Commission. (Ex. 15 at 5; Ex. 211 at 2.) The Applicant's traffic information is summarized in the Core Issues section of this Order;
 - (k) Playground. At the Public Hearing, the Applicant provided information about the placement and operation of the Playground; and (Ex. 190A at 43; Tr. 3 at 30, 44, 104-05.)
 - (l) Community Outreach. Following Setdown, the Applicant continued to engage with the ANC, other community groups and organizations and interested individuals. (Ex. 190A at 10.)
66. At the Public Hearing, the Commission asked whether: (a) the proposed wraparound porches were present in the neighborhood elsewhere; (b) the Applicant examined using the long façade of end townhouses as the front façade; (c) visitor parking would be available on the Property for non-residents to use the Project's public open spaces; (d) the Project would involve phased construction; (e) the trash receptacles are located in garages exclusively; (e) the crash data in the CTR could be clarified; (f) certain traffic thresholds provided in the CTR could be clarified; (g) the mix of townhouse sizes in the Project could be clarified; (h) the open space would be subject to a public access easement; (i) the Applicant's proposed Tax Relief Fund was for either seniors or those earning 50% of the Area Median Income ("AMI"); (j) the Applicant's team included anyone who lived in the community surrounding the Property; (k) the Applicant considered locating the

Playground elsewhere on the Property; (l) the Applicant proposed to install a fence around the Playground; (m) the Hospital filed a letter in support of the Project; (n) the Capital Bikeshare stand location had been determined; (o) the extension of Webster Street, N.E. would ever become a public street; (p) the trash collection on the Property would be private or public; (q) traffic problems would result from various vehicular movements into and out of the Project; and (r) the Applicant could provide an update on the status of the historic preservation application for the Seminary. (Tr. 3 at 56-120.) At the Rebuttal Hearing, the Commission had additional questions for the Applicant. The Commission asked: (s) for additional information and explanation with respect to traffic conditions and operations at Allison Street, N.E. north of the Property and the adjacent intersections and whether the Applicant has discussed such improvements with the residents and the community; and (t) for additional information about residential on-street parking. (Tr. 4 at 9-12, 20-24, 29-30, 31-37.)

67. The Commission finds that the Applicant responded completely to the Commission's questions at the Public Hearing and Rebuttal Hearing:
- (a) Wraparound Porches. The Applicant confirmed that wraparound porches are not common in the neighborhood surrounding the Property but that such features were included at OP's suggestion; (Tr. 3 at 59-60.)
 - (b) End Townhouse Façades. The side façade of end townhouses does not work as the front entrance because of internal configuration challenges; (*Id.* 60-62.)
 - (c) Visitor Parking. The Applicant noted that the Project has 43 street parking spaces and that 23 are not reserved for specific townhouses. Those 23 spaces are assigned as short-term visitor parking. (*Id.* at 63-64.) One of the 23 non-reserved spaces may be used as car-share parking; (Ex. 190A at 53.)
 - (d) Construction Phasing. The Applicant explained that it typically would not phase a development that is the scale of the Project. (Tr. 3 at 82). Instead, the Project would be constructed one group of townhouses at a time as pre-sales occur. (*Id.*) Land development would occur at one time; (*Id.*)
 - (e) Crash Data. The Applicant explained that crash data in the District is often mapped to the nearest intersection rather than at the specific location of the crash. As a result, crashes that have occurred in the Hospital parking lot may be mis-assigned elsewhere along 12th Street, N.E.; (*Id.* at 88-89.)
 - (f) Traffic Thresholds. The Applicant explained the meaning of a traffic mitigation threshold table in the CTR; (*Id.* at 90-91.)
 - (g) Townhouse Sizes. The Applicant confirmed that 64 of the townhouses have four bedrooms and 16 have three bedrooms and that two of the three-bedroom townhouses could become four-bedroom townhouses; (*Id.* at 93.)

- (h) Easement. The Applicant confirmed that the Project's open spaces would be subject to the Easement; (*Id.* at 94.)
- (i) Tax Relief Fund. The Tax Relief Fund is only for those who earn 50% or less of AMI and who live within a certain area around the Project. (*Id.* at 96.) The Applicant's expectation is that many seniors would qualify; (*Id.*)
- (j) Project Team. The Applicant confirmed that its team included a District resident; (*Id.* at 100.)
- (k) Playground Location. The Applicant explained the process for selecting the site for the Playground, including examining various topographic and noise constraints, interviewing and meeting with neighbors and the Hospital, and seeking recommendations from MPD; (*Id.* at 104-106.)
- (l) Playground Fencing. The Applicant clarified that the existing six-foot-tall chain link fence currently surrounding the Property would be replaced with a 42-inch decorative fence; (*Id.* at 107-108.)
- (m) Hospital Support. The Applicant confirmed that the Hospital remained neutral with respect to the Project. (*Id.* at 107.) The Hospital submitted a letter to the Applicant; (Ex. 206 at 4.)
- (n) Capital Bikeshare. The Applicant explained that the Capital Bikeshare facility would be located along 12th Street, N.E. north of the existing bus shelter; (Tr. 3 at 109.)
- (o) Extension of Webster Street, N.E. The Applicant confirmed that the extended Webster Street, N.E. would remain private; (*Id.* at 110; Ex. 211 at 5.)
- (p) Private Trash Collection. The Applicant confirmed that trash collection for the Project would be private; (Tr. 3 at 111.)
- (q) Traffic Concerns. The Applicant provided detailed explanation of the traffic functioning of the Project. (Tr. 3 at 111-118.) Findings on traffic concerns, including discussion by the Applicant at the Public Hearing and Rebuttal Hearing, are addressed in the Core Issues section of this Order;
- (r) Historic Preservation Application. The Applicant confirmed that a historic preservation application ("Landmark Application") has been drafted and was being prepared in conjunction with HPO and members of the community. (*Id.* at 119.) The Landmark Application would be filed prior to issuance of the building permit for the Project; (*Id.*)
- (s) Allison Street, N.E. The Applicant provided additional information in its Post-Hearing Submission regarding Allison Street, N.E. (Ex. 211 at 2-3; 211A.) Such information is summarized in the Core Issues section of this Order; and

- (t) Residential Parking. The Applicant's Post-Hearing Submission provided additional information regarding parking controls applicable to the Project. (Ex. 211 at 5.)
68. Following the Applicant's testimony at the Public Hearing, the Commission requested the Applicant: (a) provide photos of the existing context surrounding the Property with renderings of the Project dropped into place; (b) provide information on how the visitor parking spaces on the Property would be policed for non-residents; (c) determine the FAR calculation for only the portion of the Property where the townhouses are developed; (d) select a different material for the fence separating the townhouses from the Seminary; (e) provide information on how many townhouse owners would be eligible to participate in the Residential Permit Parking ("RPP") program; (f) examine pushing the penthouse closer to the center of the townhouses to reduce the setback, provide an aerial view of the penthouse and rooftop decks, and consider beveling the penthouse door to the rooftop decks; (g) reconsider the use of shed dormers instead of gabled dormers; (h) study the aspect ratio of the windows on the front façade of the townhouses; (i) reconsider using a brick with a smoother finish than the one selected; (j) provide a plan showing which IZ townhouses are affordable at which levels and with what bedroom counts; (k) clarify the timing of delivery of the IZ townhouses; (l) provide a response to the Residents' pre-hearing written arguments and comments; (m) submit a draft of the text of the Easement for review; (n) provide information on the level of sustainable design achieved by the Project; (o) provide an analysis on the number of households that would be eligible for the Tax Relief Fund; (p) provide additional information on the relationship between the Project and the Hospital with respect to traffic; (q) provide information on the agreement and the interactions between the Applicant and the GBBA; (r) provide additional information on traffic functioning around the Property more generally. (Tr. 3 at 56-120, 271-272.) The Commission requested no additional information at the Rebuttal Hearing except as noted regarding Allison Street, N.E.
69. The Applicant has responded to the Commission's questions, comments, and concerns raised at the Public Hearing and Rebuttal Hearing. At the Rebuttal Hearing and in the Post-Hearing Submission, the Applicant provided information in response to the Commission's requests:
- (a) Context Images. At the Rebuttal Hearing, the Applicant provided images of the Project in the existing context. The Commission understands that some of these images contain conditions, including existing trees, that might not be included in the Project as built, but finds that these images help depict the Project in context; (Ex. 206 at 8-22.)
- (b) Visitor Parking. In the Post-Hearing Submission, the Applicant noted that all parking on the interior private streets of the Project are subject to restrictions. Among these restrictions, all of the parking spaces along the Project's private roads are available for use by visitors to, and residents of, the Property, except along the extended Webster Street, N.E. where designated parking spaces ("Reserved Parking") are reserved for the owners of Units 61-80. (Ex. 211 at 5.)

The Project's future homeowner association ("HOA") has the right to have any vehicles that are parked on the Property in violation of the provisions of the townhouse HOA towed away at the expense of the owner; (*Id.*)

- (c) FAR Calculation. At the Rebuttal Hearing, the Applicant confirmed that the effective FAR on the portion of the Property developed with townhouses was 1.29; (Tr. 4 at 29-30; Ex. 209 at 1.)
- (d) Fencing. At the Rebuttal Hearing, the Applicant proposed revised fencing materials; (Tr. 4 at 35-36.)
- (e) RPP Eligibility. The Applicant responded that in the event that future residents of the Project are able to obtain RPP stickers that allow those residents to park on neighboring public streets, residents of the surrounding community will be able to park on the private roads in the Project except for the Reserved Parking. (Ex. 211 at 5.) Parking along the private roads for visitors to the Property (and only the Property) is available on a first-come, first-served, basis, unless RPP restrictions are established on neighboring public streets; (*Id.*)
- (f) Penthouse Revisions. At the Rebuttal Hearing, the Applicant noted that it had revised the penthouses to reduce the setback violation by approximately 10 inches and provided additional drawings of the penthouses and rooftop decks. (*Id.* at 4-5.) The penthouse stair enclosures have a maximum height of nine feet and are set back from the edge of the roof line a distance of eight feet, one inch; (*Id.*)
- (g) Dormer Selection. The Applicant agreed to remove all gable dormers in favor of shed style dormers; (*Id.* at 4.)
- (h) Window Ratio. The Applicant also studied particular façades that included twin window configurations in order to provide a fenestration pattern that is more vertical in orientation and proportion. In the Post-Hearing Submission, the Applicant noted it would remove the twin windows in favor of narrower windows resulting in a more proportional façade; (*Id.*)
- (i) Brick Selection. In its Post-Hearing Submission, the Applicant declined to revise the brick selection, noting that the original selection was selected for its appropriateness relative to the architecture style and detailing of the Project's contextual surroundings and that similar brick is utilized on many of the homes in the community; (*Id.*)
- (j) IZ Plan. The Applicant included with the Post-Hearing Submission, a plan showing the location of the IZ townhouses, the widths and square footage of the individual IZ townhouses, the AMI levels, the number of bedrooms, and the expected purchase price. (Ex. 211B.) The IZ townhouses are distributed evenly throughout the Project. (*Id.*) The Applicant requested the flexibility to make minor modifications to the location of these IZ townhouses, provided that the location of

the IZ townhouses are moved only within the same block of townhouses and to a similarly sized (in width and number of bedrooms) townhouse; (*Id.* at 3.)

- (k) IZ Delivery Timeline. Because the IZ townhouses are evenly distributed throughout the Project, the Applicant expects to construct the IZ townhouses at a rate roughly proportional to that of the market rate townhouses; (*Id.*)
- (l) Rebuttal of Residents' Concerns. The Applicant submitted the detailed Rebuttal Memo in response to each point and comment raised in the Residents' pre-hearing statement. (Ex. 209.) The Residents responded with a further writing in the Residents' Memo. (Ex. 212.) A thorough discussion of the contents of the Residents' Memo, Rebuttal Memo, and Residents' Memo is included in the Core Issues section of this Order;
- (m) Draft Easement. The Applicant filed a draft Easement granting access and recreational use rights to the public on the protected portions of the Property. (Ex. 211E.) The Easements runs in perpetuity and with the Property; (*Id.*)
- (n) Sustainability. In its Post-Hearing Submission, the Applicant provided information on the sustainability measures it was taking with respect to the Project, including engaging in third-party evaluation and monitoring of the Project design by a third-party RESNET accredited HERS² rater and achieving a maximum HERS index of 65 (where a lower HERS index value equates to greater energy efficiency), which is the equivalent of a 15% reduction in less energy relative to the 2013 DC Energy Code requirements. (Ex. 211 at 5-6.) The Project also includes sustainable features such as a compact footprint, use of existing public utility and public transit infrastructure; low-impact design stormwater management techniques (including bio-retention ponds, roadside bio-retention swales, bio-retention boxes; all open air systems which treat stormwater at the source and promote infiltration); and preservation of open space and trees; (*Id.*)
- (o) Property Tax Benefit. In its Post-Hearing Submission, the Applicant set forth its rationale for the size of the contribution to HCS for the Tax Relief Fund. (*Id.* at 7-8.) The Applicant explained that the goal of the Tax Relief Fund is to provide an opportunity for HCS to interact with people who might be at risk of losing their homes or struggling with increases in the cost of living, including property taxes. (*Id.*) The earlier that HCS representatives can interact with at-risk homeowners, the more likely they are to help them to get access to existing tax relief programs in the District and to help plan for their long-term housing solutions. The Applicant acknowledged that depending upon the local economy and its impact on tax increases in the District, the Tax Relief Fund might last for four years or more or it might only last for two years, but that the primary consideration is that the Tax Relief Fund provides immediate relief to those in short-term need and an opportunity for solving a longer term issue for the individual homeowner; (*Id.*)

² The HERS index is a national industry standard for building energy efficiency, referenced by LEED, Green Communities, and Energy Star.

- (p) Traffic Impacts with respect to the Hospital. In its Post-Hearing Submission, the Applicant provided extensive discussion on enhancements to transportation conditions surrounding the Project including with respect to the Hospital. (*Id.* at 2.) These enhancements are discussed in the Core Issues section of this Order;
- (q) GBBA. In the Post-Hearing Submission, the Applicant provided additional information on its relationship with GBBA. (*Id.* at 6-7.) The Applicant seeks an informal partnership with GBBA to support the local business community. The Applicant and GBBA will assist local businesses to bring jobs related to the Project to members of GBBA and other businesses in the Greater Brookland Area. The Applicant and GBBA propose the following:
- Create direct lines of communication between the Project's general contractor and the business community so that local businesses clearly understand when bids are due for various trades. Bid dates and schedules will be communicated to the GBBA for distribution to its membership;
 - Prequalify³ local businesses in advance of bid dates so that the Applicant is aware of the capability of the businesses and their respective performance history. Once the Applicant's purchasing team has pre-qualified a local business, that local business is added to the Applicant's bidder list. The Applicant will make the GBBA aware of this prequalification process; and
 - The Applicant regularly seeks qualified contractors to bid on the Applicant's other projects throughout the greater metropolitan area. As such, once a relationship has been created between the Applicant and new contractors through GBBA, the Applicant would look to communicate with those contractors about bid deadlines for projects that the Applicant is building throughout the area; and
- (r) Traffic Impacts Generally. As noted above, the Post-Hearing Submission provided extensive discussion on enhancements to transportation conditions surrounding the Project. These enhancements are discussed in the Core Issues section of this Order; (*Id.*)

70. The Applicant provided the following responses to four agency reports that were submitted after the Public Hearing and the Rebuttal Hearing in this case⁴:

- (a) DC Water. The DC Water Memo noted that there appears to be adequate water and sewer infrastructure capacity to support the Project but that the Project's

³ The prequalification process typically entails the local business meeting with the Applicant's purchasing team and presenting examples of relevant work experience.

⁴ DDOT also submitted its Second Supplemental Report after the hearings. The Commission did not leave the record open for a response from the Applicant.

conceptual layout does not fully satisfy DC Water's criteria for approval. The Applicant stated that it will work with DC Water to resolve any technical issues during the building permit process; (Ex. 221 at 1.)

- (b) FEMS Memo. FEMS noted that the Project will not impact FEMS's ability to access the adjacent Providence Hospital Complex from 12th Street, N.E. and that the Fire Marshal has no objection to the Project, provided the Applicant complies with applicable fire code requirements. The Applicant stated that it is committed to complying with all applicable fire code requirements; (Ex. 221 at 2.)
- (c) DDOT Supplemental Report. DDOT concurred that the seven transportation related-improvements proposed by the Applicant will have positive effects on local traffic congestion and safety. The Applicant stated that it will provide DDOT with the requested technical information during the public space permitting process to implement the proposed improvements on Allison Street, N.E.; and (Ex. 221 at 2.)
- (d) DOEE Report. The Applicant provided the following responses to the five recommendation areas of the DOEE report:

Stormwater Management

DOEE recommended that the Project be revised to capture runoff from a 1.7-inch rainfall event. In order to satisfy DOEE standards, the Project has been designed to capture all runoff from a 1.2-inch rainfall event. The Applicant further analyzed the ability to capture run-off from a 1.7-inch rainfall event. The Applicant noted that the significant amount of open space and tree preservation areas on the Property are not counted towards the satisfaction of the Project's stormwater management requirement as they are not within the limits of disturbance on the Property. Due to the preservation of the large open spaces and the already rigorous 1.2-inch standard, the Applicant stated that it is not economically feasible to achieve the 1.7-inch rainfall event standard recommended by DOEE. However, the Applicant noted that the Project has been designed to achieve the 1.2-inch standard with no infiltration. If infiltration is achieved at any of the stormwater management facilities, then the Project will begin to exceed DOEE's 1.2-inch standard.

In regard to the DOEE issue of potentially incorporating permeable surfaces into the Project, the Applicant noted that all the sidewalk and paved surfaces are already draining to a stormwater management/ bio-retention facility. The treatment the runoff receives in a bio retention facility (and overall benefit to the environment) is greater than when runoff infiltrates through a permeable pavement section. The Applicant concluded that incorporating permeable pavement into this Project is cost prohibitive and provides little to no environmental benefit.

The Applicant also undertook further research as to the viability of green roofs on the townhomes. The Applicant's representatives were informed by various green roof manufacturers that the slopes of the proposed roofs (seven-inch rise in 12-inch run) exceed the normal allowable pitch and therefore installation of their product on these roofs is not achievable. (Ex. 221 at 2-3.)

Air Quality

DOEE recommended that the Project include lower-emitting technologies to the extent possible to provide power, heating, and cooling. In addition to meeting the referenced requirements for fugitive dust and fuel-burning equipment, the Applicant agreed to the following commitments, intended to minimize upstream emissions from power demands associated with the Project:

- Heating and cooling equipment that exceeds US DOE minimum efficiency requirements by at least 20% (a Federal standard was selected since there are no applicable local requirements for the Applicant to comply with); and
- Install PV supplier-approved rough-ins to allow for future "plug and play" rooftop solar panel installation by homeowners. (Ex. 221 at 3-4.)

Sustainable Design and Energy Efficiency

DOEE encouraged the Applicant to include an improved strategy for energy efficiency and seek LEED certification, or in the alternative achieve certification under the ENERGY STAR v3.1 criteria for the Project. The Applicant stated that the ENERGY STAR Certified Homes Program, and by extension LEED for Homes V4, includes both an overall energy performance standard and a list of specific design and construction requirements for new homes. The Applicant diligently researched concerns related to LEED for Homes V4, and concluded that it includes provisions that are punitive from a cost and complexity standpoint on a townhouse project such as the proposed development.

The DOEE report objected to the Applicant's proposed use of a third-party verified HERS index rating as a standard for the Project, in part, due to the fact that ENERGY STAR for Homes does *not* allow for the flexibility associated with tradeoffs. It is the Applicant's position that quantifiable and verifiable improved energy performance is an appropriate goal for the Project, but that this should be achieved by means determined by the development team and its expert consultants (with approval from DOEE), rather than in accordance with a set of rigid prescriptive requirements. The Applicant proposed that the Project achieve certification on the new homes under ENERGY STAR v3.1, or an equivalent energy efficiency performance metric mutually agreed to by the Applicant and DOEE during the permitting phase of the Project. (Ex. 221 at 4.)

Renewable Energy

DOEE recommended that the Project incorporate solar panels for all townhouse units. The Applicant stated that all of the townhouses will be designed to be structurally solar ready. The Applicant does not believe that it is appropriate to require that all townhouses include the solar panels as: some residents will prefer the option of having outdoor space on their roof deck, which is the area that would be covered by the solar panels; and some residents may not want to pay the initial capital cost of the solar panels at the time they purchase the townhome. For those purchasers that do want to have solar panels, the Applicant stated that it is already working with a Ward 5 solar panel company to create an option for townhouse purchasers to install the solar panels on their home prior to move-in and take advantage of the District's tax credit program for such installations. The Applicant noted that it will market this solar panel program to all prospective purchasers and encourage people to take advantage of the reduced utility costs that they will enjoy. (Ex. 221 at 5.)

Finance

DOEE recommended that the Applicant take advantage of financial programs and opportunities that would finance an increased commitment to sustainability in the Project. The Applicant noted that it has worked, and will continue to work, with DOEE staff to learn more about the various financing opportunities that could possibly enhance the already robust sustainability program that is provided by the Project. (Ex. 221 at 5.)

71. The Commission finds that the Applicant has thoroughly addressed its comments and the reports of various District agencies and provided, in response to the Commission's questions, answers that are supported by substantial evidence.
72. At the Public Hearing, the Commission requested that DOEE and other District agencies provide written reports on the Project. (*Id.* at 95, 131, 272.)
73. The Commission also asked questions of DDOT at the Public Hearing regarding possible traffic improvements and actionable items. (*Id.* at 131-35.) The Commission asked for elaboration on the processes available for reducing traffic congestion on the various streets, particularly, Allison Street, N.E. and about DDOT's views on an all-way stop at 13th Street, N.E.:
 - (a) Allison Street, N.E. DDOT explained two processes for implementing traffic calming on Allison Street, N.E.: (i) conduct a DDOT-approved study, and (ii) a resident-led application for conversion of the street to one-way; and (*Id.* at 133.)
 - (b) 13th Street, N.E. DDOT confirmed it agreed with the operations on 13th Street, N.E. as proposed by the Applicant except DDOT did not support an all-way stop at 13th Street, N.E. and Webster Street, N.E. for safety reasons. (*Id.*)

74. At the Public Hearing, the Commission also asked questions of the ANCs. (Tr. 3 at 148-150.) The Commission asked for clarification on the boundary of ANC 5B, whether the ANCs had reviewed the latest proposal, and whether ANC 5A's requests were satisfied:
- (a) ANC 5B Boundary. ANC 5B clarified that the Property is not located within the boundaries of ANC 5B but is across the street from the southern end of the Property where the Seminary and associated grounds are located; (*Id.*)
 - (b) ANC Review of Final Proposal. ANC 5B confirmed it had reviewed the reduced Project proposal (i.e., not the 150-unit proposal) although it is unclear whether ANC 5B had reviewed the proposal for the Project prepared after Setdown. ANC 5A confirmed that the current SMD Commissioner reviewed the final (i.e., post-Setdown) proposal of the Project and that the ANC had the Applicant return for a follow-up presentation and vote after earlier presentations to the previous SMD; and (*Id.* at 148-149.)
 - (c) Local Business Involvement. ANC 5A noted that it had asked the Applicant to involve local businesses in the Project. (*Id.*)
75. At the Public Hearing, the Commission also asked questions of Supporters, requesting clarification on (a) traffic operations and (b) the tree canopy; (c) complaints that letters of support ("Improper Form Support Letters") had been allegedly erroneously filed in the record; and (d) traffic impacts: (Tr. 3 at 172-177.)
- (a) Street Grid. Ms. Cheryl Cort of the Coalition for Smarter Growth ("CSG") clarified that CSG's preference that the 13th Street, N.E. and Webster Street, N.E. intersection should not be limited to "right-in/right-out" because such limitation would be uncharacteristic for the neighborhood and would limit connectivity; (*Id.*)
 - (b) Canopy. Ms. Kristin Taddei from Casey Trees confirmed that Casey Trees takes a long view with respect to tree planting and applauded the Project's overall tree plan. She also noted that Casey Trees had previously undertaken a planting exercise at the Property and planted 50 new trees. She added that her organization's view on tree canopy was to be measured at the time of the trees' maturation and that the future tree canopy was estimated to be about the same as the current canopy; (*Id.*)
 - (c) Support Letters. Mr. Jordan, a past ANC 5A Commissioner and the past SMD for the area encompassing the Property explained that the Improper Form Support Letters were automatically generated by a website run by the Applicant and not solicited by him personally. The Applicant provided additional clarification of the process by which Improper Form Support Letters were solicited and obtained. (Ex. 191, 211 at 9; 211G.) Pursuant to X § 408.1(e) of the Zoning Regulations, the Commission excludes the Improper Form Support Letters from consideration in this matter; and

(d) Traffic. Mr. Jordan also clarified that his experience with traffic congestion in the area surrounding the Property was that it was worst at rush hour and shift changes but not during off-peak hours. (Tr. 3 at 176-177.)

76. At the Public Hearing, the Commission also questioned the Residents. (Tr. 3 at 227-228.) The Commission requested feedback from the Residents regarding RPP. Ms. Melgarejo, speaking for the Residents, noted that some residents of the neighborhood had previously had bad experiences with RPP and are opposed to it, that others are in favor of it, and that there was uncertainty about the availability of the program in the neighborhood. (*Id.*)

IV. Agency Reports and Testimony

Office of Planning

77. In the OP Setdown Report, OP recommended that the Commission set the application down for public hearing, stating that the proposal was “generally not inconsistent with the policies and land use maps of the Comprehensive Plan.” OP identified several items for which more information or clarification was needed, but stated that those matters could be addressed in future submissions from the applicant. The information and clarifications OP requested the Applicant: (a) submit a tree study from a licensed arborist regarding the Oak Tree on the Property; (b) deconcentrate the IZ townhouses and provide private outdoor space on such townhouses; (c) eliminate curb cuts on the private streets; (d) relocate trash collection areas for the townhouses adjacent to the Seminary; (e) provide a plan showing the boundaries of the Easement area; (f) prepare additional renderings from various perspectives; (g) re-examine the architecture of certain façades at the end of the townhouses framing the Seminary; and (h) provide additional information the proffered public benefits. (Ex. 11.)

78. In response to the OP Setdown Report, the Applicant provided the following information:

(a) Tree Study. The Applicant submitted a preliminary tree study and a more robust tree preservation plan from license arborists (collectively, “Tree Plan”). (Ex. 15B, 192.) The Tree Plan sets forth practices for ensuring the survival of the Oak Tree, and the Tree Plan concludes that the Oak Tree has a “fair to good chance of survival” if the recommended practices are implemented. (*Id.*) The Tree Plan was developed in consultation with UFA; (Ex. 192 at 1.)

(b) IZ Plan. As noted above, in its Post-Hearing Submission the Applicant included a plan showing the location of the IZ townhouses, the widths and square footage of the individual IZ townhouses, the AMI levels, the number of bedrooms, and the expected purchase price. The IZ townhouses are distributed evenly throughout the Project; (Ex. 211B.)

(c) Curb Cuts. The Final Plans removed five driveway cuts on the private streets within the Project and relocated all garages to the rear of each townhouse with driveway access from adjacent alleys. (Ex. 15 at 6; Ex. 228B.) Similar revisions were made with respect to the Allison Street, N.E. frontage; (*Id.*)

- (d) Trash Collection. The Final Plans show the trash collection areas located off of a private walkway at the rear of the yards for the townhouses adjacent to the Seminary and no longer near the windows of such townhouses; (*Id.* at 7.)
 - (e) Easement Plan. The Applicant included an Easement plan in the Final Plans; (*Id.*; *see also* Ex. 228B.)
 - (f) Additional Renderings. As noted above, the Applicant included additional renderings in the PHS, 20-Day Statement, and in its materials at the Public Hearing and Rebuttal Hearing; (Ex. 15H, 30A, 190A, 206.)
 - (g) End Townhouse Façades. The Applicant redesigned the side façades and gabling of the end townhouses that front on streets. (Ex. 15 at 7.) The Final Plans show that the sides of townhouses fronting on streets now have added detail, including additional brick banding, bay windows, and richer materials. The Seminary-framing townhouses (i.e., townhouses 70 and 73) were revised to include wraparound porches as well; and (Ex. 30 at 1; Ex. 30A.)
 - (h) Public Benefits. In its PHS, 20-Day Statement, and at the Public Hearing, the Applicant provided additional information regarding the Public Benefits. These items are addressed below. (Ex. 30F; *see also* FF ¶¶ 191-205.)
79. In the OP Final Report, OP stated that the proposal is not inconsistent with the policies and land use maps of the Comprehensive Plan. It identified a few items for which more information or clarification was needed, but subject to resolution of those issues recommended approval of the application. OP requested the Applicant: (a) provide a more robust tree plan; (b) examine ways to create formal pedestrian openings in the fences proposed for the ends of the alleys; (c) clarify language regarding the public art Public Benefit so that it is clear that a local artist is actually creating the work of public art, not simply commissioning the art; and (d) provide an analysis that the Project's density is comparable to that of surrounding squares. (Ex. 36 at 2-4, 9.) OP noted that the other items requested in the OP Setdown Report had been resolved. (*Id.*) OP separately requested the Applicant provide additional justification for the penthouse setback relief requested.
80. In response to the OP Setdown Report, the Applicant provided the following information:
- (a) Tree Study. The Tree Plan was supplemented in consultation with UFA; (Ex. 192.)
 - (b) Pedestrian Openings. The Final Plans include proposed fences at the end of the private alleys and the ability to access the private alleys through those fences; (Ex. 211C.)
 - (c) Public Art. At the Public Hearing, the Applicant clarified that a local artist would be commissioned to create the public art; and (Tr. 3 at 12.)

- (d) Density Analysis. The Applicant provided a calculation of the Project's density. (Ex. 209; *see also*, FF ¶¶ 129-137.)
81. The OP Final Report noted that OP referred the Application to numerous District agencies for review and comment and hosted an interagency meeting to give such agencies the opportunity to learn about the Application, ask questions of the Applicant, and provide feedback. (Ex. 36 at 14.) The Commission finds that OP conducted a thorough public review of the Project.
82. DHCD provided written comments to OP recognizing the proffer of IZ townhouses for sale to families earning 50% AMI or less is deeper affordability than is required under the Zoning Regulations. (*Id.*)
83. This Commission finds that the Applicant satisfactorily addressed all of OP's comments and questions.
84. At the Public Hearing, OP testified in support of the Project and noted that the Applicant had made changes that, in OP's view, improved the Project. (Tr. 3 at 128.) OP testified that the Project was not inconsistent with the Comprehensive Plan for the District of Columbia ("Comprehensive Plan"), including the Future Land Use Map and Generalized Policy Map and the written policies of the Comprehensive Plan. (10-A DCMR ("10-A") § 100, *et seq.*) (Tr. 3 at 129.) OP also testified in support of approving the requested zoning flexibility. (*Id.*)
85. This Commission finds that OP's reports and testimony were thorough and credible and helpful in considering this Application and accordingly gives such testimony the great weight it is entitled.

Department of Energy and the Environment

86. DOEE did not present any testimony at the Public Hearing. DOEE submitted a report into the record, dated June 22, 2017. The DOEE report supported the application and recommended approval with recommendations in the following general areas: stormwater management; air quality; sustainable design and energy efficiency; renewable energy; and finance. (Ex. 220A.)
87. In regard to stormwater management, DOEE noted that "Capturing a higher storm level volume will benefit the Developer's application by ensuring its' commitment to the environment and providing needed relief from stormwater runoff. Hence, DOEE's Watershed Protection Division (WPD) recommends the project capture a 1.7-inch rain storm event." (Ex. 220A at 2.) In regard to air quality, the report noted that "...DOEE's Air Quality Division (AQD) recommends that the applicant consider using lower-emitting technologies to the extent possible to provide power, heating, and cooling." (Ex. 220A at 3.) In regard to sustainable design and energy efficiency, the report noted that "Given market conditions and the District's goal of continually improving building codes to meet higher efficiency targets with the ultimate goal of achieving net zero energy properties by 2032, it is strongly encouraged that the Applicant's project team improve its

strategy for energy efficiency and seek LEED certification. If LEED Certification is not possible, at a minimum, DOEE requests that the project achieve certification under the ENERGY STAR v.3.1 criteria.” (Ex. 220A at 5.) In regard to renewable energy, the DOEE report stated “To create a more resilient and economically progressive project, it is strongly recommended that the project incorporate solar panels for all townhouse units.” (Ex. 220A at 6.) Finally, with regard to finance, the DOEE report concluded “DOEE recommends that the applicant take advantage of financial programs and opportunities that would finance an increased commitment to sustainability.” (Ex. 220A at 6.)

District Department of Transportation

88. The DDOT Report noted no objection to the Project on the condition that the Applicant implements its proposed TDM program. (Ex. 37 at 2.) The DDOT Report included numerous findings, which the Commission hereby adopts, and notes the following in particular:
- (a) Sound Methodology. The Applicant used sound methodology to perform the transportation impact analysis in the CTR; (*Id.*)
 - (b) Dispersal Actions. The Project’s street network has the potential to disperse traffic in a way that minimizes the Project’s impact on the external road network and improves connectivity to the adjacent neighborhood; (*Id.*)
 - (c) Reasonable Assumptions. The background growth, mode split, and trip generation assumptions proposed by the Applicant are reasonable; (*Id.*)
 - (d) Parking Ratio. The Project’s parking ratio is considered high compared to other recent developments. The amount of short-term bicycle parking is appropriate; (*Id.*)
 - (e) Trip Generation. The action is expected to generate a low number of new vehicle, transit, bicycle, and pedestrian trips; (*Id.*)
 - (f) Conservative Analysis. The Applicant assumed what is likely a conservatively high number of new vehicle trips; (*Id.*)
 - (g) No Increased Delay. The action is not projected to increase travel delay in the area; (*Id.*)
 - (h) Unwarranted Calming Measures. An all-way stop at the intersection of 13th Street, N.E. and Webster Street, N.E., rectangular rapid flash beacons, and speed humps on any public portion of Webster Street, N.E. are not warranted and may reduce safety instead of improving safety; (*Id.*)
 - (i) Street Design. The proposed street distribution on 12th Street, N.E. between Allison Street, N.E. and Varnum Street, N.E., which distribution includes adding two bicycle lanes, may be appropriate; (*Id.*)

- (j) Capital Bikeshare. Although not a required mitigation, the Applicant proffered \$63,000 towards a Capital Bikeshare station as a public amenity; (*Id.*)
 - (k) The proposed Transportation Demand Management (“TDM”) plan is appropriate for the action; and (*Id.*)
 - (l) Given the complexity and size of the action, the Applicant is expected to continue to work with DDOT outside of the Commission process regarding: (i) public space approvals; (ii) the design of vehicular access points; (iii) potential traffic calming measures; (iv) a tree preservation plan (in consultation with UFA). (*Id.* at 3.)
89. The TDM plan includes the following elements. The Applicant must:
- (a) Contribute \$63,000 towards a Capital Bikeshare station, the specific location of which will be determined during public space permitting;
 - (b) Identify a TDM Coordinator (for planning, construction, and operations) who must work with residents to distribute and market transportation alternatives and who must provide updated contact information and report TDM efforts and amenities to goDCgo staff once per year;
 - (c) Establish a TDM marketing program that provides detailed transportation information and promotes walking, cycling, and transit and compile such information for distribution to residents, utilizing and providing website links to CommuterConnections.com and goDCgo.com;
 - (d) Encourage alternative transportation modes, including bicycling; and
 - (e) Reserve at least one on-street parking space on the private streets for use by local car-sharing vehicle services. (*Id.* at 2-3.)
90. At the Public Hearing, DDOT noted that the proposed conversion of Allison Street, N.E. to a one-way street requires a traffic calming application from 75% of the block’s residents along with an ANC resolution. (Tr. 3 at 130-135.)
91. The DDOT Supplemental Report, dated June 8, 2017, addressed the transportation-related elements of the Post-Hearing Submission. DDOT noted it was in agreement with the Applicant’s proposed traffic enhancements and that such traffic enhancements will improve the design and operations of Allison Street and its intersection with 12th Street. DDOT stated that the Applicant made two additional commitments that were not reflected in the Post-Hearing Submission: (1) providing a driver feedback machine, to be located on southbound Sargent Road between Allison Street and Webster Street; and (2) recording an easement for the public’s use of the private Webster Street Extended and the private north-south street. DDOT requested that the Applicant be required to provide evidence that it has recorded such an easement against the property prior to the issuance of the first building permit for the construction of any of the townhouses. (Ex. 218 at 1.)

92. DDOT submitted its Second Supplemental Report to address ANC 5B's proposal to convert two-way public alleys in the 1000 and 1200 blocks between Varnum Street and Taylor Street, N.E. to one-way operations. DDOT noted that converting the 15-foot-wide alleys, which are a typical width for two-way alleys in the District, would create an overly wide alley for vehicles to potentially speed through. DDOT also noted that ANC 5B's requested changes to control rush hour traffic may have the reverse effect of what the ANC hopes to achieve. DDOT noted that wider alley lanes, which lead to higher speeds, may incentivize more residents and commuters to drive within the alley network as opposed to the road network, particularly during rush hour if there is congestion on the roads. DDOT concluded that it does not support ANC 5B's proposal due to the safety concerns that would result from increased vehicle speeds and traffic volumes in the alleys proposed to be converted to one-way operations. (Ex. 227 at 1-2.)

Urban Forestry Administration

93. UFA did not present any testimony at the Public Hearing. The UFA Report provides information on the removal and planting of trees. (Ex. 134.)
94. The UFA Report notes that there are two pending "Special Tree" applications pending approval for removal of trees on the Property. (*Id.*) The UFA Report also confirms that both such applications were submitted prior to the amendment of the Tree Canopy Protection Act Amendment of 2016 ("TCPA"). UFA also noted that the Property included a Northern Red Oak tree that qualified as a Heritage Tree under TCPA, and that the Oak Tree must be preserved in situ. (*Id.*) The UFA Report also stated that the Property included additional Special Trees under the TCPA, and described the steps the Applicant should take to protect those trees. The UFA Report also listed the existing Street Trees bordering the Property. Finally, UFA recommended that the Applicant hire a certified arborist to limit damage to trees on the Property. (*Id.*) The Applicant has agreed to do so. (Ex. 192.)

DC Water

95. DC Water did not present any testimony at the Public Hearing. The DC Water Memo concluded that there appeared to be adequate water and sewer infrastructure in the area of the Project to support the Project. (Ex. 210.)
96. DC Water reviewed a conceptual layout for the Project and noted that it would work with the Applicant during the permit review process to reach a suitable design in accordance with the Final Plans and DC Water's design criteria even though the conceptual layout does not meet DC Water's criteria for approval. (*Id.*) DC Water acknowledged that it was not unusual for a concept layout not to meet its approval and that it expected that the Property can be developed in accordance with the Project in agreement with DC Water's criteria. (*Id.*)

Fire and Emergency Medical Services

97. FEMS did not present any testimony at the Public Hearing. The FEMS Memo provides that the Project “will not impact FEMS ability to access the Providence Hospital Complex from 12th Street, NE.” (Ex. 213.) In addition, FEMS Office of the Fire Marshal reported that it had no objection to the Project being approved as long as the Project complies with the fire code requirements related to fire department access. The FEMS Memo thereafter summarizes the relevant fire code requirements.

V. ANC Reports, Testimony, and Cross-ExaminationANC 5A Reports and Testimony

98. ANC 5A submitted two reports. The first report was submitted April 19, 2017, and attached a resolution, dated March 22, 2017 (“5A Resolution”) in support of the Project. (Ex. 41.) The 5A Resolution recites the changes in the Project over the course of discussions with the ANC, which changes included reducing the number of townhouses from 150-180 to 80, reducing the number of stories from four to three, and creating similar structures (i.e., duplexes and triplexes) to conform with existing neighborhood standards. (*Id.*) The 5A Resolution also recites in part the Public Benefits. (*Id.*) Finally, the 5A Resolution confirms that the concerns mentioned in the 5B Resolution (as hereinafter defined) had been addressed. The 5A Resolution was adopted unanimously. (*Id.*) The second report was submitted June 8, 2017. (Ex. 219.) The report responded to comments made at the hearing by community members that questioned the appropriateness of the ANC’s support for the PUD, and recounted the reasons for the ANC’s support. Neither report listed any issues or concerns about the Project.
99. At the Public Hearing, ANC 5A provided testimony in support of the Project. (*Id.* at 137-143; Ex. 200.) ANC 5A’s testimony included the following statements, which this Commission hereby adopts in their entirety as findings:
- (a) The Applicant appeared before ANC 5A on six occasions as well as attended separate meetings with the SMD;
 - (b) Residents and neighbors were allowed to speak in support of or in opposition to the Project at a subset of such meetings;
 - (c) The Applicant has been diligent in its efforts to engage the community and has dramatically changed the design concept for the Project in response to residents’ concerns;
 - (d) ANC 5A recognized that if the Project proceeded as a matter-of-right development there would be impacts on the community without public benefits in return. Instead, the PUD process results in benefits for the surrounding neighborhood;

- (e) ANC 5A encouraged the Applicant to reach out to Luke C. Moore High School regarding construction education, and the Applicant did so; (*Id.* at 148-149.)
 - (f) ANC 5A found after research on the issue that the Project is consistent with the Comprehensive Plan including the Future Land Use Map;
 - (g) ANC 5A also found that the Project's townhouse is a housing type that is consistent with the housing stock of the surrounding area and that the revised configuration of duplexes and triplexes along Allison Street, N.E. and Sargent Road, N.E. is entirely consistent with the surrounding community;
 - (h) ANC 5A found that the Public Benefits are appropriate and sufficient for the Project proposed and that the benefits accrue to the immediate neighborhoods that are impacted by the Project;
 - (i) ANC 5A recognized that some community members are strongly opposed to the Project but that the Josephites have been good neighbors for almost 100 years and that this is their time of need. ANC 5A appreciated that the Josephites chose a developer committed to community outreach; and
 - (j) ANC 5A supported the Project and requests that its support be given great weight. (*Id.*)
100. ANC 5A noted in its testimony that it had requested a comprehensive transportation study of the neighborhood. (Tr. 3 at 140.)
101. Opponents and Residents raise allegations regarding procedural defects with ANC 5A's participation in this matter and urge the Commission to decline to give the ANC's resolution the great weight it is entitled under District law. (*See* FF ¶ 123(a) ("Findings on ANC 5A"). Opponents' concerns with ANC 5A are primarily that: (a) former Commissioner Adrian Jordan's participation should be disallowed because he was not domiciled in his district during his tenure as ANC Commissioner, and (b) current ANC Commissioner Keisha Coefield-Lynch has failed to hold hearings or otherwise obtain constituent input on the Project and her representation of her constituents has otherwise been inadequate. (*Id.*) The Commission makes further findings on these allegations in the Findings on ANC 5A.

ANC 5B Reports and Testimony

102. ANC 5B submitted three reports. The first was dated February 23, 2017 (Ex. 20.) The report stated that ANC 5B was opposed to the PUD for three reasons:
- (a) The townhouse development proposed in the PUD was out of character with the existing area, which is presently zoned R-2, developed predominantly with semi-detached housing, and less dense than the Project;

- (b) The Applicant's method of computing FAR for the whole Project, rather than by individual lot, is unacceptable; and
 - (c) Increased traffic from the Project would interfere with emergency vehicles operating on 12th Street N.E. and entering the Providence Hospital emergency room area.
103. The Commission notes that ANC 5B's first report was adopted prior to the Applicant filing the PHS with the changes shown on the Final Plans. Accordingly, the 5B Resolution references an 82-townhouse project. (*Id.*)
104. ANC 5B submitted a second report June 8, 2017. (Ex. 214.) The report repeated the issues and concerns stated in the first report, and added that:
- (a) The PUD proposal was in conflict with the Upper Northeast section of the Comprehensive Plan; and
 - (b) Increased traffic would contribute to rush hour intersection failures already experienced in ANC 5B.
105. ANC 5B submitted a third report on June 28, 2017. (Ex. 223.) The report stated the ANC was concerned about potential alley traffic as a result of the PUD, stated the ANC believed the proposals to address the issue in DDOT's Supplemental report were inadequate to address the concern, suggested that additional one way alleys should be considered, and that further consideration of alley traffic was needed.
106. At the Public Hearing, ANC 5B provided testimony in opposition to the Project. (*Id.* at 144-147.) ANC 5B's testimony included the following statements, which this Commission hereby also adopts in their entirety as findings:
- (a) Constituents in ANC 5B expressed opposition to the Project;
 - (b) ANC 5B opposes the Map Amendment because the Comprehensive Plan for the Upper Northeast Area is better served by the current R-2 zone;
 - (c) ANC 5B finds unacceptable the flexibility requested for the Project, the proposed density, and the traffic impacts especially in light of the adjacent Hospital;
 - (d) ANC 5B is experiencing a considerable amount of development throughout its boundaries and does not see the need to support a Project it views is inconsistent with the Upper Northeast Area Element of the Comprehensive Plan; and
 - (e) Accordingly, ANC 5B opposes the Project and requests that its support be given great weight.

ANC 5B Cross-Examination

107. At the Public Hearing, ANC 5B cross-examined the Applicant's testimony and asked whether any of the townhouses were four stories and whether the penthouse included any storage. (*Id.* at 122-123.) In response to the ANC's cross-examination, the Applicant confirmed that the townhouses were each three stories and that the penthouse was limited to a stairwell and did not include any storage. (*Id.*)
108. At the Public Hearing, ANC 5B also cross-examined OP and asked whether OP believed that the request for the Map Amendment was consistent with the Comprehensive Plan. (*Id.* at 135.) OP answered that it felt that the Map Amendment, like the Application as a whole, was not inconsistent with the Comprehensive Plan, which identifies the Property for institutional uses. OP noted that the Comprehensive Plan provides that when sites designated for Institutional Use are redeveloped, the new development should have a density that is merely similar to the surrounding neighborhood and not necessarily identical to that of the surrounding neighborhood. (*Id.* at 136.)
109. At the Rebuttal Hearing, ANC 5B cross-examined the Applicant's rebuttal testimony: (Tr. 4 at 37-40.)
- (a) ANC 5B asked about the status of the Landmark Application and whether the Seminary could be redeveloped if such Application was denied. The Applicant confirmed that it had engaged in discussion with HPO staff and that staff was comfortable that the Landmark Application would be worthy of designation and that they would likely support such Application; and (*Id.*)
- (b) ANC 5B also asked whether the front setbacks of the townhouses along Sargent Road, N.E. as shown in the renderings were accurate. The Applicant noted that the vast majority of homes in the neighborhood were set back 30 feet from the public right-of-way and that all right-of-way fronting townhouses in the Project are similarly set back 30 feet from the public right-of-way. The Applicant noted that six existing houses along the west side of Sargent Road, N.E. are anomalous insofar as they are set back more than 70 feet from the right-of-way. (*Id.*)

VI. Parties and Persons in Support

110. This Commission finds that there is strong and enthusiastic support for this Application among residents of neighboring communities in Ward 5 and throughout the District more generally as well as among various civic, service, and religious organizations. Dozens of individuals submitted written testimony in support. (Ex. 10, 28, 38, 43-46, 58, 62-129, 133, 136, 140-141, 145, 163, 166-175, 178, 182-188, 193-194, 197-198, 200-201.⁵) The Commission accepts these submissions as a credible expression of support for the Project from Supporters, many of whom reside within the boundaries of ANC 5A and 5B. (Ex.

⁵ The Commission notes that Exhibits 44-46, 58-59, 61-129, 163, 166-175, and 183-185 are variations of form letters and appropriately weights such support for the Project in its final analysis.

211H.) At the Public Hearing, thirteen individuals and organizations spoke in support of the Project. (Tr. 3 at 152-188.)

111. Supporters addressed the following categories of issues that this Commission finds material to the Application:

- (a) Support for the Josephites. Many Supporters expressed support and appreciation for the Josephites having allowed the public to use the Property for many years. (Ex. 10; Tr. 3 at 156-157.) Such Supporters also expressed understanding that the Josephites are undertaking the Project out of self-preservation; (Ex. 10, 178, 187-188; Tr. 3 at 157, 183.)
- (b) Community Engagement. Supporters cite affirmatively the Applicant's outreach and efforts to engage the community in developing and revising the Project. (Ex. 10, 43-45, 178, 187-188, 196-197; Tr. 3 at 157, 183.) One Supporter wrote in support of the Project as a resident of a nearby home constructed by the Applicant in a previous development effort; (Ex. 186.)
- (c) Community Support for the Project (Public Benefits). Many Supporters noted the Project's Public Benefits as worthy of support. (Ex. 10, 44-46, 58-59, 61, 63-129, 178, 182-185, 188, 194, 197; Tr. 184-185.) The Project's provision of housing and affordable housing was often cited as a particularly appreciated and important benefit; (Ex. 63-129, 136, 166-75, 182-185, 188, 194.)
- (d) Community Support for the Project (Historic Preservation). Supporters' cited the Project's preservation of the Seminary as an asset; (Ex. 44-45, 58-59, 61, 63-129, 166-175; Tr. 3 at 155.)
- (e) Community Support for the Project (Urban Design and Architecture). Supporters cited the Project's designs and how it blends in with its context as an asset; (Ex. 10, 58, 182, 194, 197.)
- (f) Community Organization and Small Business Support for the Project:
 - The Queens Chapel Civic Association ("QCCA") wrote in support of the Project and spoke at the Public Hearing. (Ex. 28; Tr. 3 at 179-180.) QCCA noted its dialogue with the Applicant and agreed with the Public Benefits package; (*Id.*)
 - The Brookland Neighborhood Civic Association ("BNCA") noted its qualified support for the Project; (Ex. 144.) BNCA commended the Applicant's engagement and noted positively many of the Public Benefits. BNCA also noted some concerns with the Project, most notably traffic concerns and the loss of open space at the Property; (*Id.*)
 - Mr. Edward Johnson of GBBA wrote in support of the Project; (Ex. 211F.)

- Ms. Kristin Taddei of Casey Trees, a District organization with a mission to “restore, enhance, and protect the tree canopy of the nationals’ capital,” entered written testimony and spoke in support of the Project at the Public Hearing. (Ex. 133, Tr. 3 at 158-161.) Ms. Taddei noted that Casey Trees ordinarily did not speak in support of a project, but that it was pleased to support this Project. She noted approvingly the Applicant’s desire to work with Casey Trees and the improvements made to the Project’s design over the course of this PUD application process;
 - Mr. Robert Oliver, of Phelps ACE High School spoke in support of the Project and the Applicant’s offer to supplement the school’s curriculum; (Tr. 3 at 170-172.)
 - Mr. Greg Billing of the Washington Area Bicyclist Association wrote in support of the Project, extolling the Project’s bicycling benefits and consistency with the MoveDC transportation plan; (Ex. 145.)
 - Ms. Cort of CSG commented that her organization supported a number of aspects of the Project, including its affordability, walkability, context-sensitive design, historic preservation, new parks, and transportation benefits. (Ex. 198; Tr. 3 at 166-170.) Ms. Cort noted that housing affordability goals are best served by increasing the supply of homes and also encouraged a reduction in parking spaces; (*Id.*)
 - Father Frank DiSiano, a Paulist Father, spoke in support of the Project. (Tr. 3 at 165-166.) Father DiSiano explained some of the dynamics that led the Josephites to need to seek to develop a portion of the Property and noted that the Project would allow the Josephites to continue their important mission; (*Id.*)
 - Mr. Brian Becker of the Washington Jesuit Academy spoke in support of the Project, and particularly the affordable housing. (Tr. at 186.) Mr. Becker also noted the Applicant’s outreach and offers of assistance; (*Id.* at 187.)
 - Mr. Randy Mueller, a local business owner wrote in support of the Project noting that the Project’s residents would be customers for his business and that the Project would spur additional development that benefitted District business owners; and (Ex. 38.)
- (g) Ward 5 Councilmember, ANC Commissioner and former ANC Commissioner support:
- Ward 5 Councilmember Kenyan MacDuffie wrote in support of the Project. (Ex. 193.) Councilmember MacDuffie wrote that he had followed the Applicant’s community outreach and found that such outreach

improved the Project. He also wrote in support of the Public Benefits, particularly the family-sized housing, which he was hoping to support through legislation more generally and an issue of a great deal of concern to his constituents; (*Id.*)

- Mr. Adrian Jordan, the former ANC 5A commissioner for the Single Member District (“SMD”) encompassing the Property entered written testimony and spoke in support of the Project at the Public Hearing. (Ex. 140, 201; Tr. 3 at 161-164.) Mr. Jordan explained that he engaged with the Applicant for over a year to work to improve the Project’s design with the input from his constituents; and (*Id.*)
- Commissioner Isaiah Burroughs, the current ANC 5A04 SMD wrote in support of the Project. (Ex. 141.) He cited positively the Project’s housing and Public Benefits as well as the Applicant’s community engagement.

The Commission notes that some of the Supporters qualified their support and raised items shared by some of the Opponents. (*See, e.g.*, Ex. 144 (raising concerns regarding traffic impacts from the Project).)

VII. The Residents’ Cross-Examination and Testimony

Cross-Examination of the Applicant

112. At the Public Hearing, the Residents cross-examined the Applicant’s direct testimony and asked questions covering the following topics: (Tr. 3 at 124-128.)
- (a) Tree Removal. The Residents asked whether the Applicant intended to remove any significant trees from the Property, and whether such trees were “Heritage Trees” under existing law and whether every effort must be made to preserve them. (*Id.* at 124.) The Applicant confirmed that it did intend to remove certain trees from the Property and that applications for permits to remove such trees had been filed prior to the effective date of the applicable law so that the law did not apply to the trees. (*Id.* at 125.) The Applicant confirmed that UFA acknowledged the Applicant could pursue tree removal, but the Applicant agreed to wait on the outcome of the instant proceeding before acting under such permits; (*Id.*)
 - (b) RA-1 Development Standards. The Residents asked whether the Applicant sought variances from the development standards of the RA-1 zone and whether the record documented the degree of relief requested. (*Id.* at 125-126.) The Applicant indicated that it sought relief from certain development standards of the RA-1 zone and provided a reference to the location of the relief requested for each theoretical lot; (*Id.* at 127; *See* Ex. 30A at 18A, 18B.)
 - (c) Zoning-Compliant Site Plan. The Residents asked whether the Applicant had prepared a zoning-compliant subdivision plan. (Tr. 3 at 127.) The Applicant confirmed that it had not; (*Id.*)

- (d) Ownership. The Residents asked about the fee simple ownership of the Property at the completion of the relevant approvals. (*Id.*) The Applicant answered that the Applicant would initially own the fee to the northern four acres of the Property and that the Easement would be recorded against the southern portion of the Property which would be retained by the Josephites. The Applicant would then sell the fee interest in the individual townhouse lots to private owners, and the HOA would maintain public areas on the portion of the Property formerly owned by the Applicant. (*Id.* at 127-128.) The HOA would maintain the Playground even though that would be owned in fee by the Josephites. (*Id.*) The Applicant confirmed that the Easement would apply to the northern portion of the Property as well. (Ex. 15 at 7 (referencing Ex. 15H at 30).)
113. At the Rebuttal Hearing, the Residents cross-examined the Applicant's rebuttal testimony, and asked questions covering the following topics: (Tr. 4 at 40-43.)
- (a) Traffic Plans. The Residents asked to what degree the revised conceptual traffic calming measures could change. The Applicant responded that the Applicant and DDOT have reached an agreement on the type of calming measures to be installed but that the details remain to be designed; (*Id.*)
- (b) Opinion Testimony in RCLCO Report. The Residents asked to what extent the RCLCO Report contained opinion evidence rather than fact evidence. The Applicant responded that the report contains opinion based on fact; and (*Id.*; *see also*, FF ¶ 23.)
- (c) Townhouse Sizes. The Residents asked whether various dimensions of the Project's townhouses were consistent with those of other houses in the neighborhood. (Tr. 4 at 43.) The Applicant acknowledged that the footprint of the townhouses in the Project and the number of bedrooms and bathrooms in each is generally comparable to the existing houses in the vicinity of the Property. (*Id.*)

The Residents' Written and Direct Testimony

114. The Residents provided written testimony in advance of the Public Hearing. (Ex. 143.) The Residents also presented direct testimony in opposition to the Application at the Public Hearing. (Tr. 3 at 189-199 (discussion by the Residents' counsel) and 199-226 (testimony by individual members of the Residents) and introduced an exhibit at the Public Hearing (Ex. 202).) After the Public Hearing, the Residents provided additional briefing in the Residents' Memo and Residents' PHS.
115. The Residents' written testimony raised the following concerns and objections: (a) the Project is too dense relative to the surrounding neighborhood as demonstrated by three density metrics: units per acre, FAR, and lot occupancy; (Ex. 143 at 2-4.) (b) the Applicant "double-counts" the Project's open space; (*Id.* at 4-5.) (c) the Applicant's

request for dimensional relief fails to satisfy the requirements of the variance test; and (*Id.* at 5-7.) (d) the Project is not consistent with the Comprehensive Plan; (*Id.* at 7-8.⁶)

- (a) Density. The Residents' concerns regarding the Project's density are addressed in the Core Issues section of this Order. However, the Commission notes preliminarily that its analysis of the Project's density is resolved as follows: the Project is developed to an actual FAR over the entire Project of 0.95 and an effective FAR 1.29 on the northern portion of the Property. Such effective FAR is equivalent to the maximum FAR allowed in the RA-1 zone pursuant to the PUD and IZ bonuses. In exchange for this density and other development incentives requested, the Applicant provides numerous Public Benefits that warrant the increased density;
- (b) "Double-Counting" of the Project's Open Space. The Residents claim that the Project transfers density from the southern portion of the Property, where the Seminary is located, to the northern portion where the townhouses are located. (Ex. 143; *see also* Ex. 155.) The Residents further claim that the Applicant proffer of the preservation of open space for public use is "double-counted" because such open space is doing double duty as a density credit and a public benefit. (*Id.* at 4.) The Commission disagrees with both of these points:
- First, the Commission finds that the Project seeks no transfer of density. The Property that is the subject of this Application includes the southern portion that remains largely preserved as much as it includes the northern portion that is to be developed.⁷ The Project seeks to transfer density no more than, for instance, an individual residential lot transfers density from an undeveloped rear yard to the developed footprint of the residence. (Ex.

⁶ The Commission recognizes that Residents' concerns extend beyond those items raised in written testimony introduced by counsel on behalf of all Residents. However, for organizational clarity in this Order, items raised by the individual members of the Residents at the Public Hearing and written items introduced by individual members of the Residents are generally grouped with the concerns and objections of other Opponents. (*See* FF ¶¶ 110-115.) That is, with limited exceptions, these FF paragraphs 104 through 109 address only those items raised by Residents' in writing and by counsel at the Public Hearing. In no way does this organizational approach diminish or otherwise affect this Commission's review of the Residents' concerns.

⁷ It is of no import that the fee interest in the Property may ultimately be divided among separate owners. The entirety of the Property will be subject to the recorded PUD covenant enforcing this Order. The PUD regulations expressly contemplate that property under a PUD may be in separate ownership (even though that is not the case in the instant Application at present). (*See* 11-X DCMR § 300.9.) The PUD regulations further provide that additional density or development rights granted through a PUD cannot be transferred as part of a combined lot development. (*Id.* § 303.17.) That provision is not applicable to the instant proceeding. A combined lot development is a density shifting mechanism that is available under the Zoning Regulations as a matter of right in certain zones. (*See* 11-C DCMR § 1200.) The Application does not involve a combined lot development; rather, the Application is a PUD. The prohibition in § 303.17 precludes transfer of density from within a PUD to an adjacent lot outside such PUD via the combined lot development process. Section 303.17 does not preclude, and simply does not address, the allocation of density within a single PUD even if portions of such PUD are currently (or will in the future be) in separate ownership.

209 at 4.) Therefore, as a matter of density calculation, the entirety of the Property is properly treated as a single unit; and

- Second, as the Applicant notes, the allocation of development on the northern portion of the Property preserves open space throughout the Property (including on the northern portion of the Property), but the mere *preservation* of open space is not proffered as a Public Benefit. Rather, the Applicant proffers the *dedication* of such open space for public use and recreation as a Public Benefit. (*Id.*) The Residents ultimately retreat from their position and restate their concern as an objection to the balancing that the Commission is tasked with in balancing the Project's benefits against the requested development incentives, including additional density afforded by the requested Map Amendment. (Ex. 212 at 4.) As discussed in more detail below, the Commission finds the Project's dedication of open space for public use to be a considerable public benefit and one that warrants density and flexibility in excess of what is permitted as a matter of right; (*See* FF ¶¶ 122(c), 201.)

- (c) Variance Standard. The Residents claim that the Project's request for relief from certain development standards pertaining to the Project's theoretical lots fails the variance test. (Ex. 143 at 5-6.) As set forth more fully below, the Commission finds that the requested relief not only satisfies the variance standard but also that such standard is not strictly applicable to such development standards in the context of a PUD. (*See* FF ¶ 150(a).) In the Residents' Memo, the Residents assert without support that the variance standard required under Subtitle F § 5200.2 of the Zoning Regulations supersedes the flexibility afforded the Commission under Subtitle X and therefore would require the variance test to apply to the Applicant's requested relief. (Ex. 212.) The Commission disagrees and finds there is no ambiguity on this point in the Zoning Regulations. Rather, the Commission's authority in this regard is quite clear. Under X § 303 "[a]s part of the PUD process, the Zoning Commission may grant relief from *any building development standard* or other standard referenced in the zone reference table with the exception of use regulations," and "the amount of flexibility from *all other development standards* shall be at the discretion of the Zoning Commission" (emphasis added). The Applicant's request for Lot Relief (as such term is hereinafter defined) is unambiguously among the type of development standard for which the Commission has the authority to grant relief under X as part of the PUD process because the Commission may grant relief from "any" development standard except for use regulations; and
- (d) Consistency with the Comprehensive Plan. The Residents' concerns regarding the Project's consistency with the Comprehensive Plan are addressed in the Core Issues section of this Order.

116. Additionally, the Residents suggested revisions to the Project's site plan to reduce the Project's overall density. (Ex. 143 at 9-10; 15.)

- (a) Limited Scope of Opposition. As a predicate to their several suggested changes to the Project, the Residents allow that they support the development of the four acres comprising the northern portion of the Property, subject to the requested conditions. (Tr. 3 at 190-191.) The Residents do not oppose the height of the Project's townhouses nor do they oppose the size of the individual townhouses; (*Id.*)
- (b) Residents' Proposed Site Plan. However, the Residents request that 14 townhouses be removed from the Project's site plan. (Ex. 143 at 15.) The Residents provide a rationale for the townhouses selected. (*Id.* at 9.) The Residents generally do not object to any of the townhouses fronting on private streets at the interior of the Project. (*Id.* at 15.) Instead, the Residents would prefer to remove townhouses from the public streets surrounding the Property. (*Id.*) The Applicant thoroughly notes the problems with this suggestion, not the least of which is that the Residents' suggestion is far more out of context for the surrounding neighborhood than the Applicant's. (Ex. 209 at 6.) The Commission notes from aerial images and context images of the neighborhood provided by the Applicant that the prevailing construction pattern in the neighborhood is for residences to be constructed to the public street. (*See, e.g.*, Ex. 206 at 24.) The Residents' proposed changes would create gaps that undermine that fabric. The Commission sees no analogous expression of "spaciousness," which the Residents suggest is a merit of their proposal, elsewhere along residential streets in the surrounding area. The Commission acknowledges and appreciates the Applicant's revisions to the Project's site plan to limit the townhouses on Allison Street, N.E. and Sargent Road, N.E. to duplexes and triplexes. This is a gesture consistent with the fabric of the surrounding areas. The Residents' proposal is not. Accordingly, the Commission places relatively little merit in the Residents' proposal. To the extent the Residents' object to the overall number of townhouses, objections raised in that context are discussed in detail in the Core Issues section of this Order and in the Opponents' concerns and objections; (*See* FF ¶¶ 124-37.)
- (c) Placement of Open Spaces. The Residents believe that open space around the exterior of the Project is meritorious, that open areas should be visible for safety reasons, and that such areas should be accessible and visible so that such areas are inviting to neighbors from outside the Project. (Ex. 143, 212.) The Commission finds that the Project already achieves these objectives as designed:
- First, the Project contains considerable open space around its perimeter. The entire southern portion of the Property, including the ceremonial front lawn on Varnum Street, N.E. has preserved spaces at the exterior of the Property;
 - Second, the Commission notes that the Playground was designed to be visible from the public right-of-way, in part of safety reasons. The Commission finds that the Applicant worked with the community and MPD to program it in a way such that it is inviting to neighborhood

residents with children and safe. (Tr. 3 at 21, 105.) The two public open spaces at the interior of the northern portion of the Property are fronted by townhouses, thereby expressing the type of “eyes on the street” safety benefit the Residents advocate; and

- Third, the Commission finds that the Applicant has taken efforts to ensure that the Project’s open spaces are inviting notwithstanding their placement, in part, in the interior of the Project. For instance, the Commission commends the Applicant’s commitments with respect to visitor parking and signage for such open spaces. Accordingly, the Commission finds that the Applicant has thoroughly and appropriately addressed the Residents’ concerns with respect to the placement of the Project’s open spaces;
- (d) Townhouses along 12th Street, N.E. The Residents complain about the Project’s longer groups of townhouses along 12th Street, N.E. (Ex. 212.) The Commission finds this concern particularly unavailing for reasons that the Residents themselves allude: these townhouses “are not close to or across from any of the Residents’ homes.” (Ex. 212 at 8.) Indeed, such townhouses are not close to or across from *any* homes at all. These townhouses are across from the Hospital, which is fronted by surface parking lots, and which is currently in the RA-1 zone. The Commission finds that it is entirely appropriate for the somewhat greater appearance of density to be located along 12th Street, N.E., and that moreover the opposing condition anticipates such increased density. For the foregoing reasons, the Commission declines to adopt the Residents’ recommendations with respect to the placement of townhouses along 12th Street, N.E.; and
- (e) Residents’ Tree Preservation Proposal. The Residents’ concerns regarding the removal of two trees from the eastern portion of the Property warrants further discussion. (Ex. 143 and 212.) The Commission finds that although the permits authorizing the removal of such trees have been temporarily stayed during the pendency of this proceeding, ultimately the Commission has no authority to halt the removal of such trees. (Tr. 3 at 124-25; Ex. 134 at 1) Moreover, the Commission finds that as a matter of the Comprehensive Plan and the Zoning Regulations, the Project’s net effect with respect to the Project’s tree cover is positive for two reasons. First, the Project results in no net loss in tree canopy despite developing nearly four acres of currently largely undeveloped land. (Tr. 3 at 160.) That alone is a considerable feat of landscape planning given the Project’s concomitant housing benefits. Second, the Project results in the preservation of existing trees and tree canopy in a way that would likely not be achievable under a matter-of-right development of the Property. (Ex. 116 at 2.) For instance, the trees that the Residents seek to retain could be removed under a matter-of-right development, and therefore such matter-of-right development of the Property might very well have a net negative reduction in tree canopy. That the Project would replace such loss of tree canopy as part of the Project is a feature available only in the context of this PUD.

117. Finally, the Residents propose nine categories of additional changes to the Project. (Ex. 143 at 10-13; Ex. 212 (containing follow-up requests).) The Commission finds that the Applicant has been highly responsive to the Residents' concerns and requests and has generally approached finding resolutions to these items in the spirit of cooperation:
- (a) Brick Façades. The Residents' request that the Project should express brick façades on all façades visible from a public street and all façades fronting on the two new private streets. (Ex. 143; 212 at 12.) The Commission finds that the Applicant provided evidence that this request would be adequately satisfied; (Ex. 209 at 25; 216.)
 - (b) Rooftop Decks. The Residents' request a detailed lot-by-lot review of the potential effects of the optional rooftop decks pursuant to the special exception standard. The Applicant concedes as much. (*Id.* at 3.) This Commission makes separate findings on the Project's satisfaction of such standard and the Residents' concerns are more appropriately addressed there; (*See* FF ¶¶ 151-152.)
 - (c) Allison Street, N.E. The Residents request that Allison Street, N.E. be made one-way, eastbound. The Commission notes that the Applicant remains neutral as to this request, and that it has offered substantial improvements to traffic conditions on that street in light of DDOT's preference that the street remain bi-directional; (Ex. 209 at 9; 211.)
 - (d) RPP. The Residents requested initially that the Project's residents be ineligible for RPP. (Ex. 143 at 11.) However, the Residents appear to have abandoned that position. (Ex. 212 at 13.) The Residents' other parking and traffic concerns are addressed in the Core Issues section of this Order; (*See id.* at 13.)
 - (e) Private Alley Signage. The Residents and the Applicant appear to be in agreement with respect to signage; (Ex. 143 at 11; 209 at 10.)
 - (f) Public Benefits. The Residents generally do not disagree with the package of public benefits except with respect to tree and open space preservation as addressed in paragraph 108 of this Order; (Ex. 143 at 12; 212 at 15.)
 - (g) Public Art. The Residents seek input on the selection of an artist for public art to be included as part of the Project. (Ex. 143 at 12.) The Applicant agrees; (Ex. 209 at 10.)
 - (h) Capital Bikeshare Station. The Residents express preferences with respect to the location of a Capital Bikeshare station, and the Applicant generally agrees; and (Ex. 143 at 12; 209 at 10.)
 - (i) Construction Management. The Residents and Applicant generally agree with respect to the particulars of the construction management plan ("CMP"). (Ex. 30C.) The Commission finds that the Project adequately addresses the Project's impacts, including construction period impacts. The Residents request that the

Project be constructed in a single phase and that if the Project is constructed in multiple phases, then the surrounding streets should be repaved. (Ex. 143 at 14; 212 at 15.) The Applicant confirmed that the Project's site work would be performed in a single phase. (Tr. 3 at 82.) The Applicant also provided ample justification that all of the Project's townhouses could not plausibly be constructed simultaneously. (Ex. 209 at 10.) Implicit in the repaving request is that if the Project is constructed in a single phase, no such repaving should be required. The Residents have offered insufficient justification for this repaving request and DDOT has expressed no support for this position. The Commission is disinclined to make such requests a condition of this Order because the Applicant has provided more than adequate mitigation for the Project's potential impacts.

VIII. Opponents' Concerns and Objections

118. The Commission notes that there is strong opposition to this Application among residents of Michigan Park, North Michigan Park, other neighboring communities in Ward 5, and various community organizations. Prior to the closing of the record, Opponents submitted nearly 60 letters or other items of written opposition testimony. (Ex. 12-14, 29, 34-35, 39-40, 42, 47-57, 60, 130-132, 136-139, 142-143, 146-162, 164-165, 176-177, 179-181, 189, 195, 203-204.) At the hearing, 12 Opponents (apart from the individual Residents) provided testimony in opposition to the Project. (Tr. 3 at 229-266.) The Commission has reviewed all of the Opponents' testimony in the record and finds such testimony to be generally credible. The following paragraphs 119 through 123 identify and address Opponents' concerns and objections and those of the individual Residents. These collective concerns and objections are grouped into categories (rather than addressed as individual items of testimony from each Opponent) for review and analysis. A subset of Opponents' concerns and objections, together with certain of those raised by the Residents, are addressed in more detail in the Core Issues section of this Order.⁸ Opponents' concerns that are treated as Core Issues and are addressed in said section of this Order are denoted as such below.
119. Design, Density, and Aesthetic Objections. On balance, the Commission finds that the Project is highly responsive to the concerns and preferences of the community, OP, and this Commission. The concerns raised by Opponents with respect to design, height, rooftop elements, and views are all appropriately addressed in the Final Plans, are not inconsistent with the Comprehensive Plan (as addressed in the Core Issues section of this Order), and do not have unacceptable impacts that are not appropriately mitigated or rendered acceptable in light of the quality of the Project's public benefits.

Opponents raised the following concerns and objections regarding the Comprehensive Plan and the Project's density and design:

⁸ The Commission does not suggest that the contested issues addressed in these paragraphs are immaterial. Rather, the designated Core Issues grouped below all warranted a greater intensity of scrutiny by the Commission and are grouped together with concerns raised by the Residents purely for organizational purposes.

- (a) Consistency with the Comprehensive Plan. Several Opponents testified that the Project was inconsistent with the Comprehensive Plan. (*See* Ex. 29, 34, 47, 49-50, 55, 60, 131, 135, 138, 148, 150, 154, 158-159, 164, 177, 179-180; Tr. 3 at 204, 214, 221.) As indicated above, this Commission disagrees and separately describes findings that the Project is not inconsistent with the Comprehensive Plan. (*See* FF ¶¶ 125-128; 162-178.) A detailed discussion of the Project's consistency with the Comprehensive Plan in light of particular allegations raised by Opponents and the Residents is addressed in the Core Issues section of this Order;
- (b) Appropriateness of the Map Amendment. Opponents oppose the Map Amendment, and raise three categories of objections with respect thereto:
- *The Map Amendment is inconsistent with the goals of the adjacent R-2 zone, which is a zone designation that is attractive and valuable to residents.*⁹ (Ex. 14, 39, 159; Tr. 3 at 219, 221.) The Commission finds that the Map Amendment is entirely appropriate for the surrounding context in light of the Comprehensive Plan and the proposed design and density of the Project. As discussed in more detail in the Core Issues section of this Order, the Project's density and design make it compatible with the surrounding neighborhood and not inconsistent with the goals of the R-2 zone. The Map Amendment and resulting Project do not reduce the attractiveness of the surrounding area; indeed, the opposite is true: the Project improves upon the existing aesthetic condition. Opponents point to no evidence that the value of the surrounding area will be diminished. The Applicant, meanwhile, has provided substantial evidence of the value of the Project to the District; (Ex. 208 at 8.)
 - *The Map Amendment sets a precedent for future projects.* (Ex. 29, 150, 204.) As the Applicant pointed out on rebuttal, this Commission has stated on multiple occasions that each future PUD application will stand on its own and be evaluated on its own merits. (Ex. 206 at 34.) This Application creates no binding precedent before the Commission. Moreover, neither the Applicant nor any future developer or landowner could utilize the RA-1 zone approved herein except in accordance with the Final Plans. (*Id.*) That is, the Map Amendment has no effect apart from the Project. (*See* X DCMR § 300.4.) Opponents urge comprehensive review of future projects and requests in light of this Application. (Ex. 204.) Such review is unnecessary as the requested Map Amendment has no precedential value and future applications will be independently assessed pursuant to the applicable regulations; and

⁹ Italicized text in these paragraphs merely summarizes or recites Opponents' concern or objection and does not represent a finding of this Commission.

- *The existing adjacent RA-1 zone is an exception and not the norm for the area because RA-1 zones belong immediately around Metrorail stations.* (Ex. 155.) The Map Amendment would rezone the Property to an identical zone as one of the adjacent blocks. This is not an insignificant fact, and one not at all diminished by that adjacent block not currently being used for residential purposes. The current use of that adjacent block could be replaced with residential development constructed to RA-1 zone parameters as a matter of right. The RA-1 zone is part of the character of the surrounding neighborhood and not limited to Metrorail stations; (Ex. 2G at 1.)

Accordingly, the Commission finds that the proposed Map Amendment is entirely appropriate in light of the Map Amendment standards articulated below; (See FF ¶¶ 145-147.)

- (c) Project Density. Opponents, like the Residents, raised strong objections to the Project's density. (Ex. 12, 29, 34, 47, 49, 55-56, 60, 135, 137, 139, 155, 158, 164-165, 176, 179-180; Tr. 3 at 243-244.) A detailed discussion of the Project's density is addressed in the Core Issues section of this Order;
- (d) Project Design. Opponents raised the following categories of concerns about the Project's design:
- *The Project's townhouses are out of context given that the surrounding housing stock is a mix of detached homes, duplexes, and triplexes.* (Ex. 14, 34, 39, 47, 49-50, 55, 60, 135, 151, 158-159.) The Commission finds that the revisions to the Project along Allison Street, N.E. and Sargent Road, N.E. as shown in the Final Plans (i.e., to reduce the apparent density of the Project such that the Project presents only duplexes and triplexes opposite existing residences) address these concerns. Some Opponents ultimately agreed with the improvements in the revisions. (Ex. 39.) The proposed longer rows of townhouses along 12th Street, N.E. are appropriate in light of the lack of existing residences along that portion of that street;
 - *The Project brings about generally unfavorable and dramatic changes to the character of the neighborhood and is inconsistent with the architectural and social character of the neighborhood.* (Ex. 14, 29, 34, 39, 47-50, 55-56, 60, 135, 151, 155-156, 158-159, 164-165, 177, 179.) The Commission generally disagrees with this sentiment and finds that the Project's overall urban form, architecture and detailing is entirely consistent with the look and feel of the surrounding neighborhood and that the Applicant's revisions to the Project over the course of this matter have made the Project increasingly compatible with the neighborhood. The Commission agrees with Opponents that the Project's form and architecture are somewhat differentiated from the existing housing stock in

select areas—for instance, along 12th Street, N.E. and to the rear of the Seminary—but finds that such differentiation is strategic, thoughtfully designed, and will add a degree of character and richness to the Project in a way that does not affront any existing residences or detract from the neighborhood overall. Contrary to allegations raised in a petition filed by various Opponents (*See* Ex. 164), the Commission finds that the Applicant has not proposed to construct any new townhouses to a height of 60 feet and would have no authority to do so under this Order; (*See* Ex. 228B (showing the maximum heights of each townhouse in the Project) and Condition A.1 hereof (requiring the Project to be constructed in accordance with the Final Plans).)

- *The Project's townhouses are too tall in presenting three stories to the street.* (Ex. 14, 39, 159.) The Applicant has presented evidence that the Project's individual townhouses are generally all within the 40-foot height limit allowed as a matter of right in the surrounding R-2 zones, and none of the townhouses exceed that limit by more than two feet. (Ex. 228B.) These maximum heights are generally consistent on all sides of the Project;
- *The Project's townhouse lot sizes are incompatible with other lots in the neighborhood.* (Ex. 131.) The Applicant does not appear to dispute the characterization of the Project's theoretical lots being smaller than typical lots in the neighborhood. (The Applicant provided testimony that the Project's townhouses are roughly similar in size as other houses in the neighborhood. [Tr. 3 at 27.]) Ultimately, the Commission finds this statistic not particularly enlightening as it is disconnected from any discussion about the Project's impact, its relevance to the Comprehensive Plan, or any other regulation the Commission is obligated to consider;
- *The Project's penthouses and rooftop decks are non-contextual.* (Ex. 14, 29, 34, 39, 47, 49-50, 55, 60, 135, 151, 158-159, 204.) In general, the Commission finds the Project's implementation of rooftop decks to be well-designed and contextual. Opponents allege that these features have the impact of a four story building. We disagree. The Applicant presented evidence that the decks are largely hidden from public view and are otherwise well-designed. (Ex. 206 at 30; 211D.) The Project's penthouses are limited to stair enclosures and entirely appropriate given the context for the reasons set forth below. (*See* FF ¶¶ 151-52.) The rooftop decks and appurtenant penthouses are options available to all houses in the surrounding area under the special exception standard, which the Applicant satisfies, and the Commission sees no reason to exclude such features categorically from the Project when the proposal satisfies such standard; (*See id.*).

- *The Project's architecture is "simplistic."* (Ex. 150.) While the Commission always appreciates that there will be differences of opinion among individuals with respect to architectural preferences, the Commission finds that the Project's architecture is appropriately detailed and crafted in light of the context of the existing residences as well as the adjacent historic Seminary building. The Commission appreciates that the Applicant has expended effort to ensure that the Project's townhouses are not inappropriately imitative and that the Project both respects and contributes positively to the architectural vocabulary of the neighborhood. The urban design and architecture is, as noted above, a Public Benefit of the Project; (FF ¶ 193.)
- *The Project injures views from surrounding properties.* (Ex. 29, 47, 49.) One Opponent, an immediate abutter, raised concerns about injury from views from her residence to the Project's alley (which will be enlarged relative to its current state) and garage doors at the rear of new townhouses, and raises concerns about the social and aesthetic impacts from the lack of yards. The Commission notes that the six existing homes on the block where the Project is located are anomalous in the neighborhood insofar as such houses do not back against the rear of other houses. (Ex. 206 at 22.) The introduction of alleys and rear elevations at this location continues a condition that is common in this neighborhood. On the whole, while the Commission is sympathetic that this neighbor will lose views of the existing open space on the northern half of the Property, her new views are not markedly different than what she would experience with house constructed to the standards of the R-2 opposite the existing alley behind her residence. Similarly, her new views are not out-of-line with those that occur elsewhere in the neighborhood. Other Opponents raise concerns that the Project will impair views reminiscent of historic views in the District. The Applicant has undertaken efforts to mitigate adverse visual impacts and protect views of historic resources as well as the resources themselves. For instance, the Project protects and enhances views of the historic Seminary (particularly the cupola) and preserves vistas along existing streets through strong streetwalls, appropriate setbacks, and retention of the 11 mature street trees along 12th Street, N.E. Accordingly, these alleged impacts are not unacceptable and are capable of being mitigated; and
- *The renderings included in the Application materials are inaccurate.* (Ex. 34, 47, 49-50, 55, 60, 135, 158.) The Commission disagrees and finds that the renderings and the drawings overall are highly credible and satisfy the standard for substantial evidence.

The Commission finds that the Project's design and visual impacts are not unacceptable and that some of the Project's impacts are either favorable (e.g., the inclusion of new detailing and the protection of certain views and vistas), capable of being mitigated (e.g.,

through design and landscaping), or acceptable given the quality of the Project's public benefits, as discussed in more detail below.

120. Traffic and Parking Concerns. Opponents' concerns also include the following alleged adverse impacts of the Project with respect to traffic and parking:

- (a) Traffic Congestion. Virtually every Opponent had concerns about the Project's impacts on traffic congestion. (Ex. 12, 14, 29, 34-35, 39, 47-50, 55-57, 60, 131, 135, 137, 139, 142, 147, 149, 151, 152, 155, 159, 162, 165, 176; Tr. 3 at 203-206, 208-211, 233, 246, 249.) The Commission shares in these concerns. Accordingly, traffic congestion is addressed among the Core Issues section of this Order;
- (b) Traffic Safety. Related to Opponents' concerns with respect to traffic congestion are concerns arising out of traffic safety impacts on streets surrounding the Project. (Ex. 29, 39, 50, 131, 137, 147, 157, 160, 176, 179; Tr. 3 at 231, 234, 238, 252-254, 256.) Traffic safety is also addressed among the Core Issues section of this Order;
- (c) Providence Hospital Traffic Access/Issues. Several Opponents also raised concerns about emergency vehicle access to the adjacent Providence Hospital as well as adverse interactions between the hospital and surrounding streets. (Ex. 39, 57, 131, 142, 147, 157, 203; Tr. 3 at 231, 254.) Hospital-related traffic conditions are also addressed among the Core Issues section of this Order;
- (d) Adequacy of the CTR. Opponents allege deficiencies with the CTR. (Ex. 50, 147, 151, 195, 203; Tr. 3 at 205, 239.) The following allegations of the CTR are raised:
 - *The CTR does not examine currently existing problems.* (Ex. 50.) The Commission disagrees. The CTR affirmatively examines existing adverse traffic conditions and notes, in relevant part, that "There are three study intersections that operate unacceptable levels of service during at least one study scenario due to existing levels of traffic." (Ex. 22 at 15, 21-22.) That is, the CTR acknowledges that traffic is already congested in the neighborhood and includes such existing traffic conditions in its analysis;
 - *The CTR does not reflect accurately the traffic conditions in the neighborhood at present, citing lack of analysis on queuing, alley usage, and Hospital-related traffic.* (Ex. 147, 150.) To the contrary, this Commission finds that the CTR does address each of those items; (Ex. 22 at 22 (queuing), 16 (alley usage), 21 (hospital traffic); *see also* Ex. 206 at 4 (including a letter from the Hospital dated May 16, 2017 with respect to the Project's impact on hospital operations, "Providence Letter").)
 - *The CTR does not consider ongoing and new development in the areas surrounding the Project.* (Ex. 195.) Again, to the contrary the Commission finds that the CTR considers whether other developments would affect

traffic in the vicinity of the Project. (Ex. 22 at 16.) The CTR also includes a conservatively high assessment for general background traffic growth that DDOT found to be appropriate; (Ex. 37 at 7.)

- *The CTR does not consider effects on the Hospital's operations.* (Ex. 203; Tr. 3 at 239.) The CTR again contradicts this allegation. The CTR includes the Hospital's driveways in its analysis. (Ex. 22 at 21.) In addition, as part of the Applicant's rebuttal testimony, the Applicant introduced the Providence Letter, wherein the Hospital disclaims any concerns about impacts on operations arising from the Project. (Ex. 206 at 4.) The FEMS Memo concurs; (Ex. 213.)
- *The CTR is deficient with respect to the queuing analysis.* (Ex. 147, 151; Tr. 3 at 205.) Opponents cite the lack of a queuing analysis for two intersections. However, the CTR explains this absence: the study methodology agreed-upon by the Applicant and DDOT does not provide for queuing results at the two cited intersections given the nature of each as an all-way stop-controlled intersection. (Ex. 22 at 22; 37 at 3.) The Commission finds it unfortunate that the relevant methodology does not accommodate queuing analysis for such intersections, but finds that on the whole the analysis in the CTR is more than satisfactory for the Commission to undertake the relevant evaluation with respect to the Project's transportation and traffic impacts; and
- *More broadly, the CTR is "unscientific."* (Ex. 203.) DDOT disagrees with this assessment, and the Commission places reliance upon DDOT's report and incorporates its findings herein. (Ex. 37 at 2; *see also* FF ¶ 88.) Moreover, Opponents' attacks on the CTR are inconsistent with this Commission's review of the CTR and the testimony of Mr. Van Pelt, the Applicant's transportation expert witness, who the Commission finds to be quite credible. The DDOT Report expressly found the CTR to be sound and reasonable and to take into account a conservative estimate of vehicle trips. (*Id.*) At the Public Hearing and at the Rebuttal Hearing, the Commission challenged some of Mr. Van Pelt's assumptions and analysis to gauge the strength of his analysis. (Tr. 3 at 88-92, 112-17; Tr. 4 at 9-15.) The Commission requested additional information from the Applicant in its post-hearing submission regarding traffic impacts in areas where the Commission initially identified omissions or incomplete aspects of the CTR. On the whole, in light of the Applicant's Post-Hearing Submission and the CTR, the Commission finds Mr. Van Pelt's responses to be well-reasoned and convincing.

In sum, the Commission credits the expert status of Mr. Van Pelt and the expert quality of the CTR and finds both to be credible and sound. The Commission finds that the CTR is an unrebutted and reasonably accurate depiction of the

Project's transportation impacts and satisfies the substantial evidence standard; and

- (e) Parking. Opponents raise concerns about the Project's impact on parking. (Ex. 14, 29, 39, 147, 150-151, 155, 159-160; Tr. 3 at 206, 209-210.) Opponents' raise the following parking concerns:

- *The introduction of curbside parking along 12th Street, N.E. does not account for the operational needs of the adjacent Hospital and will exacerbate existing unfavorable conditions on 12th Street, N.E.* (Ex. 14, 39, 155, 159.) This Commission ultimately disagrees with this characterization. Initially, the Commission shared Opponents' skepticism regarding the impact of the Project on operations adjoining the Hospital and along 12th Street, N.E. more generally. However, the Applicant and Mr. Van Pelt presented convincing evidence that the Project would not create adverse conditions along 12th Street, N.E. subject to the proposed traffic calming changes to that street. (Ex. 211 at 2-3; Tr. 4 at 9-15.) Additionally, the Providence Letter and FEMS Memo alleviate the Commission's concerns about the Project's impacts on the Hospital's operations finding that the Hospital itself is the best judge of those impacts. Finally, the Commission credits the Applicant's interaction MPD with respect to 12th Street, N.E.; and (Tr. 3 at 104-106.)
- *The Project has insufficient parking to accommodate new residents and their guests. New residents' use of existing street parking will diminish the on-street parking supply for existing residents.* (Ex. 29, 147, 150-151, 160; Tr. 3 at 206, 209-210.) The Commission acknowledges residents' concerns about parking shortages on public streets, but notes that parking on public streets is inherently limited. Nearby residents currently have procedural options to implement RPP restrictions on public streets surrounding the Project. The Project does not force any nearby residents to forfeit such options. The Commission notes that residents of many surrounding streets have elected not to utilize these options. The Commission agrees with the Applicant that it is unfair to the future tax-paying residents of the Project to impose public parking restrictions on the new townhouses, and moreover finds such restrictions to be akin to an empty promise. As Opponents acknowledge: Hospital patrons and employees already park on surrounding streets because many such streets are unrestricted. (Ex. 147, 151.) The CTR notes and the Commission agrees that the Project includes an appropriate level of parking for the Project's future resident's and their guests. (Ex. 22.) The Commission appreciates the Applicant's commitments regarding shared parking on the new private streets within the Project as well as the availability of temporary parking for users of the Project's new parks. (Ex. 211 at 5.) The Commission credits DDOT's and the Applicant's efforts to reduce vehicle uses overall among residents of the Project. Finally, the Commission,

though initially wary of the removal of parking spaces from the south side of Allison Street, N.E. in pursuit of traffic congestion improvements, finds that the loss of such spaces is appropriate in light of the local transportation benefits created. (Ex. 211 at 2-3; 211A.)

Overall, the Commission finds that the Project's parking does not introduce adverse impacts on the neighborhood or on District parking services that are not capable of being mitigated by the parking and the parking control measures proposed as part of the Project. (*See, e.g.*, Ex. 211A.)

121. Social, Health, Economic, and Cumulative Impacts. Opponents' concerns include the following alleged adverse social, health, economic, and related impacts of the Project:

(a) Project Impacts on Human Health and Neighborhood Safety. Opponents raise concerns that the Project will result in adverse effects on the health and safety of neighbors. (Ex. 34, 47-50, 57, 60, 131, 135, 150, 153, 156, 58; Tr. 3 at 255.) These concerns highlight the following discrete issues:

- *The Project endangers existing residents' physical and mental health. (Id.)* This Commission ultimately disagrees with this assertion. Opponents' assertion on this point are generally grounded on fears of (i) adverse community mental health impacts stemming from the loss of open space and trees (i.e., green space has inherent mental health benefits, so its loss has resulting adverse mental health consequences); (ii) adverse physical health effects arising from the loss of a neighborhood recreational opportunity as a result of the loss of open space; and (iii) adverse physical and mental health effects from density and overcrowding. The Commission recognizes that these are legitimate concerns but finds that the Public Benefits with respect to health greatly exceed any adverse health effects. The Project results in the preservation of several acres of open space and formalizes that space for community use and recreation. As noted above, this is a considerable public benefit of the Project. This benefit more than offsets the adverse mental and physical health effects asserted by Opponents. Opponents concerns about the Project's adverse health effects on neighborhood children are offset by the Project's introduction of the Playground, designed specifically for neighborhood children. Finally, the Commission has reviewed the adverse health effects alleged as a result of densification and finds that the materials cited by Opponents refer to adverse health effects from multi-family housing development and overcrowding in subsidized housing with other unfavorable environmental conditions (e.g., industrial activities) that are not at all germane to the Project;
- *The Project will result in increased crime in the vicinity of the Project and increase demands on MPD. (Ex. 47, 49, 57, 158; Tr. 3 at 255, 264.)* The Commission finds this concern unconvincing. The Applicant notes that the

introduction of additional residents typically can be expected to have an “eyes on the street” benefit with respect to crime. (Ex. 206 at 34.) The Commission tends to agree with this assessment though it sympathizes with Opponents’ concerns about existing neighborhood petty crime and property damage. The addition of 80 new townhouses generally implies 80 new families in the neighborhood to look after and assist with young, elderly and other vulnerable existing residents and to report and deter break-ins and property damage. The Commission was heartened that the Applicant has coordinated with MPD on monitoring of the new park spaces and other issues and finds that such additional activity in the vicinity of the existing bus station has a positive effect on deterring inappropriate loitering. (Tr. 3 at 104-106.) Similarly, the Commission believes that the Project’s urban form, with new townhouses generally surrounding the public open space at the heart of the Project, creates the type of visibility over public areas that typically deters criminal and mischievous activity; and

- *The Project will result in noise and litter.* (Ex. 47, 49; Tr. 3 at 255.) The Commission understands that Opponents care about the upkeep and beauty of their neighborhood and sees no reason to believe that the new residents will not feel similarly. (Ex. 206 at 34.) In addition, because the Project’s townhouses are governed by an HOA, there is a discrete body responsible for maintaining the upkeep of the Project upon its completion. The HOA is a discrete point of contact available to address any complaints from neighbors. Finally, the Applicant notes that the Josephites will remain in the Seminary even after completion of the Project. The Josephites have a long history of responsible stewardship of the Property and expects that they will maintain contact with the HOA and future townhouse residents to ensure the Property is well-maintained.

As set forth above, the Commission generally finds that the Project will advance the District’s goals with respect to public health and safety and finds that the alleged adverse impacts of the Project with respect thereto are either non-existent, capable of being mitigated, or more than offset by the quality of the Public Benefits.

- (b) Project Economic and Housing Market Impacts. Opponents allege adverse economic impacts arising from the Project:

- *The Project decreases property values.* (Ex. 150, 164.) *The Project increases property values.* (Ex. 12, 57.) The Commission finds that the Project does not project to have a significant adverse impact on housing prices or property values in the surrounding neighborhoods. The Applicant introduced written and oral testimony that housing prices in the vicinity of the Project have been experiencing increases for several years. (the “RCLCO Report”) (Ex. 208 at 1-2.). The Commission finds the RCLCO Report well-researched, convincing, and satisfactory of the substantial

evidence standard. The Commission finds no justification that surrounding property values will decrease as a result of the Project. The Project includes high quality design and delivery and numerous amenities and benefits, all of which make it a good neighbor from the perspective of preserving property values. The Commission suspects, given the evidence presented, that the most likely outcome of the Project with respect to Property values is that it slows, to one degree or another, the background increase in neighborhood housing prices but that it does not adversely affect such values;

- *The Project shrinks the supply of affordable housing and/or increases housing prices elsewhere.* (Ex. 12, 29, 57.) The Commission disagrees with these assertions. Rather, the Project increases the supply of affordable housing by adding 10 new, income-restricted IZ townhouses. The Commission generally credits the Applicant's non-expert testimony that the Project alone does not act to increase housing prices in the surrounding area; (Ex. 208 at 2.)
- *The Project does not address the crisis of affordable housing or do more than the bare minimum to satisfy affordable housing requirements.* (Ex. 29.) One Opponent provides considerable written testimony on the Project's alleged deficiencies with respect to affordable housing. The Commission finds such testimony thoroughly researched and credible. However, the Commission disagrees with fundamental concerns of this testimony as applied to the Project. The Opponent suggests that the new housing introduced as part of the Project tends to increase housing prices. The Commission disagrees. As the RCLCO Report notes, a shortage of supply relative to the demand for housing increases housing prices. (Ex. 208 at 3.) Thus, the primary benefit of the Project from an affordability perspective (beyond the ten income-restricted townhouses) is the provision of family-sized townhouses that address the particularly acute existing imbalance in supply and demand for such townhouses. (Ex. 208 at 3.) The Project's three- and four-bedroom townhouses are expressly a public benefit under the Zoning Regulations because townhouses of such size are comparatively rare and seemingly difficult to construct anew in the District. There is simply an inadequate amount of such townhouses already, and such shortage has led to the significant increases in price experienced in the District in recent years. (*Id.*) Moreover, the Commission finds that the Applicant has exceeded the affordability requirements of the Zoning Regulations both with respect to the amount of affordable housing provided and also with respect to the level of affordability. The Projects inclusion of townhouses restricted to those earning 50% of AMI, a level of affordability below that required under the Zoning Regulations, is a particular benefit of the Project. The Project has an outsized positive benefit with respect to the housing and affordable

housing shortages in the District. This benefit makes the Project's economic impacts acceptable;

- *The Project results in “gentrification.”* (Ex. 195, 204.) The Commission finds that Opponents' concerns about the Project's effects of gentrification are overstated. The Commission is concerned about the lack of affordability in the District and applauds the Project's contribution of ten income-restricted townhouses (thereby doubling the number of three-bedroom or greater IZ townhouses in the District). Opponents criticize OP and DHCD regarding their review of the Project, but the Commission finds this criticism misplaced. (Ex. 204.) The Project provides a commendable amount of affordable housing, as discussed above. Opponents provide scant rebuttal other than cursory allegations to the Applicant's substantial evidence that the Project's gentrification impacts are not unacceptable. The Applicant, on the other hand, provides substantial evidence that the Project's gentrification impacts are modest, if extant at all, and entirely acceptable in light of the quality of the Project's public benefits. (Ex. 208.) The Commission, weighing all of the available evidence in the record, finds strongly in favor of the Applicant in this respect;
- *The Applicant has not provided adequate information regarding the Project's affordability component.* (Ex. 204.) The Commission finds this comment to be simply incorrect. The Applicant provided approximate housing prices for all of the proposed IZ townhouses (i.e., 50% AMI townhouses will be approximately \$200,000 and 80% AMI townhouses will be \$345,000-\$400,000). (Ex. 190A2 at 25.) The Commission finds that such prices are truly affordable in the Brookland/Michigan Park neighborhood; (*See* Ex. 208 at I-2 (showing median single-family sale prices in the vicinity of the Property approaching \$500,000).)
- *The Applicant will not be able to sell all of the new townhouses creating vacancies or elongating the Project's construction timeline.* (Ex. 131, 176.) Opponents asserted concerns about the Project's townhouses going unsold is significantly contradicted by the substantial evidence provided by the Applicant with respect to demand for the single-family houses in the District. (Ex. 208.) The Commission finds that the better evidence is in the Applicant's favor and that the Applicant is unlikely to face difficulties finding willing buyers for its townhouses. Opponents rightly point out that an economic slowdown may elongate the period of construction for the Project. The Commission points out that this Order and the Zoning Regulations bind the Applicant with respect to construction timing. (*See* Condition D.3.) On the whole, the Commission finds that in light of the other construction mitigation measures proposed by the Applicant the Project's impacts in this regard are not unacceptable and are capable of being mitigated;

- *College students may move into the new townhouses.* (Ex. 49; Tr. 3 at 255.) The Applicant notes that the Project is composed entirely of for-sale housing. (Ex. 206 at 34.) The Commission accordingly finds that there is no reason to believe that the Project creates any greater adverse effect from college students living in the neighborhood in group houses than exists in the neighborhood today. The Commission finds that these alleged impacts are not unacceptable but instead acceptable given the quality of the Public Benefits; and
 - *The Project's resulting homeowners' association will have undue economic and political sway and will create a "virtual" gated community.* (Ex. 195.) The Commission notes that the Project is entirely porous from a design perspective and has no gates and is not otherwise segregated from the surrounding community except with respect to private rear yards and certain private areas on the Seminary grounds. These design considerations are relevant to Opponents' concerns in this respect: the Project will become part of the fabric of the surrounding community, which Supporters and Opponents alike testified to as being inclusive and welcoming. (*See, e.g.*, Tr. 3 at 153-154, 156, 219, 241.) The Commission finds that the Project's proposal to include a homeowners' association allow it to better manage the common resources introduced by the Project and does not preclude existing residents and new residents from intermingling. In evaluating this concern, the Commission finds that the impacts alleged are not unacceptable in light of the mitigating design aspects and the considerable Public Benefits introduced in advance of housing and affordable housing goals;
- (c) Project Impacts on Property Taxes. Opponents expressed concerns that the Project will increase property taxes in the area surrounding the Project. (Ex. 29, 195.) The Applicant did not directly refute this assertion. However, the Applicant did provide considerable evidence that numerous programs currently exist to mitigate property tax increases for District residents. (*See* Ex. 208 at 6.) Moreover, the Applicant is providing, in the Tax Relief Fund, a novel benefit to address property tax increases for those least able to afford such increases. The Commission finds that any property tax impacts of the Project are capable of being mitigated and otherwise acceptable given the quality of the Public Benefits; and
- (d) Project Impacts in Light of Cumulative Effects of Development in the Area. Opponents further raise concerns about the effects of the Project in light of other proposed and ongoing development in the area of the Property. (Ex. 57, 177, 179, 181, 204; Tr. 3 at 248.) These concerns take two forms:
- *There is too much development occurring in the region generally and the Project will only add to such oversaturation.* The Commission notes with respect to the first assertion that the Applicant has provided substantial

evidence to evaluate the Project's impacts in light of such background growth conditions. For instance, the CTR evaluates traffic congestion concerns in light of a background growth of one percent annually. (Ex. 22 at 16; 37.) The Applicant's infrastructure and environmental analysis similarly examines background growth trends; and (*See, e.g.*, Ex. 2 at 35.) (addressing background conditions on school enrollment in the District).

- *The District's agencies have not undertaken adequate review of such developments, including the instant Application.* The Commission has reviewed and evaluated the reports from District agencies and departments as well as evidence introduced by the Applicant and other parties and persons alleging adverse Project impacts or conditions. The Zoning Regulations do not contemplate and this Commission does not require formalized impact evaluations on District services or surrounding areas. Rather, this Commission reviews and evaluates the evidence introduced by the Applicant with respect to such impacts against allegations or concerns raised by Opponents and, placing the burden on the Applicant as required under the Zoning Regulations, weighs the entire body of evidence in the record accordingly. The Commission has undertaken a comprehensive review of the Application, including its environmental and other impacts, and heard testimony and reviewed written reports from numerous District agencies. Thus, the Commission disagrees with the assertion that its evaluative process is "fatally flawed." (Ex. 204.)

On balance, the Commission finds that the Project does not create unacceptable health, safety, or economic impacts that are not capable of being mitigated or that are not offset in light of the Project's public benefits.

122. Impacts on District Infrastructure and the Environment. Opponents' concerns include the following alleged adverse impacts of the Project on District infrastructure and the environment:

(a) Project Impacts on District Infrastructure. Opponents allege adverse impacts from the Project on District services and infrastructure:

- *Water, sewer, gas, and electrical infrastructure problems already exist in the vicinity of the Property to varying degrees, the Project exacerbates such problems, and surrounding residents will face increased costs as a result.* (Ex. 29, 34, 47, 55-57, 60, 131, 135, 149-150, 155, 158, 160, 195; Tr. 3 at 225.) The Commission understands that utility infrastructure supporting the neighborhood surrounding the Property suffers from occasional break downs and interruptions in service. However, the DC Water Memo indicates that the public water and sewer infrastructure capacity in the neighborhood is sufficient for the Project and commits the Applicant to working with the agency to develop an appropriate construction plan for the Project. (Ex. 210.) The Commission finds that it

is not feasible at this stage in the development of the Project to fully design the Project's construction drawings. (Ex. 216.) The Applicant has provided sufficient evidence regarding the availability of gas and electrical services; (Ex. 2 at 34.)

- *The Project's traffic calming proposals increase wear and tear on private vehicles, and surrounding roadways are not equipped to handle the increased volume of traffic resulting from the Project.* (Ex. 142; Tr. 3 at 248.) The Commission is unconvinced based on unfounded assertions from Opponents that the Project's traffic calming measures impose anything more than *de minimis* costs on private vehicles. Likewise, the Commission finds from evidence in the CTR that the Project introduces only modest incremental increases in traffic usage on surrounding roads relative to existing conditions. (Ex. 22.) Overall, the Commission finds such minor private and public costs to be acceptable in light of the benefits in the transportation network introduced by such traffic calming;
- *The Project increases demand on trash collection services.* (Tr. 3 at 264.) The Applicant has noted that the Project is serviced by private, rather than District, trash collection. (Ex. 2 at 34.) Accordingly, the Commission finds that there are no unacceptable impacts on the District's public trash services resulting from the Project;
- *The Project increases demand on the public school system.* (Tr. 3 at 264.) The Commission disagrees. The Applicant provided evidence that there is ample public, charter, and private school system capacity in place to accommodate the Project. (Ex. 2 at 35.) Accordingly, the Commission finds that there are no unacceptable impacts on District school services resulting from the Project;
- *The Project increases demand on public transportation.* (Tr. 3 at 264.) The Commission disagrees with this concern as well. The Applicant studied the capacity of the public transportation system supporting the Project. (Ex. 22 at 23-24.) The CTR concluded that the Project is not expected to "cause detrimental impacts to Metrobus service." (*Id.*) In addition, the Project has committed to installing a Capital Bikeshare station to increase mobility options a public benefit that mitigates adverse impacts. Accordingly, the Commission finds that there are no adverse impacts from the Project on public transportation that are not mitigated or acceptable given the quality of the Project's public benefits;
- *The Project's impacts have not been studied in full, and therefore the mitigation is incomplete.* (Ex. 204; Tr. 3 at 260.) The Commission is aware that it must consider the Project's impacts. The Applicant submitted multiple impact studies. (*See, e.g.,* Ex. 2 at 33-35, 15B, 192, 208 (studying, respectively, potential Project impacts, transportation impacts,

tree preservation impacts, and economic and fiscal impacts).) Numerous public agencies submitted written reports. (Ex. 36, 37, 134, 210, 213.) Opponents and the Residents collectively raised concerns about a number of additional impacts, which broadened the scope of the Commission's review. The Applicant provided additional materials in response. (Ex. 206, 209, 211.) This process provided the Commission with a substantial and more than adequate body of materials to review and assess the Project's impacts. The record is full and the Commission's review is complete. Accordingly, it is well-positioned to undertake the appropriate assessment and balancing required under the Zoning Regulations;

(b) Construction-Period Impacts. Opponents allege adverse construction-period impacts on the surrounding area and infrastructure resulting from the Project:

- *Construction of the Project will damage surrounding residences without compensation to property owners.* (Ex. 12, 160, 176.) To the contrary, the Applicant has agreed in its CMP to undertake a pre-construction survey of surrounding residences that are most likely to be impacted and agreed to bear repair costs, if any, resulting from construction-period damage from the Project. (Ex. 30C at 4-5.) Moreover, at the request of the Residents, the Applicant expanded the area of such survey. (Ex. 216 at 3; 106 at 28.) More generally, the comprehensiveness of the CMP is a significant mitigating factor against adverse construction-period impacts. The Commission also notes the benefit that the Applicant constructs and sells the townhouses itself as a mitigating factor during construction. (Tr. 3 at 19.) Thus, the Commission finds that construction-period impacts of the Project are thus adequately mitigated and that there will be no unacceptable impact;
- *Construction will create unique and adverse noise, traffic, infrastructure, roadway, social and other related impacts.* (Ex. 29, 149-151, 155-158, 160, 179; Tr. 3 at 225.) The Commission shares Opponents' concerns regarding construction-period noise, traffic, and related adverse impacts resulting from the actual development of the Project. The Commission is relieved, however, that the site work for the Project will be constructed in a single phase over a comparatively short period of time. (Tr. 3 at 82.) Specific concerns of Opponents with respect to alley construction, vegetation clearance, fence removal, and the like all fall under the protections implemented under the CMP. The Commission finds that the Applicant's robust CMP adequately appropriately mitigates and minimizes any adverse construction-period impacts. In addition, the quality of the Public Benefits introduced by the Project more than compensates for the temporary construction-period conditions; and
- *Construction could be prolonged and/or partially complete for years.* (Ex. 137, 149-150.) This Order and the Zoning Regulations impose limitations

on the build-out period and timing of completion of construction of the Project. (See Condition D.3; Z §§ 705, 706.) Moreover, the Applicant has set forth the CMP that adequately addresses construction-period impacts. As a result, the Commission finds that this impact is capable of being adequately mitigated;

(c) Loss of Open Space. Opponents raise concerns about the loss of existing open space on the Property as a result of the Project:

- *Ward 5 already experiences a shortage of open space, and the Project's removal of the open space that is currently on the Property is problematic. The Project results in the loss of a neighborhood-serving recreation area, a play area for neighborhood kids, and a walking route (i.e., for residents who enjoy the perimeter of the Property because of its minimal interaction with cars).* (Ex. 14, 29, 39, 154, 159, 176, 179-180; Tr. 3 at 244-245.) The Commission understands that the portion of Ward 5 where the Property is located has a shortage of public or other protected open space. The Applicant agrees. (Ex. 2 at 29.) The Commission is sympathetic to the concerns of Opponents about the loss of recreational opportunities afforded by the Property in its current state. It is precisely for this reason that the Commission finds the Project's preservation and dedication of such a substantial portion of the Property as open space for public use to be such a compelling public benefit. The Commission applauds the Applicant's community and urban planning effort that led to the creation of such a robust land preservation effort. Opponents encourage the Commission to weigh the loss of open space against other aspects of the Project. The Commission is similarly mindful of the economic pressures confronting the Josephites that led it to consider developing the Property in the first place. The Commission finds that the dedication of open space for public use on the Property as part of the Project and the formalization of play space for children and other programmed uses are high-quality public benefits of the Project. The Commission's balancing with respect to the loss of open space on the Property is not a difficult exercise: the benefits of the Project's preservation plan overwhelmingly outweigh any adverse impacts from loss of a portion of the existing open space;
- *The Project eliminates a community greenspace and offers only private spaces for individual property owners and little in return for the broader community.* (Ex. 57.) The Commission finds this allegation misplaced. The Project is expressly designed to minimize private open spaces for new residents at the benefit of providing communal open spaces for the broader neighborhood. Such a design strategy is a strong merit of the overall site plan for the Project;
- *The Project's lack of individual green spaces is a problem.* (Ex. 29.) The Commission finds this criticism similarly unwarranted. A quarter of the

townhouses in the Project have rear yards, and virtually all have the option for private rooftop decks. Moreover, as noted above, a primary benefit of the Project is that the Property's open spaces are preserved for communal use;

- *The Project destroys the “lungs” of the community and results in a loss of trees, which have air pollution, air quality, and water quality benefits.* (Ex. 34, 47, 55, 60, 131, 135, 137, 139, 153, 156-158, 162; Tr. 3 at 211-213.) Opponents rightfully rue the short-term loss of large, mature trees as a result of the Project. However, the Commission notes with significance the Project's support from Casey Trees, which is a foremost advocate of trees in the District. (Ex. 133.) The Project's overall replacement of trees and tree preservation plan are well-designed and significant benefits of the Project. Accordingly, the Commission finds that the loss of trees is capable of being mitigated;
- *The Project results in impacts related to the loss of so-called “Heritage Trees.”* (Ex. 162; Tr. 3 at 211-213.) Opponents note the status of two trees on the Property as so-called “Heritage Trees” under the TCPA. The Applicant explains that its tree removal permits remain in abeyance pending the outcome of the Application. (Tr. 3 at 125.) UFA concurs. The Commission understands that the policy objectives of the TCPA are to preserve tree canopy in the District. The Project is not inconsistent with that policy objective. The Applicant presented considerable evidence that its tree planting plan will so preserve the Property's canopy. Neither DDOT nor Casey Trees objected to this assessment; (Ex. 134, 133.)
- *The Project results in loss of habitat for wild animals.* (Ex. 29.) The Commission notes that the Applicant does not dispute alleged wildlife impacts of the Project. However, in light of the Project's overall benefits with respect to preservation of open space for recreation and environmental benefits along with the Project's robust tree plan, the Commission finds these alleged impacts not unacceptable; and
- *The existing open space and trees on the Property have positive visual and noise attenuation benefits along 12th Street, N.E.* (Ex. 153 and Tr. 3 at 214-216.) The Commission does not disagree that the Property's current state likely has positive visual and noise attenuation benefits on surrounding properties, especially along the busy 12th Street, N.E. The Commission applauds the Applicant's effort to largely preserve the mature tree canopy along 12th Street, N.E. The Commission finds that such tree preservation effort combined with the preservation of open space long 12th Street, N.E. (and elsewhere on the Property) as part of the Project largely mitigates these concerns;

- (d) Impacts of New Parks. Opponents express concerns about the new park spaces proposed as part of the Project:
- *Analogous park spaces created as part of the Applicant's other developments appear to be underutilized and poorly maintained, and the new parks in the Project will either be ultimately developed or fall into disrepair.* (Ex. 29, 149-150.) Opponents allege that other Applicant-created parks are poorly maintained; the Applicant provides evidence that its other developments are beloved by residents. (Ex. 190A at 8; Tr. 3 at 20.) The Commission suspects that reality includes a mix of these two generalizations, but ultimately finds that whatever the status of other parks created by the Applicant, this Project includes elements that mitigate adverse conditions on the Property. The creation of the HOA to maintain the parks significantly mitigates concerns about park maintenance because a defined body has responsibility for upkeep. The Commission also recognizes the Josephites' continued presence on the Property. The Commission understands that the Josephites will continue to play a not insignificant role in ensuring the continued beautification and maintenance of green spaces on the Property given their long-vested interest in the neighborhood. The Commission notes that the Project's parks are protected by the Easement and therefore cannot be developed in the future; and (Ex. 211E.)
 - *The new parks will be unsafe and attract loiterers and other unwanted visitors given the proximity to the bus shelter and the nearness of busy streets.* (Ex. 149-50, 176; Tr. 3 at 226, 235.) The Commission initially shared in some of these concerns of Opponents, but was relieved to hear the Applicant's discussions with MPD clearly showed a thoughtful approach to the Project's park spaces. On balance, the Commission finds that the Applicant has taken the correct approach to the Project's future parks and any negative impacts can be adequately mitigated. Moreover, the Commission finds it difficult to reconcile various statements of Opponents: on the one hand, residents of the neighborhood use the Property as park-like space at present; on the other hand, Opponents are concerned that the creation of new parks will be an unwanted attraction. Nowhere do Opponents raise concerns that the existing park-like use of the Property experiences the problems that the Opponents assign to the new parks. This lack of concern about the current use of the Property offers the Commission some reassurance about future conditions.
- (e) Air Pollution. Opponents raise concerns about adverse health effects arising from Project-related air pollution. (Ex. 29, 56, 131, 177.) The Commission notes that Opponents raise the specter of concern with respect to air pollution and cite studies generally supporting air pollution concerns. However, none of the concerns are particularized with respect to the Project or even townhouse developments that include substantial open space preservation components and

other smart growth elements. The Commission instead finds that the Applicant's evidence is more appropriate in light of the instant Project: the Project is designed to promote walkability and reduce automobile travel, both of which mitigate air pollution. (Ex. 2, 22, 206.) The Project includes a Capital Bikeshare station and the creation of bike lanes that will benefit the entire community as well as other smart growth features, including its overall location in the District near transit options. In light of the purely qualitative and speculative concerns raised by Opponents, the Commission is sufficiently convinced that such Project impacts are not unacceptable and are capable of being mitigated. Additional discussion of air pollution in association with the Comprehensive Plan is addressed in the Core Issues section of this Order; (See FF ¶ 127.)

(f) Other Environmental Impacts. Opponents raise a litany of other environmental concerns about the Project:

- *The Project would create the following adverse effects: urban heat island effect, water quality reduction, stormwater runoff, groundwater reduction, soil compaction, increased flooding, and vegetation deterioration and loss.* (Ex. 29, 153, 156.) Opponents raise the myriad impacts that new developments often have on environmental resources. However, Opponents ignore the affirmative measures that the Project is taking to mitigate such concerns. The Applicant has detailed its environmental protection measures. (See, e.g., Ex. 2 at 33; Ex. 211 at 5-6.) As noted above, the Project involves the construction of new housing and the formalization of open space, among other Public Benefits. These benefits necessarily entail land disturbance and some of the concomitant adverse impacts alleged by Opponents. However, the District has robust regulations to curtail the worst effects of such environmental impacts, and the Project is designed to satisfy those regulations. (Ex. 2 at 33-35.) In sum, though the Commission shares concerns about the environmental issues articulated by Opponents, the Commission is satisfied that any adverse environmental effects are either capable of being mitigated or acceptable given the quality of public benefits provided as part of the Project;
- *The Project results in the loss of light and air to neighboring properties.* (Ex. 57, 150-151, 153, 162; Tr. 3 at 213.) Opponents make generalized assertions regarding the Project's impacts on surrounding residences with respect to reduction in light and air. This Commission does not share these concerns. As Applicants' demonstrate, the Project is surrounded by existing buildings to the south and west that are significantly taller than any building proposed as part of the Project. (Ex. 190A at 17.) The Project largely complies with the maximum building heights allowed in the R-2 zone, and those that marginally exceed such maximum building heights are all located to the western and southern boundaries of the Project (that is, far from any existing residences). (Ex. 228B.) The Commission fails to

discern any injury on neighbors' light any air beyond what is allowed under matter-of-right zoning heights. To the extent Opponents raise concerns about loss of twilight and sunset views, the westerly location of the six-story Providence Hospital and the southerly location of the four-story Seminary (which is located on an embankment) significantly mitigate any concerns resulting from the Project;

- *The Project creates adverse noise impacts.* (Ex. 29, 153; Tr. 3 at 214-216.) Opponents raise objections to noise generated by new residents of the Project's townhouses separate from the construction-period noise effects from the development of the Project. Opponents also cite the cumulative adverse noise effects from Hospital operations. The Commission appreciates that the Project creates new noise impacts from the currently undeveloped portions of the Property. However, these noises are subject to District noise regulations and are unlikely to be different than the noise profile of existing residential uses. (Tr. 4 at 35.) The Commission fails to glean how these noise impacts of the Project are unacceptable in light of the Public Benefits. The Commission also declines to find the cumulative effects of noises from the Project and the Hospital to be unacceptable. Instead, the Commission finds that the Project's cumulative noise impacts are acceptable in light of the quality of the Project's public benefits and capable of being mitigated in light of the strictures of the District's noise regulations; and
- *The Application includes inadequate study of the Project's resilience to climate change impacts.* (Ex. 204.) Opponents question whether the Project's townhouses are adequately constructed to withstand a range of climate conditions including variable conditions anticipated as a result of climate change. (*Id.*) The Commission is satisfied that the Project will be constructed in accordance with applicable building codes. (Ex. 2 at 34.) The Commission finds that the Project's impacts with respect to climate change resilience are either capable of being mitigated through the Project's robust stormwater management infrastructure or acceptable in light of the benefits of the Project.

As summarized in the foregoing, Opponents allege numerous impacts of the Project on the environment, the surrounding area, and District services and infrastructure. This Commission finds that the record reflects substantial evidence for the finding that the Project produces no unacceptable impacts that are not capable of being mitigated or are not otherwise acceptable in light of the quality of the Project's public benefits. The Commission has undertaken a complete and thorough assessment of the Project's environmental impacts as part of this comprehensive review.

123. Opponents also raised the following alleged procedural defects:

- (a) Complaints regarding ANC 5A. Opponents assert procedural defects in ANC 5A's participation in this matter and urge the Commission to decline to give that ANC's resolution the great weight it is entitled under District law. Opponents' concerns with ANC 5A are as follows:
- *Former Commissioner Adrian Jordan's participation should be disallowed because he was not domiciled in his district during his tenure as ANC Commissioner.* (Ex. 13, 189.) The Commission finds that former Commissioner Jordan did not participate in the resolution submitted by ANC 5A. Therefore, it declines to address Commissioner Jordan's participation in earlier proceedings involving ANC 5A.
 - *Current ANC Commissioner Keisha Coefield-Lynch has failed to hold hearings or otherwise obtain constituent input on the Project and her representation of her constituents has otherwise been inadequate.* (Ex. 132, 146, 151, 189.) The Commission understands that some Opponents may disagree with ANC 5A's support of the Project though there may be a mix of Supporters and Opponents of the Project within such ANC. Upon review of the allegations raised by Opponents and a response thereto filed by the ANC, the Commission discerns nothing in the record, and Opponents advance no legal theory, that disqualifies the ANC's resolution. (Ex. 219.) Accordingly, the Commission declines Opponents' request to discount the ANC 5A resolution.
 - Nevertheless, as noted by the District of Columbia Court of Appeals in the context of a BZA proceeding, "While it may be helpful to an application...to have the support of the local ANC, that body's recommendation in favor of a project does not provide any substantial support to justify the BZA's decision." (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The Commission here does not rely upon ANC 5A's recommendation of approval as providing substantial support to justify its decision to grant this application, except to the extent it reflected a subset of community sentiment. Further, because ANC 5A expressed no issues or concerns with respect to the Application, it did not articulate any items to which the Commission must give great weight. (*See id.* at 1086 (explaining that the ANC Act, codified at D.C. Code § 1-309.10(d)(3)(A), does not require an agency to give great weight to an ANC's support for an application, except to the extent issues and concerns raised by the ANC are rejected).) Accordingly, the Commission does not give ANC 5A's resolution great weight under the ANC Act.
- (b) Improper Form Support Letters. Eight Opponents claim that letters were improperly entered into the record on their behalf. (Ex. 40, 42, 51-54, 130, 161.) Other Opponents raised similar concerns. (Ex. 161, 177.) The Applicant provides a reasonable explanation for the existence of such letters, (Ex. 211 at 8-10; 211G),

and the Commission sees no reason to doubt the veracity of its other filings or discount its public outreach endeavors. As noted above, the Commission discounts the Improper Form Support Letters. (*See* FF ¶ 75(c).)

- (c) Lack of Community Support for the Application. Opponents make much of the putative lack support for the Project among immediate neighbors. (Ex. 34, 47, 50, 55, 60, 135, 147, 176-177; Tr. 3 at 207-208.) The Applicant provided evidence that the Project enjoys support from residents of ANC 5A and 5B. (Ex. 211H.) Overall, the Commission finds that the Project enjoys support from the surrounding neighborhoods. (*See also* FF ¶¶ 110-111.)
- (d) Inadequate Notice. One Opponent claims to have not received a letter from the Applicant, presumably regarding notice of the Project and/or the Public Hearing. (Ex. 47.) The Commission finds that such Opponent received notices from OZ (Ex. 19 at 7 (including evidence of mailed notice to 1201 Varnum Street, N.E.)), and had actual notice of the Project and hearing by virtue of her participation in same. (Tr. 3 at 254 (identifying her place of residence as 1201 Varnum Street).) There's no evidence that the notice mailed to such Opponent was returned to OZ as undeliverable. (*See* Ex. 23-25, 27.)
- (e) Inadequate Public Benefits. Opponents urge the Commission to determine the Project's public benefits are inadequate:
- *The Playground is not a public benefit under the Zoning Regulations.* (Ex. 180; Tr. 3 at 243.) One Opponent urges the Commission to discount the Project's inclusion of the Playground as a public benefit. The Opponent proffers a convoluted reading of the Zoning Regulations in support of this claim, arguing that a playground is equivalent to a child development center, which is allowed by-right in the RA-1 zone. The Commission fails to understand or assign the proposed equivalence and rejects this Opponents' assertion;
 - *Tree preservation is not a public benefit. (Id.)* This same Opponent urges the Commission find that the Project's preservation of large trees is not a public benefit. Again the Commission declines this Opponents' suggestion. The Project's tree preservation and planting plan is on the whole a public benefit because it exceeds what is otherwise required by regulation; and (X § 305.5(k); *see also* FF ¶ 200.)
 - *The Project's architecture is not a public benefit.* (Ex. 203-204. Other Opponents urge the Commission to reject the Applicant's proffer of superior architecture on the grounds that the Project's materials are not explicated and do not offset adverse density impacts. (*Id.*) Again, the Commission finds these suggestions unavailing. The Project's architectural design and detailing is on the whole superior. Although certain Commissioners and the Applicant disagree on the aesthetics of the

Project's brick selection, the Commission does not hesitate to find the Project's proposed materials are unquestionably of a high quality. The Project's materials are clearly defined. (*See* Ex. 228B.)

- (f) Deficient Zoning Flexibility. Opponent DC Residents for Reasonable Development ("DCRD") alleges the Project's request for special exception relief for the penthouse use supporting the Project's proposed rooftop decks is deficient because (i) such decks are not otherwise common in the vicinity of the Project and (ii) the impacts of such decks were not adequately studied. (Ex. 204.) As noted below, the Project satisfies the special exception standard for residential penthouse use in the RA-1 zone. (FF ¶¶ 151-152.) Commonality in the neighborhood surrounding the proposed use is not a consideration under the special exception criteria for such use. The Commission finds to the contrary that the impacts of such decks are appropriately examined in the record. (*Id.*) DCRD also alleges the clustered nature of the Project (which clustering results in the majority of townhouses not containing private rear or side yards) is out of character with the surrounding area. (Ex. 204.) The Commission agrees that the Project's clustering is anomalous in the immediate vicinity. However, the Commission finds that the clustering accommodates the laudable public benefit of providing affordable housing and preserving open space. DCRD urges developing the Property at lower densities than contemplated by the Project. (Ex. 204.) DCRD's preferred density does nothing to address and indeed would perpetuate the cycle of unaffordability and exclusion that the Project, the Zoning Regulations, and the Comprehensive Plan all seek to remedy. Therefore, the Commission declines to accept DCRD's urgings.

IX. Findings Regarding Core Issues

124. The Commission finds that the Applicant has responded fully and satisfactorily to each material contested issue raised in this Application. This Commission has reviewed the entire record in this case and finds that three categories of items raised by the Residents, the ANCs, Opponents, and this Commission are best consolidated in this section as Core Issues. In sum, this Commission resolves these contested questions in favor of the Applicant and finds that the Project is consistent with the Zoning Regulations and the PUD Evaluation Standards (as such term is hereinafter defined).

Consistency with the Comprehensive Plan

125. In its Initial Statement, the Applicant provided a detailed analysis of the Project's consistency with the Comprehensive Plan. (Ex. 2 at 44-59.) The Applicant's analysis supported its assertion that the Project is not inconsistent with the Comprehensive Plan, and such analysis is supported by substantial evidence in the record in the instant proceeding. (*See also* FF ¶¶ 162-178.)
126. OP agrees with the conclusion of the Applicant's analysis regarding the Project's consistency with the Comprehensive Plan. (Ex. 36 at 8-9, 16-20.)

127. The Residents and Opponents raised numerous questions and allegations regarding the Project's consistency with the Comprehensive Plan. The Applicant provided, on a point-by-point basis, a responsive analysis to the Comprehensive Plan questions and allegations raised by the Residents and Opponents. (Ex. 209 at 7-8.) The Residents and Applicant each provided further briefings on this issue. (Ex. 212; 216 at 2.) Although the Commission ultimately agrees with the Applicant and affords OP's analysis its requisite great weight, the questions and allegations regarding the Comprehensive Plan raised by the Residents and Opponents warrant careful scrutiny as follows:

- (a) Future Land Use Map. *The Project's density is inconsistent with the Future Land Use Map.* (Ex. 143, 204.) The Applicant notes that the "Guidelines" for using the Future Land Use Map provide that density or intensity is not shown for areas designated for institutional uses and that in the event that a change in use occurs on a site designated for institutional use, any future zoning designation "should be comparable in density or intensity to those in the vicinity." (10-A § 226(h).) (Ex. 209 at 7.) As detailed extensively below, the Project's density is comparable to that allowed in the adjacent R-2 and RA-1 zones. (See FF ¶¶ 129-137.) In addition to the foregoing findings, the Commission finds that the Future Land Use Map shows that the density or intensity designations in the vicinity of the Property include moderate-density and low-density residential. (Ex. 2G at 2.) As part of the Project, institutional uses will continue to remain on the Property, and such continued use is not inconsistent with the Future Land Use Map. The height, density, intensity, and form of the residential component of the Project are comparable with the moderate-density and low-density residential designations in the vicinity. The Commission finds that the Project is not inconsistent with the Comprehensive Plan's Future Land Use Map in light of the applicable guidelines of the Comprehensive Plan and in light of the density findings contained herein.
- (b) Generalized Policy Map. *Remapping the Property's existing zoning away from the Property's current Generalized Policy Map designation will challenge the stability of surrounding low-density neighborhoods:* (Ex. 204.)
- As the Applicant notes, the Opponents' concern (which is in part that the Map Amendment allows future projects in the area) misunderstands the Generalized Policy Map. (Ex. 209.) The Map Amendment has no precedential value; (X § 300.4 ("PUD-related map amendments establish no precedent . . .").)
 - As with the Future Land Use Map, the current designation for the Property on the Generalized Policy Map is "Institutional." The Comprehensive Plan's guiding language on the Generalized Policy Map with respect to the Institutional designation allows that "change and infill can be expected" and "institutional sites likewise may see new buildings or facilities added." (10-A § 223.22.) These changes are to occur under the guidance of the policies in the Land Use Element to address the "compatibility" with surrounding neighborhoods; and (*Id.*)

- The Commission’s findings in the context of the Land Use Element address the compatibility of the Project with surrounding neighborhoods. However, the Commission notes that the Comprehensive Plan’s use of the term “compatibility” in the land use context suggests the absence of “significant conflict or ill effects” among land uses. (*See* Office of Planning, Comprehensive Plan Volume 3 – Glossary and Index at G-10, DC.Gov (Nov. 20, 2010) (<https://planning.dc.gov/node/574922>) (“Glossary”).) The Commission finds that it is exceedingly unlikely for the single-family residential uses proposed as part of the Project to come into significant conflict with or impose significant ill effects upon adjacent single-family residential uses. Rather, it is virtually canonical as a zoning matter that like uses are inherently compatible, as this concept underlies the fundamental logic of establishing zoning districts on the basis of use. In the context of the Project, the difference between the proposed RA-1 zone and the R-2 zone that exists on three sides of the Project is largely one of physical form rather than use. The Commission does not hesitate to find that the Project’s uses are compatible with surrounding uses; and
- The Generalized Policy Map itself, however, is no bar to rezoning of the Property. The Commission finds that the Project is not inconsistent with the Comprehensive Plan’s Generalized Policy Map in light of the applicable guidelines of the Comprehensive Plan because the Project is compatible with surrounding uses.

Finally, the Project retains institutional uses, which is another way in which it is not inconsistent with the Generalized Policy Map;

(c) LU-1.4.1: Infill Development. *The Property is not properly characterized as an “infill” site:* (Ex. 154; Tr. 3 at 222.)

- The Applicant argues that the portion of the Property that is to be redeveloped is a leftover vacant property within an area that is already developed. (Ex. 209.) Guidance accompanying the Comprehensive Plan defines “Infill” as “[d]evelopment of individual small vacant lots or leftover vacant properties within areas that are already developed.” Glossary at G-22. “Vacant land” is defined in the Glossary as “land that is not covered by a structure.” (*Id.* at G-42.) There can be little doubt that the portion of the Property to contain the townhouses and related infrastructure and open space is vacant under the meaning of the Comprehensive Plan. There can similarly be little argument that the Property is within an area that is already developed. The Commission therefore finds that the Project is an infill development;
- This policy also directs development to gaps in the urban fabric and to *complement* the character of the area. (10-A § 307.5.) There is no requirement that development on infill be *identical* to the character of the

area. The northern portion of the Property is such a gap in the urban fabric, and the Project is complementary of the surrounding area; (*See* FF ¶ 127(e).)

- The Residents advance a view that the Property is “institutional open space” under UNE-1.2.7 rather than the infill and vacant designations advanced by the Applicant. The Commission finds the Residents’ reading to be, in part, correct. The portions of the Property nearest the Seminary and particularly on the southern portion of the Property satisfy the conditions described in UNE-1.2.7. The Commission finds that such southern portions of the Property have a ceremonial character and historic significance. Such areas also play important environmental and recreational purposes in the neighborhood. The portions of the Property on the northern portion of the Property where the Project’s townhouses are to be located are more appropriately characterized as vacant land and appropriate for infill development. Although the Josephites appear to take good care of their property, there are unquestionably some derelict elements out of place in an otherwise residential area (e.g., chain-link fencing, underutilized sporting facilities, a notable lack of manicured landscaping) on the northern portion of the Property that make it appropriate for future development without any inconsistency with UNE-1.2.7. The Comprehensive Plan’s infill and institutional open space designations are not mutually exclusive in this instance; and
- The Residents’ puzzlingly aver that the Project will not add diversity to the housing types in Michigan Park. The Commission strongly disagrees. There is a relative paucity of newly constructed single-family homes in the neighborhood. (Ex. 208.) Certainly new-construction townhouses add diversity and choice to potential buyers in the neighborhood. More significantly, the Project adds income-restricted for-sale townhouses with three- and four-bedroom models. The Applicant provided substantial evidence of the relative scarcity of such townhouses in the District generally (i.e., the Project would effectively double the number of such townhouses in the District). (Ex. 190A at 54.) Therefore, adding such townhouses in the Project contributes to a housing type diversity in a manner consistent with the objectives of the Comprehensive Plan.

Accordingly, the Project is not inconsistent with this policy objective;

- (d) LU-1.4.2: Long-Term Vacant Sites. *The Property is not a “long-term vacant site.”* (Ex. 154; Tr. 3 at 222.) Again the Comprehensive Plan says otherwise. The Glossary defines a “long-term vacant” site as one that is “[v]acant (unoccupied) for more than two years.” (*Id.* at G-24.) The portion of the Property that to be redeveloped has been vacant for more than two years. LU-1.4.2 encourages measures to reuse vacant lots subject to development constraints. (10-A § 307.6.)

The Project utilizes the PUD process to overcome constraints in developing the Property;

- (e) LU-1.4.3: Zoning of Infill Sites. *The Map Amendment is not compatible with the prevailing development pattern of the surrounding neighborhoods.* (Ex. 154; Tr. 3 at 222.) The Applicant asserts that the Map Amendment is compatible with the prevailing development pattern in the surrounding neighborhoods. (Ex. 209.) First, one of the blocks immediately adjacent to the Property is currently within the proposed RA-1 zone. Second, many of the properties in the surrounding R-2 zones are non-conforming with respect to that zone. (Ex. 2 at 14.) Accordingly, the R-2 zone is not the only metric to use to determine whether the proposed rezoning to the RA-1 is compatible. Finally, this policy requires only that the proposed Map Amendment be “compatible” not identical to the surrounding neighborhoods. (Tr. 3 at 136.) The RA-1 zone for the Property is compatible, especially in light of the Project’s overall height (approximately 40 feet, which is the limit in the R-2 zone), actual density (0.95), which is below the effective limit in the R-2 zone), and effective density for the northern portion of the Property (1.29), which is equivalent to the density permitted in a RA-1 PUD). Accordingly, the Project is not inconsistent with this policy objective;
- (f) LU-2.1.1: Variety of Neighborhood Types; LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods; LU-2.1.5: Conservation of Single Family Neighborhoods. *Read as a whole, the Comprehensive Plan emphasizes preserving neighborhoods, including low-density neighborhoods, and the features that make those neighborhoods unique, while still allowing for revitalization and development elsewhere.* (Ex. 154.) The Applicant argues, and the Commission ultimately agrees, that the Project is not inconsistent with these policy objectives:
- With respect to LU-2.1.1, the Applicant argues that the Project preserves and enhances the positive elements that create the identity and character of the surrounding neighborhoods, which is strongly single-family residential in character, with the Catholic institutions as a focal point. (Ex. 209.) The Project is a single-family residential development that preserves the existing Seminary building and allows the Josephites to remain in their current location. The Commission recognizes that the Project includes differences, including notable ones, relative to the surrounding immediately neighborhoods. These differences include both amenities (public open space, affordable housing, and a Bikeshare station, among others) and possible detractors from the perspective of neighbors (*e.g.*, a greater number of townhouses, in absolute terms, on the northern portion of the Property than occurs on neighboring blocks, rooftop decks that require penthouse setback relief) relative to the surrounding areas. However, the Commission finds that these differences and detractors are not sufficient to render the Project incompatible with the surrounding areas. Moreover, the Commission finds that the Project’s detractors with respect to neighbors (*e.g.*, slightly denser housing than is customary in the

neighborhood) are benefits to those residing elsewhere in the District who would like to move into a family-sized home;

- With respect to LU-2.1.3, the Project balances the goals of increasing the housing supply, including the supply of family-sized and affordable family-sized townhouses, with the preservation of historic resources, protection of the neighborhood character (as described above with respect to LU-2.1.1) and restoration of the environment. The Project's environmental benefits are well-documented elsewhere, (*see* FF ¶ 200), and the Project's tree preservation, stormwater management, and sustainable building strategies all go towards achieving this policy objective;
 - With respect to LU-2.1.5, the Applicant argues that as much as is possible on a large vacant site that is also adjacent to a large hospital use, the Project protects the character of the surrounding neighborhoods. (Ex. 209.) The Project has been carefully designed through numerous iterations and significant community involvement. The Project is of a density comparable to surrounding neighborhoods, preserves multiple acres of open space permanently and for public use, and maintains the scale permitted in the neighborhood; and
 - Accordingly, the Project is not inconsistent with these policy objectives.
- (g) LU-2.3.7: Non-Conforming Institutional Uses. *The Residents assert the Project is not consistent with this policy which "encourages conformance with existing zoning and continued compatibility with the neighborhood."* The Commission concludes that, while the Project is a bit taller and denser than most of the surrounding neighborhood, it is compatible and comparable with the surrounding neighborhood, and its density is appropriate. While the Application includes a PUD-related Map Amendment and zoning relief, the development is almost a textbook case of when a PUD appropriately allows for additional density because of the way the townhouses are clustered and arranged to enhance the totality of the site and the setting of the preserved historical building;
- (h) LU-3.2.3: Non-Profits, Private Schools, and Service Organizations.¹⁰ *This objective speaks directly to the Project.* (Ex. 154; Tr. 3 at 221.) The Applicant argues that the Project is not inconsistent with this objective. (Ex. 209.) This objective goes to the expansion and impacts of institutional uses. The Project preserves the Seminary through the historic preservation process and thereby renders it ineligible for future redevelopment, a management approach that

¹⁰ "Ensure that large non-profits, service organizations, private schools, seminaries, colleges and universities, and other institutional uses that occupy large sites within residential areas are planned, designed, and managed in a way that minimizes objectionable impacts on adjacent communities. The zoning regulations should ensure that the expansion of these uses is not permitted if the quality of life in adjacent residential areas is significantly adversely affected." (10-A DCMR § 315.8.)

provides benefits (rather than any objectionable impacts) to the adjacent communities. There is no expansion in or increase in impacts from the institutional use contemplated as part of the Project. The Commission discerns no objections in the record to the existing or proposed impacts of the Project's Seminary uses. Accordingly, the Project is not inconsistent with this policy objective;

(i) E-1.1.1 Street Tree Planting and Maintenance; E-1.1.2 Tree Requirements in New Developments. *The Residents and Opponents imply that the Project is inconsistent with the Environmental Protection Element.* (Ex. 143, 204.) The Commission finds that the Project is not inconsistent with such Element:

- As the Applicant rightfully points out, in these objections, the Residents ignore the tree planting and preservation plan to which the Applicant has committed and overlook the other environmental commitments of the Project. (Ex. 209.) The Project retains the Oak Tree and eleven mature street trees along 12th Street, N.E. (Tr. 3 at 43.) The Applicant has also adopted a robust Tree Plan in coordination with UFA; (Ex. 192.)
- Overall, the Project maintains no net change in tree canopy relative to that in existence today. The Commission finds it regretful that two large trees and many other smaller ones are removed to make way for the Project. Standing alone, this fact cuts against the Project's consistency with the Comprehensive Plan. However, this single aspect of the Project must be examined in the context of the Project and the Comprehensive Plan as a whole. The Commission appreciates the many benefits of trees and encourages preservation whenever feasible. However, tree removal is a necessary facet of many development projects in the District, and in the PUD context, one that must be weighed against other benefits and amenities of the Project as well as efforts to mitigate such losses. The Commission finds that the benefits of removing such trees is compensated by the Project's many other benefits, which would not necessarily exist or would not exist to the same degree if the Project contained fewer townhouses as advanced by the Applicant. The Commission further finds that the Project's other environmental attributes and tree canopy regime compensate for the loss of trees. On this point, the Commission credits the testimony of Casey Trees, one of the District's foremost advocates for tree canopy. (Ex. 133.) The Residents' would have tree removal, *ipso facto*, render the Project inconsistent with the Comprehensive Plan. The reality in the PUD context is far more nuanced, and this Commission has undertaken the balancing necessary to make such a finding;
- More generally from an environmental protection perspective, the Project is designed to comply with all applicable environmental regulations including with respect to stormwater and water quality. (Ex. 2 at 33-35.)

The Project's stormwater retention mitigates flooding effects; and (*Id.* at 34.)

- The Applicant points out and the Commission agrees that a climate change resilience study is not a requirement of the Zoning Regulations for a PUD. (Ex. 209 at C-4.) Future iterations of the Comprehensive Plan may require climate change resiliency review, *id.*, but the current version does not expressly mandate it;
- (j) Parks, Recreation and Open Space; Urban Design; and Historic Preservation (Generally). The Project's consistency with these Elements generally will be improved through the removal of specific townhouses: (Ex. 143.)
- The Commission observes that the Residents do not cite any specific policy objectives of these Elements. The Commission's review is not well served by broad, citation-less references to the Comprehensive Plan, a document that spans many hundreds of pages;
 - In any event, the Applicant disagrees with the Residents' assertion and highlights that the Residents' proposal to remove townhouses would negatively affect, for instance, consistency with UD-2.2.6, which encourages consistent façade lines along public streets. The Residents' site plan proposal would remove townhouses in a manner as to break up the façade lines along Allison Street, N.E. and the prevailing setback from 13th Street, N.E./Sargent Road, N.E.¹¹ The Applicant provides additional justification that the Project is not inconsistent with the Parks, Recreation, and Open Space, Urban Design, and Historic Preservation Elements of the Comprehensive Plan; (Ex. 2.)
 - Except with respect to certain individual policies, such as the urban design objective identified above, the Commission does not disagree that some of the Residents' proposed changes could potentially improve the Project's consistency with the Comprehensive Plan. However, the Residents fail to apply their Comprehensive Plan analysis to the clear direction of the Zoning Regulations: a PUD must "not [be] inconsistent with the Comprehensive Plan." (X § 304.3(a).) It is no bar to approving this Application that the Project could in theory be made more consistent with the Comprehensive Plan. Rather, the relevant standard that this Commission is obligated to consider is that the Project must not be inconsistent with such plan. A lack of inconsistency, as the Regulations require, is a far different threshold than maximum consistency, as the Residents advocate. The Applicant has affirmatively presented substantial

¹¹ The Residents' response regarding the setback for the existing six houses adjacent to the Property is unavailing. (Ex. 212.) These six houses are clearly set back anomalously far from the public right-of-way relative to virtually every other house on surrounding blocks. (Ex. 206 at 24.)

evidence demonstrating no inconsistency between the Project and the Plan, and Opponents and the Residents have failed to present any evidence challenging that finding;

- The fundamental flaw in the Residents’ reading is that increasing the number of townhouses also makes the Project more consistent with the Comprehensive Plan. The Residents’ view—preservation of trees and more open space—is fundamentally at odds with the Applicant’s position—production of more family-sized and affordable housing. The Commission must, and does, reconcile the competing elements; and (FF ¶ 137.)
 - For the reasons advanced by the Applicant, the Commission finds that the Project is not inconsistent with these Elements of the Comprehensive Plan. The Commission also finds that the Residents do not dispute such consistency. The Residents only offer that the Project could be made more consistent with such Elements, an implicit acknowledgement that the Project is not inconsistent with the Comprehensive Plan;¹²
- (k) PROS-4.2.A: Zoning Assessment of Institutional Land. *It is not clear whether the study recommended by this action item has been completed. In any event, the Project should provide functional open space.* (Ex. 154.) The Applicant is not aware of the status of any study conducted in response to this action item. (Ex. 209; *see also* 10-A § 2519 (summarizing the status of action items contained in the Comprehensive Plan)). The Commission declines to take notice of any information relevant thereto. However, the Applicant disagrees with the assertion that the Project’s open space will not be functional. The Applicant engaged in significant study and community outreach to program different types of open space for the public to use and enjoy. (Tr. 3 at 23, 26-27.) The Commission finds that the Applicant has the better argument on this point and accordingly finds that the Project is not inconsistent with this action item of the Comprehensive Plan;
- (l) IN-6.1.3: Developer Contributions. *The Applicant must fund necessary upgrading of existing facilities to address limitations existing infrastructure on or adjacent to proposed development sites.* (Tr. 3 at 260; 10-A § 1317.5.) Section 1317.5 of the Comprehensive Plan offers the following direction: “Require that private developers fund the necessary relocation or upgrading of existing utilities to address limitations with existing infrastructure on or adjacent to proposed development sites.” The Commission understands that the Comprehensive Plan’s use of the directive “require” can under certain circumstances be understood as suggestive rather than mandatory. (*See Friends of McMillan Park v. District of Columbia Zoning Comm’n.*, 149 A.3d 1027, 1036 (DC 2016) (“*McMillan*”).)

¹² The Residents’ counsel essentially acknowledged lack of inconsistency between the Project and the Comprehensive Plan at the Public Hearing: “As for the various policies highlighted by [the Applicant] as being furthered by the Project, in just about every instance, to the extent [the Applicant] is correct, *and they may be largely correct. . .*”

Therefore, the Commission understands § 1317.5, in the context of a PUD, to direct the Zoning Commission to encourage the Applicant to fund infrastructure improvements. In this instance, the use of the term “require” squarely contradicts direct constraints imposed on the Commission under the Zoning Regulations. (*See* X § 305.11 (“The Zoning Commission may not compel an applicant to add to proffered public benefits . . . Nevertheless, the Zoning Commission may at any time note the insufficiency of the public benefits and suggest how the benefits may be improved.”).) Section 1317.5 of the Comprehensive Plan and § 305.11 of the Zoning Regulations are thus at odds. The Commission reconciles the two by determining that it is bound by the Zoning Regulations, but only guided by the Comprehensive Plan. Ultimately, the Applicant has offered a satisfactory resolution to the Commission’s dilemma: the Applicant has proffered water infrastructure improvements as part of the Public Benefits. (*See* FF ¶¶ 202, 204(a) (offering transportation infrastructure improvements and water utility improvements).) The Commission finds that these proffered benefits satisfy § 1317.5 without obligating the Commission to run afoul of its regulations. The Commission is further satisfied that the Project is not inconsistent with § 1317.5 insofar as DC Water will require the Applicant to design an appropriate connection for the Project at the permitting stage; (*See* Ex. 210.)

- (m) UD-2.2.7: Infill Development. *The Project’s density is not consistent with Policy 2.2.7.* (Ex. 180; Tr. 3 at 244.) The Applicant asserts and the Commission agrees that the Project “avoid[s] overpowering contrasts of scale, height and density as infill development occurs.” (*See* 10-A § 910.15.) As documented extensively herein, the Project’s density and height are consistent with and not an “overpowering” contrast to surrounding development. The Project does present some contrast with the surrounding development, but there is no reasonable basis to describe such contrast as “overpowering” in the ordinary sense of the term, which is not defined in the Glossary. The Project’s scale, particularly the proposed block scale is entirely consistent with the surrounding urban fabric and therefore the Project is not inconsistent with this objective;
- (n) UNE-1.1.1: Conserving Residential Uses. *The Project would not enhance the surrounding neighborhood, fails to preserve the stability of the surrounding community, and does not conserve the residential character of the surrounding community.* (Ex. 29, 148, 159.) The Applicant disagrees, and the Commission again sides with the Applicant. (Ex. 209.) This objective provides in relevant part that “The residential character of these areas shall be conserved, and places of historic significance, gateways, parks, and special places shall be enhanced.” (10-A § 2408.2.) The Project conserves the residential character of the area by adding no new non-residential uses (indeed nothing but identical single-family residential uses) and instead provides a buffer between the existing hospital and other surrounding residential areas. The Project also preserves and enhances the historic Seminary building. Finally, the Project formalizes and enhances the open space on the Property through a series of programmed and publicly-accessible

open spaces. Accordingly, the Project is not inconsistent with this policy objective;

- (o) UNE-1.2.7: Institutional Open Space; UNE-1.2.8: Environmental Quality. *The Project is inconsistent with these objectives:* (Ex. 148, 159.)
- With respect to UNE-1.2.7, the Project is consistent with this objective, which reads in relevant part: “Recognize the particular importance of institutional open space to the character of Upper Northeast, particularly in and around Brookland and Woodridge. In the event that large institutional uses are redeveloped in the future, pursue opportunities to dedicate substantial areas as new neighborhood parks and open spaces.” (10-A § 2409.7.) The Project recognizes the importance of the existing open space in the neighborhood and dedicates a substantial portion of it as new publicly-accessible neighborhood parks and open space, including a playground for neighborhood children. Accordingly, the Project is not inconsistent with this policy objective, and indeed takes significant steps to affirmatively further it; and
 - With respect to UNE-1.2.8, the Project is not inconsistent with this objective, which reads in full: “Improve environmental quality in Upper Northeast, with particular attention given to the reduction of emissions and particulates from trucks and industrial uses in the area.” (*Id.* § 2409.8.) The Commission finds that this objective largely goes to protecting against industrial and heavy transportation uses that are endemic to Ward 5 and the Northeast quadrant of the District. The Commission does not understand this objective as imposing additional scrutiny on the construction of single-family housing. While the Commission does not necessarily find that the Project affirmatively improves environmental quality, the Project does provide numerous environmental benefits that do not render it inconsistent with this objective;
- (p) UNE-Planning and Development Priorities: Air Quality. *Opponents raise concerns about traffic congestion and air pollution effects as expressed in the Planning and Development Priorities of the Area Element.* (10-A § 2407.2(d); Ex. 131.) The Commission appreciates the concerns of the Residents and Opponents with respect to air quality but finds that this Priority is only tangentially relevant to the Project if at all. The Priority reads in relevant part that “Upper Northeast residents have lived with heavy truck traffic, noise and visual blight that comes with industrial land use for decades. Residents are especially concerned about large trucks, vibrations, dust, air pollution and hazardous materials on the railroads.” (10-A § 2407.2(d).) The Project’s residential use and character do not present the type of concerns raised in this portion of the Comprehensive Plan. Truck traffic from the Project’s construction will be limited in scope and duration. (Ex. 30C.) Accordingly, the Project is not inconsistent with this priority;

- (q) UNE-Planning and Development Priorities: Open Space. *Opponents cite language in the Comprehensive Plan's Upper Northeast Area Element that notes that the large institutional open spaces and wooded glades of upper Northeast neighborhoods "may someday be lost to development" and that such properties are "important to the health of the community and should be considered as opportunities for new neighborhood and community parks (as well as housing) if they become available. They are the "lungs" of the neighborhood."* (10-A § 2407.2(f); Ex. 148, 150, 154, 159.) The Applicant recognizes that preservation of parts of the existing open space on the Property is a community priority and has taken extraordinary efforts to comply with this preference, as discussed above. The Commission finds the Applicant's efforts commendable. The Commission observes that numerous Opponents selectively quote portions of this section. None acknowledge that this priority expressly contemplates the development of housing on large institutional spaces such as the Property. The Commission recognizes that many of the Opponents and Residents would prefer to see the Property maintained as a park. However, the Area Element is no bar to the Project's development, and the Project is not inconsistent with the Comprehensive Plan; and
- (r) Comprehensive Plan (Generally). *The Project is inconsistent with the Comprehensive Plan generally.* (Ex. 34, 47, 49, 50, 55, 60, 135, 158, 160, 164,¹³ 177, 179.) Numerous Opponents testified in a general way that the Project is inconsistent with the Comprehensive Plan:
- As noted, the Applicant and OP provided evidence to the contrary. (Ex. 2 at 44-59; 209; 36.) In addition, the Applicant notes that the Project affirmatively advances numerous of the individual policy objectives of the Comprehensive Plan. (Ex. 2 at 44-59);
 - To the extent the Project is inconsistent with individual objectives of the Comprehensive Plan (and this Commission has found the Project to be inconsistent with none of those objectives raised by Opponents, the Residents or the ANCs), that alone does not end the Commission's inquiry. The Commission must review the Project against the Comprehensive Plan *as a whole*, balancing competing or contradictory elements or objectives; and (*See McMillan, supra* FF ¶ 127(1) at 1034.)
 - Because the Land Use Element of the Comprehensive Plan integrates the policies of all other District Elements, it should be given greater weight than the other Elements. (10-A § 2504.6.) The Future Land Use Map and

¹³ Ex. 164 suggests that the Project is inconsistent with (uncited) language in the Comprehensive Plan that reads that the Plan is intended to "... (b) Protect these areas [zoned R-2] from invasion by denser types of residential development." The Commission is unable to determine where this quote exists in the Comprehensive Plan. For example, the word "invasion" appears only once in the Comprehensive Plan, in § 812.5 of 10-A, and in a manner not applicable to the instant proceeding. Accordingly, the Commission registers this objection of Opponents as a general objection to the Project's consistency with the Comprehensive Plan.

Generalized Policy Map should be given the same legal weight as the text of the Land Use Element. (*Id.* § 200.5.)

128. Recognizing that the Commission is obligated to explicate its analysis on the balancing required among the numerous Elements and objectives of the Comprehensive Plan, the Commission offers the following thoughts: (*See Durant v. District of Columbia Zoning Comm'n.*, 99 A.3d 253 (DC 2014).)
- (a) Land Use Element Consistency. The Project is entirely consistent with the Comprehensive Plan's two maps and affirmatively advances numerous elements of the Land Use Element, which is entitled to the greatest weight under the Plan;
 - (b) Housing Element Consistency. The Project's housing and affordable housing Public Benefits are particularly laudable. Given the Project's residential nature, and the residential nature of much of the area surrounding Project, the Commission has determined that the Project's consistency with the Housing Element weighs heavily in favor of the Project being not inconsistent with the Comprehensive Plan as a whole. The Residents advocate for 66 townhouses, yet nowhere in their analysis do they consider the Project's affordable housing benefits of or the necessary reduction in such housing that would result from the smaller project they propose. The Commission finds that the overall number of IZ townhouses supported by the Project and the Project's total number of townhouses with bedroom counts that satisfy family needs and that avoid any displacement or loss of existing housing, is the single most significant benefit of the Project;
 - (c) Historic Preservation Consistency. The Project's efforts to preserve the Seminary—both by developing a site plan around it and by providing the Josephites the means with which to remain in their home—substantially advance the Comprehensive Plan's historic preservation aims. The Project's Landmark Application to permanently protect the Seminary is further still evidence of consistency with the Plan;
 - (d) Urban Design; Parks, Recreation and Open Space; Infrastructure; and Area Elements. For the reasons given above, the Project advances these Elements also; and
 - (e) Balancing Analysis. To the extent there are questions about consistency, such questions are confined to the Environmental Protection Element's objectives regarding tree preservation. On balance, the Commission finds that the greater weighting owed the Land Use Element under the Comprehensive Plan as well as the overwhelming consistency with objectives in the Historic Preservation, Parks, Recreation and Open Space, and particularly, in the Housing Element readily tip the scales in favor of finding that the Project is not inconsistent with the Comprehensive Plan as a whole.

Project Density.

129. In its Initial Statement, the Applicant noted that the Project had a residential unit density approximately 10.5 units per acre,¹⁴ which, the Applicant noted, because of clustering results in an effective density of “20 units per acre on the north half of the site in order to maintain open space for the community on the south half of the site.” (Ex. 2.) The Applicant also provided evidence of the units per acre density of surrounding blocks, which have a density in the range of 7.8 to 12.3 units per acre. (Ex. 206 at 24.) The Applicant argued that the Project’s overall density is comparable with the surrounding blocks and appropriate in light of the dedication of open space for public use, the provision of 10 three- and four-bedroom IZ townhouses, and other public benefits, none of which exist on surrounding blocks. (Ex. 209 at 1.) The Residents, numerous Opponents, and ANC 5B complain stridently about the Project’s proposed density, arguing that it is much higher than that in the vicinity of the Project and therefore inappropriate. OP concurs with the Applicant, which also enjoys the support of ANC 5A. (Ex. 36, 41.) For the reasons set forth below, the Commission finds that the Applicant and OP have the better argument. However, the Commission makes this finding only after probing carefully at the analysis offered by the Residents and Opponents.
130. The Commission finds that there is little to no contention that the Project’s FAR density for the purposes of complying with the strictures of the Zoning Regulation is 0.95. (Ex. 216 at 1.) There is similarly no contention that the Zoning Regulations impose any restrictions on the Project with respect to units per acre. (Ex. 209, 212.) The Project’s actual density is determined on the basis of the entire area of the Property and includes the GFA of the Seminary. The Commission adopts the FAR of 0.95 as the Project’s “actual” density.
131. For the purposes of evaluating concerns raised by Opponents and the Residents, however, the Commission finds some utility in examining the Project’s “effective” density. The effective density includes the townhouse portion of the northern half of the Property plus varying amounts of the undeveloped southern portion of the Property as addressed below. The Commission cautions, for the avoidance of doubt, that the effective density as used herein is applied as an investigative tool, is not rooted in the Zoning Regulations or Comprehensive Plan, and therefore has no legal weight or precedential value.
132. The Project’s effective density relative to that of surrounding blocks is of importance because the Property is designated for Institutional use on the Comprehensive Plan’s Future Land Use Map. The Future Land Use Map is expressly agnostic with respect to density for areas designated for Institutional use. (10-A § 226(h).) However, the Comprehensive Plan suggests that any change for those areas designated for Institutional use “should be comparable in density or intensity to those in the vicinity.” (*Id.*) The Application includes a request for a Map Amendment that seeks a change in an area designated for Institutional use, so § 226(h) is precisely on point in the instant

¹⁴ The density calculation in the Initial Statement was based on an 82-townhouse site plan. As the Project was revised, the Applicant revised the Project’s units per acre density as addressed below. (Ex. 206 at 24-26.)

proceeding. At this point, the Commission pauses to parse carefully the guidance of § 226(h):

- (a) Recommended rather than Mandatory. The Commission is mindful that the employment of “should” in § 226(h) means that such guidance is recommended rather than mandatory. (*See McMillan, supra* FF ¶ 127(l).) That is, the Commission is not bound to ensure that the Project is comparable in density to surrounding areas. However, the Commission is further mindful that recommended provisions have “substantial force” even if not mandatory and that a decision to deviate from such guidance must be carefully considered; (*Id.*) (citations omitted).
 - (b) Comparable in Density or Intensity. The Commission further notes that § 226(h) requires only that a change in density or intensity be “comparable” to the surrounding area. Section 226(h) does not suggest, much less require, that a change in density must be identical to the surrounding area. OP concurs in this analysis; (Tr. 3 at 136.)
 - (c) Meaning of Density or Intensity. The Glossary advises (though does not require) that “intensity” refers to residential density in dwelling units per acre and that density is a measure of non-residential uses in FAR. Glossary at G-22; and
 - (d) Text of Comprehensive Plan. In determining the meaning of § 226(h) to the instant Application, the Commission also notes the relevance of Section 226(d). That is, a Zoning Map amendment, such as the one contemplated here, should be guided by the Future Land Use Map, “interpreted in conjunction with the text of the Comprehensive Plan.” (10-A § 226(d).)
133. The Project’s numeric density measure relative to that of surrounding neighborhoods is important in complying with the guideposts established by the Comprehensive Plan. However, the Project’s density numeric calculation is not merely an abstract computational exercise. To be useful in evaluating the Project under the Comprehensive Plan and the Zoning Regulations, the Project’s density analysis should be harnessed to tangible aspects of the Project. Therefore, the Commission first observes that the Project’s density is relevant as a proxy for the Project’s new impacts on surrounding areas. In general, development impacts scale to some degree with an increase in density. That is, higher densities typically have greater impacts. Second, the Commission also determines that the Project’s density is relevant as a proxy for the Project’s physical form or design.
134. The Commission finds that the Project’s density and intensity are absolutely comparable to that of the surrounding area. More particularly, the Commission finds that the Project’s new impacts and physical form are comparable in scale to those of land uses in the vicinity of the Project and the Project preserves substantial open space on the property.

This finding is supported by substantial evidence and was elucidated following considerable briefing from the Applicant, OP, the Residents, and some Opponents:

- (a) Applicant's Justification for the Project's Density. The Applicant's fundamental justification for the Project's density involves the Project's provision of housing and affordable housing. The Applicant and many others providing testimony for this proceeding note that the District faces a considerable shortage of new family-sized housing. (Tr. 3 at 25; Ex. 193, 208.) To address this housing shortage, the Mayor has an explicit goal of providing additional housing for families, and the Commission's 2016 revisions to the Zoning Regulations now expressly identify the provision of family-sized housing as a public benefit for PUDs. (*Id.*; X § 305.5.) In light of these policy objectives, and in response to the critical need for additional family-sized housing, the Applicant proposes an 80 townhouse program that reserves 12% of the townhouses as affordable townhouses, 60% of which will be at greater levels of affordability than is required by current law. That is, six of the Project's IZ townhouses will be affordable at 50% AMI; (Ex. 30B, 211B.)
- (b) Project Unit Count Revisions. The Applicant has substantially revised downward the Project's density to reduce the Project's new impacts:
- In an early community meeting in December 2015, the Applicant proposed redeveloping the Property with a project that would include approximately 150 to 180 townhouses and leave approximately 1.3 acres of private open space. After the initial series of community meetings, the Applicant understood that members of the community opposed this level of density and desired the preservation of more open space. At the initial meeting, some members of the community specifically expressed a preference for approximately half the number of townhouses on the Property. This sentiment was echoed once again at the community focus group meeting held on February 18, 2016; (Ex. 15 at 1-2.)
 - Over the course of more than 20 subsequent community meetings and following extensive discussion and listening to community preferences, the Applicant reduced the total number of townhouses first from its initial proposal of 150-180 to 110, then to 90, subsequently to 83, and ultimately to the 82 townhouses which were included in the Initial Statement. As part of discussions with the community, the Applicant also agreed to reduce the height of the homes to three stories from four, thereby reducing the overall GFA of the Project. The Project's initial 82 townhouse program is in the range of the 75 to 90 townhouses voiced at the initial community meetings; (*Id.*)
 - At the same time as it reduced the number of townhouses proposed for the Property, the Applicant also agreed not only to increase the open space from 1.3 acres to three acres, but also to preserve approximately 2.5 acres of the open space via the Easement to allow public use of the space. (*Id.*)

The Applicant agreed to design the Project so that instead of each unit having private outdoor space, the Project would feature common outdoor spaces that could also be used by both existing and new residents of the neighborhood and that could be programmed with play equipment and landscaping;

- At Setdown the Commission expressed concerns regarding the number of townhouses proposed as part of the Project and the Project's relationship to the surrounding neighborhood. (Tr. 1 at 68-77.) Subsequently, the Applicant further has reduced the number of townhouses in the Project and made design changes to the Project along Allison Street, N.E. and Sargent Road, N.E., the two adjacent streets with existing residences. (Ex. 15, 15H.) Notably, following the post-Setdown reduction in townhouses, the Applicant did not reduce the number of IZ townhouses; and (*Id.*)
- Although the Project's post-setdown revisions reduced the total townhouse count only by two, the revisions resulted in an 11,200 square feet (six percent) total reduction in the Project's GFA. (Tr. 3 at 28.) The reduction in GFA has a greater influence on the appreciable bulk and feel of the Project, especially along the Property's boundaries, than the reduction in the absolute number of townhouses in the Project; (Ex. 15.)

(c) Project Design Changes. The Applicant also substantially redesigned the Project's site plan and architecture to address concerns about the visual effects of the Project's density. (*Id.*) In sum, the Project relocates its density to: (i) the interior of the site, where it is largely hidden from view from the existing public realm; and (ii) along 12th Street, N.E., which, as opposite the Hospital, already contains a condition that is not characteristic of the residential streets in the neighborhood:

- After setdown, the Applicant simplified the range of townhouse sizes and reduced the widths of the individual townhouses to match the surrounding neighborhood. The Initial Statement included a mix of 24-, 22-, 20-, and 16-foot-wide townhouses. The Final Plans include only 20- and 16-foot-wide townhouses. (Tr. 3 at 28.) The Applicant studied the dimensions of the surrounding houses, and those two unit widths are representative of the surrounding duplex and triplex housing stock. For instance, the triplex immediately north of the Project on Allison Street, N.E. consists of three 20-foot-wide townhouses. An important result of this simplification is that the townhouses in the Project are comparable in scale to those on surrounding streets; (*Id.*)
- After setdown, the Applicant also reduced the townhouse massing to exclusively duplexes and triplexes along Allison Street, N.E. and Sargent Road, N.E., the two streets along which the Project faces existing houses. In addition to reducing the Project's overall scale, the Applicant paid

particular attention to the design along the boundaries of the Project that face, or are adjacent to, existing homes. Accordingly, the Project revisions reflect the existing duplex/triplex character of the neighborhood. The Applicant redesigned the blocks of townhouses to reduce the apparent massing of the Project from the surrounding public streets. Specifically: (i) along Sargent Road, N.E. the Project's townhouses are expressed as a duplex and triplex, a configuration comparable to the two sets of existing triplex homes along Sargent Road, N.E. and the houses on east side of 13th Street, N.E. opposite the Seminary, which is lined with existing triplexes; and (ii) along Allison Street, N.E. the Project's townhouses are expressed as a duplex and triplex with a new yard separating them. Again this arrangement is consistent with the existing homes on the north side of Allison Street, N.E., where there are currently two sets of triplexes directly across from the Project; (Ex. 15.)

- In addition to reconfiguring the townhouses along the Project's edges, the Applicant reconfigured the townhouse blocks at the interior of the Property. Longer blocks of townhouses are limited to the interior of the Property and along 12th Street, N.E. the two locations that have the least visual impact on existing adjacent residences. Moreover, the remaining longer blocks in the Project were reduced in length relative to the Initial Statement. The Initial Statement included blocks of attached townhouses with as many as 11, 12, and 14 townhouses in a block. (Ex. 2H.) In the Final Plans, the longest block includes only eight townhouses and none of these longer blocks face any existing neighborhood homes. (Ex. 228B1 at 2-3.) The Project also breaks down the apparent scale of the longer blocks of townhouses into groups of two or three homes stylistically so that the rhythm to the Project's architecture is in keeping with the pattern of the existing duplex and triplex homes in the neighborhood; (Ex. 15.)
- The Applicant believes, and the Commission agrees, that it is not necessary to limit the townhouses along 12th Street, N.E. to duplexes and triplexes because of the existing character of that street. (Ex. 209.) The Project's boundary opposite the Hospital is appropriate for longer blocks of townhouses because there the opposing land use is already a much greater apparent intensity of use than any other in the neighborhood (including any proposed as part of the Project). Indeed, the slightly higher concentration of houses along 12th Street, N.E. creates a beneficial visual buffer and logical transition from the hospital use to the surrounding residential uses in a manner that benefits the entire neighborhood; and (*Id.*)
- As the Applicant demonstrates, there are numerous examples of single-family homes, duplexes and triplexes existing directly across a street from rowhouses in a contextually sensitive manner throughout this Northeast neighborhood, as well as in adjoining neighborhoods; (Ex. 190A at 35.)

- (d) Opponents' and Residents' Objections. The Residents and Opponents raised numerous questions and allegations regarding the Project's density:
- *The Project's density exceeds that of the surrounding neighborhood.* (Ex. 14, 34, 39, 47, 49, 55-56, 60, 135, 137, 139, 143, 155, 159, 180, 212; Tr. 3 at, e.g., 243-244.) The Project's effective density relative to that of surrounding blocks is addressed below. In sum, the Commission agrees that the Project's effective density exceeds by a slim margin the prevailing density of surrounding blocks but finds such excess density warranted and not inconsistent with the Comprehensive Plan;
 - *There is no precedent in the surrounding area for the Project's proposed density.* (Ex. 29.) Although the Commission finds that the Project's density is slightly higher than the prevailing density in the neighborhood, the Commission finds that the Project's effective density is not without precedent in the existing fabric. The effective density of the six existing townhouses on the block containing the Property is equal to the density proposed as part of the Project; (Ex. 209.)
 - *The Project's density alters or adversely affects the neighborhood's look and feel and character and increases the neighborhood's population.* (Ex. 155, 176.) The Commission finds that the Project's revisions after setdown appropriately address the visual density impacts of the Project such that the Project will not adversely affect the neighborhood's look and feel; and
 - *The Project does not account for the density bonus.* (Ex. 12, 29.) As noted elsewhere, the Project may be constructed only in accordance with the Final Plans. (See Condition A.1.) Accordingly, although the Applicant has not utilized the entirety of the actual FAR density afforded it under the Zoning Regulations (taking into account the density bonuses for complying with IZ and proceeding pursuant to a PUD), the Applicant is barred from any future use of that FAR. Such FAR may not be transferred beyond the Property. (X § 303.17. The Easement bars development on the Property other than the instant Project;
- (e) Computation of Units per Acre. The units per acre metric is useful for the Commission in light of the guidance at § 226(h) of the Comprehensive Plan. However, the metric has no bearing on the Project's compliance with the applicable development standards of the Zoning Regulations. The parties have offered multiple units per acre calculations as the Project's appropriate effective density. The Commission finds that 12.7 units per acre is the most appropriate in determining the Project's overall effective density and that 11.1 units per acre is the Project's market rate effective density:
- The Residents assert that the Project's units per acre should be calculated only on the portion of the Property where the townhouses are being

constructed, thus reducing the land area from 349,294 square feet to 173,753 square feet and increasing the units per acre to 20.1 townhouses/acre; (Ex. 143 at 3.)

- The Applicant's view is that the Residents misunderstand the Applicant's intent of providing a summary of the Project's density in a 'units per acre' format. The units per acre metric is a proxy to show that the Project's net new impacts are of a similar scale to the impacts that the homes on neighboring blocks create. That is, the Project has a similar impact from the perspective of traffic, population density, utility demand, and the like as the impact from houses on surrounding blocks, which are generally on the order of 10 units per acre as measured from back of curb. The Applicant's initial position was that the Project's effective density should be calculated on the basis of the entire area of the Property. This position resulted in a calculation of approximately 10.0 units per acre. (Ex. 2H.) The Applicant then conceded to remove the land area for the Seminary from this calculation, resulting in a density of 10.5 units per acre. (Ex. 190A at 15.) The Applicant felt that the overall development of the Project has a similar impact as surrounding blocks from the perspective of traffic, population density, utility demand, and the like. Surrounding blocks are generally on the order of 10 units per acre as measured from back of curb;
- The Applicant goes one step further and removes the entire approximately 80,200 square feet of land area protected by the historic designation of the Seminary, which area is nearly identical to the lot area attributable to the Seminary on an FAR basis.¹⁵ This analysis retains the area protected by the Easement and results in 12.7 units per acre;
- For comparison, the six existing homes at the corner of Allison Street, N.E. and Sargent Road, N.E. that share the block with the Seminary and the proposed Project have an identical density of 12.7 units per acre;
- The Residents assert that the Project's units per acre density should be calculated based on the developed land area without roads or alleys because FAR under the Zoning Regulations is calculated net of roads. This argument is not well-reasoned. The Applicant's measurement of the density of surrounding blocks included alleys and driveways, so it would be inappropriate to exclude the private roads within the Project. As noted previously the method for determining units per acre is not based on the

¹⁵ The Commission disagrees with the Residents' theory that the area removed to account for the Seminary should rely only on the five percent bonus density allowed under the Zoning Regulations' PUD provisions. (Ex. 212.) Such five percent bonus is available in limited circumstances *in addition to* the ordinary 20% bonus afforded under a PUD. (X §§ 303.3, 303.10(b).) The Project, including the GFA of the Seminary are subject to the PUD provisions and therefore eligible for the resulting density bonus under § 303.3. The Applicant has not sought the additional density bonus under § 303.10(b). In sum, the Commission discounts the Residents' final set of calculations.

Zoning Regulations nor is it something that is typically regulated by the Commission. The Applicant's inclusion of the land area of private streets and alleys internal to the Project allows for an "apples to apples" comparison with the units per acre on the surrounding blocks. If the Applicant were to remove the private drive aisles, streets, and alleys from the Property, it would likewise need to remove the same from the neighboring blocks.

- The density associated with the Project is entirely appropriate given the public benefits provided by the Project, and in particular, given the affordable housing associated with the Project. The difference between the density associated with the Project following the removal of the lot area for the Seminary building and the density of surrounding blocks is entirely attributable to the Project's IZ townhouses. (Ex. 209.) That is, the Project provides market-rate townhouses at a density of 11.1 units per acre, which is identical to the two blocks north of Buchanan Street, N.E. and less than the density of the homes adjacent to the Property and the block immediately to the north of the Project. (*Id.*) The additional 1.6 units per acre resulting from the Project as a whole (i.e., the delta between 12.7 and 11.1 units per acre) is entirely because the Project provides 10 townhouses at income-restricted levels, a public benefit that does not exist on any nearby blocks; (*Id.*)
- The Residents seem to suggest that the parties have settled on 20.1 units per acre as the effective density of the Project. (Ex. 212.) This is contradicted by the Applicant. (Ex. 209 at 1.) Moreover, the analysis leading to the Residents' preferred number entirely neglects to account for the open space preserved on the southern portion of the Property. For this reason, it cannot be considered seriously. The Project's open space on the southern portion of the Property is an essential component of the Project. The allocation of density across the Property, including on the southern portion of the Property is akin to the allocation of density on residential lot with front and rear yards. (Ex. 209.) To ignore such allocation undermines the utility of the exercise.
- The Commission declines to adopt the Residents' view with respect to the portion of the lot attributable to the Seminary. (*See* Ex. 212.) The Applicant has the better argument: given that the Project is proceeding as a PUD, the existing GFA of the Seminary counts towards the overall FAR cap of 1.296 on the Property. It is therefore appropriate to remove from the lot area of the Property an area commensurate such density; and
- The Residents do not dispute the Project's effective market-rate density. (Ex. 212.) Accordingly, the Commission finds that 12.7 units per acre and 11.1 market-rate units per acre are the best measures of the Project's effective density. Such effective density is comparable to those in the

vicinity of the Project and to the extent the 12.7 units per acre number is greater, such increased density is warranted by the Project's housing benefits as more fully addressed below.

(f) Computation of FAR.

- As noted above, there is little argument that under the Zoning Regulations the Project's FAR is 0.95. As is required by the Zoning Regulations, the Applicant removed the land area associated with the Project's private roads and alleys from the total land area when calculating FAR for the Project. This resulted in an overall FAR of 0.95 for the Project, which FAR includes a conservative estimate for the gross floor area associated with the existing Seminary building. (Ex. 209 at 3, n. 1.)
- The Applicant reported that the Project's effective FAR on the northern portion of the Property is 1.29, where the area of the Project's private alleys is included in the denominator of the FAR calculation, but area of the private streets is not.¹⁶ This number also excludes the area of the open space on the southern portion of the Property, as requested by the Commission, though the Applicant believes that such open space is relevant to the overall density analysis.¹⁷ The maximum FAR in the RA-1 zone under a PUD (including the IZ bonus) is 1.296.
- The Residents assert that the effective FAR of the northern portion of the Property should be 1.45, which would exclude the area of the Project's private alleys from the FAR calculation in order to make a meaningful comparison to the imputed FAR in the R-2 zone. This is not a sensible interpretation of the effective density of the adjacent R-2 zones, which clearly include alleys and driveways akin to the private alleys included in the Applicant's effective FAR calculation. Moreover, the Residents' suggestion to remove alleys from the FAR calculation flies in the face of the Commission's express request at the Public Hearing, which was that the calculation be performed in accordance with the Zoning Regulations. (Tr. 3 at 66-67 ("Mr. May: I would be curious to see what the FAR

¹⁶ For the purposes of calculating the effective FAR of the northern portion of the Property, the Applicant included in the lot area the land area of private driveways and accessways as is permissible under the Zoning Regulations. (See 11-B DCMR § 303.2.) The Applicant excluded from the lot area the land area of the extended Webster Street, N.E. and the land area of Private Street "A" as denoted in the plans. The Applicant further notes that the overall FAR of 0.95 that it has reported since its initial filing is based on the exclusion of all private ways (including alleys and accessways) from the lot area. Accordingly, the 0.95 measurement is a conservatively high reporting of FAR.

¹⁷ Subtitle B of the Zoning Regulations provides the definition of FAR as "the ratio of the total gross floor area of a building to the area of the lot; determined by dividing the gross floor area of all buildings on a lot by the area of that lot." "Lot" is defined as "the land bounded by definite lines that, when occupied or to be occupied by a building or structure and accessory buildings, includes the open spaces required under this title." A lot may or may not be recorded.

calculation, based on the current rules on how we do that, which I think in terms of the area that gets calculated, it includes the alleys but it doesn't include the streets.”.)

- The Commission finds that the Applicant's rationale for including private alleys in the effective FAR calculation is appropriate insofar as the FAR calculation method is set forth in the Zoning Regulations and such regulations contemplate the inclusion of private alleys;
- (g) Computation of Lot Occupancy. The Residents assert that the Project's lot occupancy should exclude the open space preserved by the Easement. (Ex. 143, 212.) The Applicant disagrees. (Ex. 209, 216.) The Commission sides with the Applicant. There is no justification for excluding from the calculation of lot occupancy the open portions of the “lot” located on the southern half of the Property any more than there would be justification for excluding the front (but not the rear) yard on a single-family lot. There is no ambiguity in the Zoning Regulations that the entirety of the Property contributes to the denominator of the lot for the purposes of determining lot occupancy. (10-B DCMR § 312 (“Lot occupancy shall be calculated by dividing the total building area of all buildings on a lot by the *total area of the lot*.”).) The lot occupancy provides a metric for assessing the Project's impacts with respect to look and feel and air and light. On this point, the Commission finds that the Project is comparable to what is permitted in the vicinity of the Project;
- (h) Computation of the Seminary's Density. The Residents point out that the Applicant initially neglected to account for the Seminary in the units per acre calculation and consequently assign it the equivalent of 46 townhouses by dividing the Seminary building square footage by the average proposed square footage per townhouse. (Ex. 143 at 4.) The Commission finds this analysis unavailing for two reasons. First, the purpose of the density exercise is to understand the Project's new impacts. No one has alleged and the Commission declines to find that the Seminary has any new impacts. Second, the Seminary is an institutional use with a large area of the building dedicated for communal dining, gathering, worship, and classrooms. A portion of the building is used to house people, but from an impact perspective—even a cumulative one—it is not comparable on a per square foot basis to single family homes, especially because a large percentage of the Seminary's residents conduct their work and study within the Seminary itself and thus do not have comparable impacts on the surrounding areas in regard to traffic and public schools. (Ex. 209.) The Commission finds that it was appropriate for the Applicant to remove some reasonable portion of the Property from the units per acre effective density calculation to account for the Seminary, but nothing more is required;
- (i) Block by Block Census. The Residents undertake a hand-count of the number of residences on surrounding blocks and note that the Project's unit count exceeds that of nearby blocks because it includes 80 townhouses on the equivalent of one

block. (Ex. 212.) The Commission finds that this analysis distorts reality, is inconsistently performed, and is therefore not particularly helpful:

- First, the Project preserves open space in existence today and does so for the use and enjoyment of the neighborhood by clustering the new townhouses close together. The Project could have been designed to spread townhouses evenly across the southern portion of Property, yielding no shared open spaces. The result would have been a much lower number of townhouses on each “block.” It is beneficial for the Residents and the neighborhood more generally that such design was not pursued; and
 - Second, by the counting method proposed by the Residents, assuming as they seem to that the Project’s two private streets should be treated as public streets for the purposes of these density calculations, the Project encompasses three “blocks.” The Project’s northwest “block” (that is, the area north of the extended Webster Street, N.E. and east of Private Street A) contains only 27 townhouses, which is below the amount the Residents are willing to concede is appropriate for a single block. The Project’s northeastern block, plus the six existing houses on that block total 39 townhouses. The Project’s southern “block” (that is, south of the extended Webster Street, N.E.) contains just 20 townhouses plus the Seminary, again below the amount the Residents are willing to concede is appropriate. The Project’s breakdown in townhouses by block underscores the futility of the Residents’ proposed census exercise: the blocks in the neighborhood all differ, sometimes significantly, in overall area. Only an adjusted analysis, that is, on a ‘units per acre’ or FAR basis, yields a meaningful comparison. The Residents’ method of counting houses on both sides of a street is also unhelpful, and unevenly applied. The Residents offer no justification for including the houses on the south side of Webster Street, N.E. as part of the Project but not those, for instance, north of Allison Street, N.E. In sum, the Commission finds this analysis to be of comparatively little, if any, utility to the analysis required under the Comprehensive Plan; and
- (j) Range of Densities. The Applicant notes that the surrounding blocks express a range of densities from 7.8 to 12.3 units per acre (up to 12.7 units per acre for the six existing units near the intersection of Sargent Road, N.E. and Allison Street, N.E.). (Ex. 206.) This range is large both absolutely (i.e., a 4.5 unit per acre range) as well as on a percentage basis (i.e., the effective density at the upper end of the range is approximately 57.5% greater than that at the lower). Opponents and Residents seem to imply that the area surrounding the Project is of uniform density. That is clearly not the case. The Project’s effective density is only marginally above the upper end of the range, and the Project’s market-rate density is well within the range. The Project’s density would not result in changes

even a fraction as great as the variation that exists in the neighborhood today.

135. The Commission appreciates the detailed and thoughtful analysis advanced by the Residents with respect to the Project's effective density. The fundamental flaw in such analysis, mathematically robust though it may be, is that it fails to account for the full range of objectives that the Comprehensive Plan counsels the Commission to consider. For instance, the Residents never once mention the Project's laudable affordable housing benefits and the commensurate density bonuses. The Commission understands that the Residents' view is a narrow one and that they are not tasked with balancing the many objectives of the Comprehensive Plan. The Commission stresses that while the computations are helpful, the Comprehensive Plan is not precise on what constitutes "comparable." The Commission sees no reason in the instant Application to draw a bright line. Rather, in light of all of the relevant factors—e.g., and without limitation, the open space proposed by the Project, the range of densities that exist in the neighborhood broadly, the provision of IZ townhouses, the presence of an adjacent RA-1 zone with an intensive hospital use, and the contents of the Comprehensive Plan more generally—the Commission finds that the Project is of comparable density relative to the surrounding vicinity.
136. This Commission's findings on the Project's density are not close on the margin given the range of densities in the neighborhood and the Project's benefits. That is, a few additional units per acre one way or another would not sway this determination.
137. The Commission separately finds that although the Project's density is comparable to that of the surrounding area, it is generally somewhat higher than that of the surrounding area on average. Pursuant to the counsel of *McMillan*, the Commission finds there are aspects of the Project—namely the Project's benefits—that weigh heavily toward granting such additional density. Even more particularly: the Project's provision of significant open spaces, affordable and family-sized townhouses, and the preservation of the Seminary are notable Public Benefits weighing heavily in granting additional density. Given that the Project offers townhouses at a level of affordability below that required under the Zoning Regulations, the Commission finds that the Project's housing and affordable housing benefits warrant the increased density that the Applicant requests. The Commission addresses the Project's Public Benefits separately, but notes them here insofar as to analyze the inherent tensions between the density preferences of the Residents and Opponents on the one hand, and the provision of housing and historic preservation benefits on the other. The Residents and Opponents simply desire fewer townhouses. As the Applicant demonstrated with substantial evidence, and as is axiomatic in economic theory, the constraint of housing supply increases housing prices. The Residents' and Opponents' preferences for lower density development, in concert with similar expressed preferences against increased housing densification across the District, are chief reasons for the District's housing affordability crisis. (*See Ex. 208; see also Tr. 3 at 25; Ex. 193* (describing the District's identification of family-sized and affordable housing as paramount policy goals in the District).) The Commission recognizes that the Project is a comparatively unique opportunity to redress, in part, that housing crisis.

Traffic Congestion, Safety, and Impacts on Hospital

138. Traffic Congestion. Virtually every Opponent and multiple individual members of the Residents had concerns about the Project's impacts on traffic congestion. (Ex. 12, 14, 29, 34-35, 39, 47-50, 55-57, 60, 131, 135, 137, 139, 142, 147, 149, 151, 152, 155, 159, 162, 165, 176; Tr. 3 at 203-206, 208-211, 233, 246, 249.) The Commission shares in these concerns:

(a) Residents' and Opponents' Concerns and Objections. The Residents and Opponents generally raise concerns about traffic congestion conditions in the vicinity of the Property at present and object to the amount of traffic that the Project generates.

- *The streets around the Property are already congested, and the Project will make it worse. Rush hour and hospital shift changes are generally the worst times. (Id.)* The Commission appreciates the concerns raised by the Residents and many Opponents. The Commission finds that traffic conditions in the vicinity of the Property are regularly poor in the absence of the Project. The Commission also finds that much of the cause of existing adverse traffic conditions are attributable largely to the proximity of the Hospital, the use of 12th Street, N.E. and 13th Street, N.E. by commuters from out of the District, and the regional street system's geometry, which funnels traffic to such 12th and 13th Streets. (Ex. 14, 29, 39, 157, 159; Tr. 3 at 203-206.) The Commission further finds that the Project has, at worst, only a marginally adverse effect on such existing traffic conditions. (Ex. 22, 37.) The Project's revised traffic mitigation package is an opportunity for marginal improvements in traffic conditions;
- *Other developments in the region create cumulative impacts to which the Project contributes.* The Commission sympathizes with the Residents' and Opponents' concerns regarding regional transportation issues in light of ongoing development in Northeast DC, commuting patterns, and other factors. The Commission notes that the Applicant considered a conservatively high estimate of increases in background traffic congestion conditions in its analysis. (Ex. 22.) Even still, it found that the Project's impacts alone do not generate significant adverse effects. (Id.) DDOT agreed with this assessment. (Ex. 37.) Accordingly, the Commission finds that the Project's impacts do not have unacceptable effects on regional transportation systems;
- *Individual traffic movements through the Project will create additional congestion.* Opponents raised concerns about overuse of the existing Allison Street, N.E. alley. (Ex. 29.) The Commission finds that the Applicant studied such alley and intends to make physical improvements to such alley that adequately address any concerns therewith. Opponents also raise concerns about traffic signal timing at the intersection of 12th

Street, N.E. and Varnum Street, N.E. (Ex. 14, 39, 159.) The Applicant has studied this intersection as well, and in conjunction with DDOT, have determined no action is appropriate at this time. The Commission defers;

- *It is unclear whether the extension of Webster Street, N.E. adds porosity to the regional street system or is expected to experience minimal cut through traffic.* (Ex. 147; Tr. 3 at 203-206.) The Commission finds that the Project's extension of Webster Street, N.E. offers some general relief to the local transportation network. The Commission moreover finds that the Applicant's commitment to allow public use of such route renders it appropriate to be proffered as a public benefit;
- *Other mobility options are not realistic: this is a neighborhood where people drive rather than walk, the Project's new residents are unlikely to use transit, the additional traffic congestion resulting from the Project impairs existing transit use, and new bicycle lanes do not address congestion concerns.* The Commission finds that the Project's partial reliance on non-automotive transportation modes is not a panacea for traffic woes in the vicinity of the Project. However, the Commission finds encouraging that such mitigation options are put in place as part of the Project. The Applicant has provided substantial evidence that the Project's impacts on non-automotive travel are not unacceptable, and DDOT concurs in this result. The Commission sees no reason not to adopt DDOT's conclusion;
- *Truck traffic in the neighborhood is already a problem and such trucks appear to ignore truck route postings.* (Ex. 131.) The Commission shares Opponents' concerns regarding truck traffic and adherence to posted traffic controls. The Commission notes, however, that the Project will not generate significant new truck traffic and that the CMP includes truck control mechanisms; (Ex. 30C at 4 (as updated by Condition C.3(l) of this Order).)
- *Opponents allege that the Project increases the number of level of service ("LOS") failures to five (from the existing three to four).* (Ex. 14, 39, 159.) Contrary to Opponents' assertions, the Commission observes that none of the intersections studied in the CTR fall to a failing LOS on account of the Project. (Ex. 22 at 21-22.) Some intersections in the CTR do fail under changes resulting from future background conditions; and (*Id.*)
- *The Commission should request additional traffic data about the surrounding area.* (Ex. 35.) The Commission notes that this Opponent expressed these concerns prior to the filing of the DDOT Report in the record. (Ex. 37.) In addition, the Applicant provided testimony at the Public Hearing, Rebuttal Hearing, and in its Post-Hearing Submission on traffic impacts and traffic data. (Ex. 190A, 206, 211, 211A.) Accordingly,

the Commission did review additional data and analysis about the Project's traffic impacts;

- (b) No Data from Residents or Opponents. The Commission notes that the Residents and Opponents proffered no experts on transportation issues and offered no formal studies or reports into the record. The Commission advises that the largely anecdotal information provided on transportation issues is helpful in assessing the Project's impacts but does not dissuade the Commission from finding that the substantial evidence offered by the Applicant in the CTR and follow-up documents is un rebutted; and
- (c) Impacts on Alley Uses in ANC 5B. ANC 5B stated that it does not believe that sufficient attention is being paid to alley traffic in ANC 5B and its potential increase with the development of the Project. ANC 5B proposed that further study is needed to evaluate alley traffic which exists in the 1000 and 1200 blocks between Varnum and Taylor Streets, N.E., west of Michigan Avenue and east of the CSX/Metro tracks, and changes need to be made to these alleys to control rush hour traffic. In response to the request of the Commission, DDOT submitted a report that concluded that it does not support ANC 5B's proposal to convert two-way public alleys in the 1,000 and 1,200 blocks between Varnum Street and Taylor Street, N.E. to one-way alleys due to the safety concerns that would result from increased vehicle speeds and traffic volumes in the alleys proposed to be converted to one-way operations. (Ex. 227.) The Commission agrees with the conclusions in the DDOT report.
139. Traffic Safety. Related to Opponents' and Residents' concerns with respect to traffic congestion are concerns arising out of traffic safety impacts on streets surrounding the Project: (Ex. 29, 35, 39, 50, 131, 137, 147, 157, 160, 176, 179; Tr. 3 at 231, 234, 238, 252-254, 256.)
- (a) Residents' and Opponents' Concerns and Objections. The Residents and Opponents raise concerns about traffic congestion conditions in the vicinity of the Property at present and object to the amount of traffic that the Project generates:
- *Allison Street, N.E. is too narrow, navigation works now only because the street is underparked (few park on the south side of the street), and alley access onto Allison Street, N.E. is too close to Sargent Road, N.E. which creates hazards/conflicts.* (Ex. 29 and 212; Tr. 3 at 246.) The Commission agrees that the safety and function of the 1200 block of Allison Street, N.E. immediately north of the Property is problematic today. The Applicant has proposed a suite of changes to Allison Street, and DDOT agreed that such changes will improve the design and operations of Allison Street and its intersection with 12th Street; (See FF ¶ 141(a).)
 - *Webster Street, N.E. at 13th Street, N.E. and Sargent Road, N.E. is dangerous because of grade changes and blocked sightlines already.*

Accordingly, Opponents request installation of a four-way stop and right-in and right-out only. (Ex. 39, 160, 179, 203, 212; Tr. 3 at 231.) The Commission agrees that this intersection is a concerning one. However, the Commission finds itself in agreement with DDOT that a four-way stop signal at this location is inappropriate. The Commission is therefore inclined to agree with the Applicant that alternative calming measures that it proposes are appropriate; (See Ex. 206 at 5.)

- *The new Webster Street, N.E. intersections at 12th Street, N.E. and 13th Street, N.E. would both experience problems.* (Ex. 29 and 160; Tr. 3 at 238.) The Commission tends to agree that the new intersections are concerning. However, the Commission finds that the Applicant has proposed configurations and improvements at both intersections that address traffic safety concerns; (See FF ¶ 141(b)-(c).)
- *The proposed installation of parking and/or bicycle lanes on 12th Street, N.E. creates hazardous conditions in light of the Hospital and impaired visibility from the existing street trees.* (Ex. 29, 203.) The Commission notes that the Applicant withdrew its proposal to install parking on the east side of 12th Street, N.E. The Commission finds that new bicycle lanes on this street and the associated reduction in the travel way have a modest calming effect and provide ancillary safety benefits to cyclists; (Ex. 15 at 5.)
- *Numerous crashes, sideswipes, and the like have occurred in the neighborhood, particularly along Allison Street, N.E.* (Ex. 29, 50, 157; Tr. 3 at 254, 256.) The Commission acknowledges the Opponents' concerns regarding traffic safety but finds that this neighborhood is hardly alone or unique regarding traffic safety concerns such as sideswipes and rear end collisions. The Commission has examined the Applicant's documentation of crash data and finds no further mitigation is necessary on account of the Project's expected traffic impacts; (Ex. 22.)
- *Use of alleys to avoid traffic is common in the neighborhood, and the Project's dead-end alleys are problematic in this regard.* (Ex. 35, 131, 176.) The Commission finds that existing congestion conditions in the vicinity of the Project result in drivers using neighborhood alleys as shortcuts when streets are congested. This practice creates conflicts with residents, pedestrians, and children who use the alleys otherwise. The Commission finds in the CTR that the transportation effects of the Project are unlikely to result in an increase of this practice. (Ex. 22.) The Commission notes that the Project's signage can ameliorate this concern with respect to the Project's alleys, none of which are accessible directly from public streets; and

- *Commuter speeds on streets around the Property are too high and are particularly concerning because children live and play in the neighborhood.* (Ex. 131, 176; Tr. 3 at 234.) The Commission agrees that high rates of travel are generally inappropriate for the streets surrounding the Property. The Commission finds that the Applicant has inventoried surrounding sidewalks and determined all are largely suitable for pedestrian travel with upgrades that the Applicant proposes to complete. (Ex. 22.) The Applicant is also committing to improving certain crosswalks surrounding the Project. (Ex. 190A, 206.) The Applicant is similarly proposing traffic calming measures to reduce speeds on 12th Street, N.E. and 13th Street, N.E. (Ex. 206, 211A.) Finally, the Applicant is proposing the Playground as an activity center for neighborhood children. Accordingly, this affords many such children a place to play that is enclosed by fence;
- (b) The Project's Traffic Safety Improvements. As discussed below, the Commission finds that the Project includes appropriate measures aimed at improving traffic safety in the vicinity of the Property. (*See* FF ¶ 141.)
140. Traffic Impacts with respect to the Hospital. Several Opponents as well as the Residents raised concerns about emergency vehicle access to the adjacent Hospital as well as adverse interactions between the Hospital and surrounding streets: (Ex. 39, 57, 131, 142, 147, 157, 203, 212; Tr. 3 at 231, 254.)
- (a) The Project's traffic and background traffic conditions along with the revisions to 12th Street, N.E. combine to interfere with Hospital operations and emergency vehicle access. (Ex. 57, 142, 203, 212; Tr. 3 at 231, 238, 252-254, 256.) The Commission raised its concerns with respect to the interactions between the Project's new intersections and the Hospital. The Commission finds, however, that the Hospital and FEMS have provided written assurances that the Project does not interfere with Hospital operations and access. (Ex. 206 at 4; Ex. 213.) The Commission adopts the view of the Hospital and FEMS. The Residents' allege that the Hospital intends to expand its operations but cite no evidence for this assertion. (Ex. 212 at 14.) The Commission notes that a letter from the Hospital is in the record, and such letter is silent with respect to any possible expansion. (Ex. 206 at 4.) If the Hospital were concerned that its expansion would be adversely affected by the Project, as the Residents assert, it had ample opportunity to have its concerns be heard. It did not do so; (*Id.*)
- (b) *The intersection of 12th Street, N.E. and Allison Street, N.E. currently operates at an LOS of "F".* (Ex. 131, 147.) The Commission finds that the above-cited intersection operates at a failing LOS. However, the Commission notes that such condition exists without the Project, and that the CTR concludes that the Project will not exacerbate such condition; (Ex. 22 at 19-22.)

- (c) *Ambulances will use the extension of Webster Street, N.E. as a route to Hospital resulting in noise and speeding impacts along that street more generally. (Ex. 176.) Accordingly, Webster Street, N.E. should be one way eastbound (i.e., away from the Hospital) through the Property. (Ex. 12.)* The Commission finds that the Applicant reviewed this configuration and rejected it upon reviewing a number of responses from the community. DDOT concurs with the Applicant. (Ex. 37.) Accordingly, the Commission defers to DDOT; and
- (d) *The CTR does not address shift changes at the Hospital. (Ex. 157.)* The Commission notes that DDOT has reviewed and concurred with the scope of the Applicant's CTR. (Ex. 22, 37.) The CTR includes as part of its background analysis conditions that include such shift changes. Given that the Hospital and FEMS have reviewed the Project and commented on its impacts with respect to the Hospital, the Commission is not concerned that the CTR does not include a particularized study of the Hospital traffic dynamics following shift changes.
141. Applicant's Response. As part of the Project, the Applicant proposes to undertake traffic calming and other measures to improve conditions in the vicinity of the Project:
- (a) Allison Street, N.E. In response to concerns raised by the Commission and Opponents, the Applicant proposes improvements to the existing and expected traffic flow along the 1200 block of Allison Street, N.E.:
- Existing Conditions. Allison Street, N.E. has only 30 feet of roadway width with parking on both sides of the street, which is a not uncommon configuration for local streets in the District. (Ex. 211 at 2-3.) Two cars traveling in opposite directions are able pass one another in this street section, but must slow down to do so. The relatively narrow configuration makes the street an inherently traffic-calmed configuration. (*Id.*) Allison Street, N.E., at the intersection of 12th Street, N.E., is off-set relative to the entrance/exit to the Hospital and the alley immediately to the north of the Hospital entrance/exit. This configuration results in an awkward five-legged intersection and would not be approved by DDOT today. The path of travel for eastbound traffic exiting the hospital is directed at the parking lane on the south side of Allison Street, N.E. due to the undesirable intersection geometry. (*Id.*) These parking spaces are in conflict with this eastbound traffic movement. Cars often illegally park on Allison Street, N.E. particularly on the south side of Allison Street, right up to the intersection with 12th Street, N.E., exacerbating the problematic eastbound condition; (*Id.*)
 - Proposed Modifications. The Applicant proposes to: (i) Remove three parking spaces on the south side of Allison Street, N.E. adjacent to the intersection with 12th Street, N.E. in order to allow for improved two-way flow of traffic at this intersection so that eastbound traffic exiting the Hospital may use this portion of the roadway to move through the

intersection without conflict with the westbound traffic, and remove two additional parking spaces on the south side of Allison Street, N.E. for access to the new private street; (ii) Remove one parking space on the north side of Allison Street, N.E. adjacent to the intersection with 12th Street, N.E. to further improve two-way traffic flow; (iii) Install lane transition markings across the intersection of 12th and Allison Streets, N.E. in order to define more clearly the east-west traffic pattern through such intersection; and (iv) Enhance and upgrade high-visibility crosswalks, curb extensions, and curb ramps at the 12th and Allison Street, N.E. intersection, and new stop bar and centerline striping in order to make the intersection safer for pedestrian and vehicular traffic (collectively, the “Allison Street Improvements”). (*Id.*) These enhancements also help users better understand how the intersection operates;

- Loss of Parking. The Applicant’s transportation engineer has concluded that these modifications will result in improved traffic operations along the 1200 block of Allison Street, NE. (*Id.*) The operational improvements result in a loss of six on-street parking spaces, but 18 parking spaces remain on this block of Allison Street, N.E. There are six homes on the north side of the block that front Allison Street, N.E. today; (*Id.*)
 - DDOT Support for Proposed Mitigations. In the DDOT Supplemental Report, DDOT noted that it was in agreement with the Applicant’s proposed traffic enhancements and that the proposed enhancements will “improve the design and operations of Allison Street and its intersection with 12th Street.”; and (Ex. 218 at 1.)
 - In light of these proposed modifications and measures on the 1200 block of Allison Street, N.E., and DDOT’s agreement and support for such modifications, the Commission finds that the Project’s transportation impacts related to Allison Street are not unacceptable and are capable of being mitigated;
- (b) Webster Street, N.E. In the course of the Applicant’s community outreach, residents living on Webster Street, N.E. east of the Property raised concerns about traffic cutting through the extension of Webster Street, N.E. to the hospital. (Ex. 15 at 5.) As a result, the Applicant initially proposed that the extension of Webster Street, N.E. from 12th Street, N.E. to 13th Street, N.E. be one way eastbound to deflect additional hospital-bound auto traffic. (*Id.*) After submitting the Application and hearing from a broader cross section of the community and from ANC 5A, the Applicant ultimately proposed that the extension of Webster Street, N.E. accommodate two-way travel with a right-in and right-out intersection at Webster Street, N.E. and 12th Street, N.E. The general consensus of the greater community has been that all streets in the neighborhood should share in the traffic burden equally and that Webster Street, N.E. should not be treated differently from a traffic flow perspective. In coordination with this change, the Applicant

proposes traffic calming measures along the Webster Street, N.E. extension in order to reduce the speed of traffic using Webster Street, N.E. for through-travel; (*Id.*)

- (c) 12th Street, N.E. The Applicant has offered to stripe bike lanes along 12th Street, N.E. in order to take advantage of the atypically wide travel lanes along 12th Street, N.E. in this area and to advance an express public policy objective of the District's MoveDC plan.¹⁸ The Applicant's study of the addition of bike lanes suggests there would be no adverse effect on the operation of hospital related traffic. At the same time, such an addition of bike lanes would improve the bike safety infrastructure in the area; (*Id.*)
 - (d) TDM Measures. The Applicant proposes a number of TDM measures to encourage non-vehicular modes of travel. In addition, the Applicant proposes to construct a Capital Bikeshare station as a public benefit. Such station should also have TDM-like mitigation effects; and
 - (e) The Applicant proposes additional transportation measures as Public Benefits.
142. The Commission finds that the record is complete with respect to traffic congestion (including congestion of the alleys in the immediate area), traffic safety, and Hospital-related traffic issues. The Commission agrees that traffic congestion and safety concerns exist on the streets in the vicinity of the Project. The Commission finds, however, that the Project is unlikely to materially adversely affect such conditions. (*See* Ex. 22, 37.) However, the Applicant does propose traffic calming and TDM measures to reduce any minor impact that the Project may have on traffic issues, particularly with regard to Allison Street. (*See, e.g.,* Ex. 211A.) The Commission finds that these measures are commendable and capable of mitigating any impacts that the Project might have. The Commission relies on DDOT's Supplemental Report supporting the Applicant's proposed mitigations on the 1200 block of Allison Street and DDOT's conclusions regarding impacts on alley use in the immediate area. The Commission appreciates hearing directly from the Hospital and FEMS on concerns about the Project's potential impact on Hospital access and operations. The Commission finds that the Project does not have any unacceptable impacts with respect to the Hospital.

X. Development Incentives: Map Amendment, Zoning Relief, and Flexibility

143. 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 as a development incentive. (X § 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; however, where such relief is

¹⁸ The MoveDC plan recommends bike lanes along the stretch of 12th Street, N.E. adjacent to the Property. (Ex. 211.)

available only by special exception ordinarily, the Commission must determine that the relief request satisfies that standard for relief. (*Id.* § 303.13.¹⁹) A Zoning Map amendment is a type of development incentive and accordingly is addressed here. (*Id.* § 303.12.)

144. As part of the Application, the Applicant requested the Commission grant the following development incentives: the Map Amendment; approval of the clerical and religious group residence use at the Seminary (“Seminary Use”); approval of residential use in the RA-1 zone (“Townhouse Use”); approval of multiple structures on a single record lot and related dimensional relief (“Lot Relief”); special exception relief for penthouse use (“Penthouse Use”); and special exception relief from the penthouse setback requirements (“Setback Relief” and collectively, the “Development Incentives”). (Ex. 209 at B-1.) These items are addressed in turn below.

Map Amendment

145. The Property is currently in the R-2 zone, and the Application seeks the Map Amendment to change the designation for the Property from the R-2 zone to the RA-1 zone to accommodate the proposed Project. The following factors bear on this Map Amendment request:
- (a) The adjacent Providence Hospital and several surrounding blocks that include institutional uses are all within the RA-1 zone;
 - (b) Residential blocks to the north and south of the Property are generally all within the R-2 zone. The two blocks immediately east of the Property are also within the R-2 zone;
 - (c) The existing triplex homes and many of the duplexes immediately adjacent to the Property would not be permitted as a matter-of-right in the existing R-2 zone;
 - (d) The Map Amendment enables the Applicant to cluster the Project’s townhouses closer together on the northern half of the Property, thereby preserving significant open space, which the Applicant proposes to dedicate for public use; and
 - (e) The Project generally does not exceed the height or overall lot occupancy currently allowed under the existing R-2 zone designation.
146. The Map Amendment is not inconsistent with the Comprehensive Plan. The Commission makes findings in the Core Issues section of this Order regarding the Application’s consistency with the Comprehensive Plan. Those findings, as well as relevant findings below are incorporated here by reference.

¹⁹ X § 303.13 provides in relevant part that “[a]s part of any PUD, the applicant may request approval of any relief for which special exception approval is required. The Zoning Commission shall apply the special exception standards applicable to that relief, unless the applicant requests flexibility from those standards.”

147. The Commission further finds that the Map Amendment request is appropriate given: the existing institutional high intensity land use to the west; the presence of an RA-1 zone on the block immediately adjacent to the Property; the Property's designation under the Comprehensive Plan's Future Land Use Map as "Institutional"; the Property's proximity to transit; the area of the Property (which facilitates the ability to cluster density and preserve open space); the proposed height of the townhouses (which are generally approximately 34 to 40 feet tall and never more than 42 feet), the FAR of the Project (0.95), when accounting for the approximately 103,750 square feet of gross floor area of the existing Seminary building and when removing 49,038 square feet of newly created streets from the lot area. The character and intensity of use of the existing residential community in the immediate area weighs somewhat against the Applicant's request. On balance, however, the Commission finds that the weight of the factors supporting the Map Amendment, and in particular, the Map Amendment's lack of inconsistency with the Comprehensive Plan, justify granting the Map Amendment.

Seminary Use

148. The Josephites propose no changes to the current use of the Property as part of the Project. However, out of an abundance of caution the Applicant seeks special exception relief under Subtitle U § 420.1(a) of the Zoning Regulations to authorize use of the Seminary for "clerical and religious group residences in excess of fifteen (15) persons" in the RA-1 zone. (Ex. 2.) The Commission finds that the Applicant's request for special exception Seminary Use satisfies the relevant criteria for the following reasons:
- (a) Standard of Review for Seminary Use. In reviewing a request for special exception relief for Seminary Use, this Commission must determine that the requested special exception is (i) in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and (ii) does not tend to affect adversely the use of neighboring property; (X § 901.2 ("Special Exception Standard").)
 - (b) Harmony. The Seminary Use is in harmony with the general purposes and intent of the Zoning Regulations and Zoning Map. 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 ("11-A") § 101.1 ("Zoning Purposes").) The Seminary Use is in harmony with the Zoning Purposes because such Use promotes teaching, learning, service, and religious institutional uses that generally advance the public health, safety, morals, convenience, order, prosperity, and general welfare. (*See* Ex. 2, 209.) The Seminary Use on the Property is in harmony with orderly and healthy promotion of adequate light and

air, prevention of undue crowding, and use of land that creates favorable conditions for educational and cultural opportunities; and

- (c) No Adverse Effects. The Commission finds that the proof that the proposed Seminary Use will not tend to affect adversely the use of neighboring property is in the many years of harmony that the Josephites have co-existed with nearby residential and other institutional uses. (Ex. 2.) The Seminary has adequate parking given its intensity of use and its overall needs. It moreover provides open space amenities, community services, historic architecture, and institutional stability to the neighborhood, all in a manner that tend to benefit rather than affect adversely the neighboring residential uses. (*Id.*)

Townhouse Use

149. Under Subtitle U § 421.1 of the Zoning Regulations, in the RA-1 zone all new residential developments, except those made exclusively of one-family detached and semi-detached dwellings, must obtain Townhouse Use special exception relief. The Commission finds that the Applicant's request for special exception Townhouse Use satisfies the relevant criteria for the following reasons:

- (a) Standard of Review for Townhouse Use. In reviewing a request for special exception relief for Townhouse Use this Commission must determine that the requested relief satisfies the Special Exception Standard; (11-U DCMR § 421.1.)
- (b) Harmony. The Townhouse Use, a single-family residential use, is in harmony with the Zoning Purposes. The Townhouse Use promotes, in particular, the public order because it includes single-family residential uses compatible with those on the neighboring residential blocks. It is also generally consistent with the height, density, and dimensional aspects of the Zoning Regulations, requiring only modest flexibility to shift density across the entire project site and to obtain minor relief for rear and side yards and for roof structures; and (*See also* FF ¶ 150.)
- (c) No Adverse Effects. The new Townhouse Use, a single-family residential use, does not tend to affect adversely the use of neighboring property, which is either residential itself or a more intensive institutional use (*e.g.*, the Hospital). As set forth more fully below, the Project's Townhouse Use tends not to have adverse effects. (*See* FF ¶¶ 179-190.)

Multiple Structures on a Single Record Lot

150. Pursuant to Subtitle C § 305.1 of the Zoning Regulations, multiple buildings are permitted on a single record lot by special exception approval, provided that each building satisfies certain applicable zoning development standards. Where each building does not satisfy the applicable zoning development standards outside of the PUD context, variance relief is ordinarily required. Under a PUD, relief from such development standards may be granted at the Commission's discretion. (X § 303.11.) The Applicant therefore seeks Commission approval for multiple structures on a single record lot and

relief from § 305. Because the Project does not comply with the applicable development standards, the Applicant seeks Lot Relief from the theoretical lot provisions with respect to the rear yards, side yards, and, to the extent applicable, lot occupancy for certain of the individual townhouses. Twenty-six of the theoretical townhouse lots require side yard relief and 73 require rear yard relief. (Ex. 228B.) All would require theoretical lot occupancy relief. (*Id.*) The Property as a whole complies with the applicable yard and lot occupancy requirements. (*Id.*) The Commission exercises its discretion to grant such Lot Relief for the following reasons:

- (a) Standard of Review for Lot Relief. The Commission notes that the Applicant initially requested this relief and set forth the application of the variance standard to such request for ease of review and out of an abundance of caution. (Ex. 2 at 59-64; 209 at 7.) The Commission finds that the Zoning Regulations do not require that the Commission find that Lot Relief requested satisfy the variance standard. (*See* X § 303.1, 303.11.²⁰) Rather, in the context of a PUD, this Commission is authorized to grant such relief at its discretion.²¹ The Commission ultimately finds that the Applicant nonetheless satisfies the variance standard for the requested Lot Relief and issues findings with respect thereto in support of this overall justification for the exercise of such Commission discretion;
- (b) Lot-by-Lot Analysis. The Residents encourage this Commission to review the Applicant's request for Lot Relief on a lot-by-lot basis for each theoretical lot requiring such relief. (Ex. 212.) The Commission disagrees. The lot for which the Lot Relief is requested is the Property. For the Property to be eligible for theoretical subdivision under Subtitle C § 305, each theoretical lot would need to comply with the development standards of the underlying zone, which in this instance is the RA-1 zone. However, the Project does not comply with, and the Applicant seeks relief from, Subtitle C § 305. The Applicant is not seeking relief directly from the development standards of the RA-1 zone under Subtitle F. Thus, the relevant scope of review for the Lot Relief is whether the Property overall (rather than the individual townhouse lots individually) satisfies the Commission's requirements for the requested relief;
- (c) Open Space Benefits. The Applicant's primary justification for the requested Lot Relief is to allow the aggregation of open space across the Property to allow for more meaningful communal and publicly accessible open space in lieu of smaller individual side and rear yards. (Ex. 209.) The Commission finds that this rationale is more than adequate to grant the requested relief in light of the Commission's balancing obligations under a PUD;

²⁰ Note, however, that the Commission must apply the special exception standard where such relief is requested under X § 303.13 and must apply the variance standard to relief from the applicable height and density requirements of the Zoning Regulations, neither of which are relevant to the relief sought in the instant case.

²¹ Such exercise of discretion is not standard-less. Rather, it goes to the heart of the PUD analysis that the Commission must perform. The development incentives requested by the Applicant must be balanced against the public benefits provided. (*See* FF ¶¶ 149-152.)

- (d) Exceptional Conditions. The Commission also finds that the Property is affected by an exceptional situation or condition arising from a confluence of factors uniquely related to the Property and not the neighborhood generally. First, the Property contains an existing historic building and surrounding lawn that are together to be identified as a historic landmark and to be preserved indefinitely. Second, the Property is an unusually large lot for the neighborhood. Whereas the vast majority of the lots put to residential use in the surrounding area contain only one single-family house on a lot of 5,000 square feet or less (often much less), the Property is larger than eight acres—larger than a typical lot by a factor of nearly 75. Third, the Property’s unusual size makes it somewhat out of alignment with the surrounding street grid, and as a result the Property is effectively multiple blocks in size. Fourth and finally, the Property is uniquely well-suited to provide meaningful public open space to the surrounding community. Taken together, these conditions make the Property exceptional relative to other properties in the neighborhood generally; (Ex. 2 at 59-64.)
- (e) Practical Difficulty. The strict application of the yard and lot coverage requirements of the Zoning Regulations would result in a practical difficulty for the Project. The Property’s unique characteristics make it practically difficult for the Project to comply with the side yard, rear yard, and lot coverage requirements of the Zoning Regulations in light of the open space preservation objectives of the Comprehensive Plan. The Property’s unusual size and configuration relative to the street grid necessitates breaking it down into smaller theoretical lots for individual homes. In addition, the presence of a historic structure and the related grounds on the Property requires thoughtful design to ensure the surrounding development is compatible with the historic resource. Finally, the Project’s unique ability to provide shared open space for the existing surrounding community necessitates clustering new development in order to optimize the space that remains for public use. As a result of these factors, it would be practically difficult for each theoretical lot of the Project to comply with each of the technical requirements of the Zoning Regulations; (*Id.*)
- (f) No Detriment. Finally, the requested relief from the strict application of the yard, lot occupancy, and rooftop requirements can be granted without substantial detriment to the public good and without impairing the intent, purpose, and integrity of the zone plan. The Project has been master-planned to minimize adverse effects on neighbors and to ensure high quality design and overall consistency with the Comprehensive Plan and Zoning Regulations. The requested Lot Relief is generally all internal to the Project site and will have minimal, if any, detrimental impact on surrounding areas; and (*See also* FF ¶¶ 155(e) (finding the Project does not circumvent the Zoning Purposes) and 162-190 (finding no inconstancy with the Comprehensive Plan and no adverse impacts).)
- (g) FAR Relief Not Required. The Commission also agrees with the Applicant’s arguments that the theoretical subdivision requirements of the Zoning Regulations do not require that the individual theoretical lots within the subdivision comply

with the FAR requirements of the underlying zone. (Ex. 209.) More particularly, Subtitle C § 305.1 allows for a waiver of the subdivision requirements set forth in § 302.1, subject to the provisions of § 305.3. (*See* 11-C DCMR §§ 302.1 [“Where a lot is divided, the division shall be effected in a manner that will not violate the provisions of this title for yards, courts, other open space, minimum lot width, minimum lot area, floor area ratio, percentage of lot occupancy, parking spaces . . .”] and *id.* § 305.3 [“The following development standards shall apply to theoretical lots (a) Side and rear yards of a theoretical lot shall be consistent with the requirements of the zone; . . .”] but there is no reference to the consistency of individual theoretical lots to the overall FAR of the applicable zone].) The waiver contemplated under § 305 authorizes FAR to be determined on the basis of the entire (i.e., non-theoretical lot).

Penthouse Use

151. Under Subtitle C § 1500.4 of the Zoning Regulations Penthouse Use special exception relief is required for any penthouse on the roof of a rowhouse, provided such penthouse does not exceed 10 feet and contain more than one story, and provided such penthouse contains only stair or elevator access to the roof and a maximum of thirty square feet of storage space ancillary to a rooftop deck. The Applicant seeks Penthouse Use special exception relief to allow the construction of optional rooftop decks on any but two of the new townhouses in the Project. (Ex. 2 at 59-64.) The Commission finds that the Applicant’s request for special exception Penthouse Use satisfies the relevant criteria for the following reasons:

- (a) Standard of Review for Penthouse Use. In reviewing a request for special exception relief for Penthouse Use this Commission must determine that the requested relief satisfies the Special Exception Standard; (11-C DCMR § 1504.1)
- (b) Harmony. The rooftop decks have been designed so as to be in harmony with the Zoning Purposes. The Commission finds the following:
 - The Penthouse Use supports residential uses only and for the purposes of providing private outdoor space for residents of the Project;
 - The penthouse structures are all located to the interior of the Property and are separated from an exterior boundary of the Property by either the front of a townhouse or a public alley;
 - The tops of the penthouse structures are below the gabling of each townhouse and generally not visible from the public right-of-way or from adjacent properties;
 - All penthouse structures are along the interior walls of adjacent townhouses and none abut an end façade and therefore do not impair provision of adequate light and air; and

- The provision of private outdoor space on the rooftop decks associated with single-family residential use prevents undue concentration of land tends to create conditions favorable to the protection of private property and recreation;
- (c) No Adverse Effects. The Project’s Penthouse Use and associated rooftop decks do not tend to affect adversely the use of neighboring property because the rooftop decks are all either confined to the interior of the Property or separated from existing houses by an existing public alley that will be widened as part of the Project. (Ex. 228B.) The use of these decks is limited to residential purposes and subject to all applicable noise laws that apply to District residential areas generally including to the use of neighboring residential properties.²² The rooftop decks are designed with a color palette that will minimize any adverse visual impacts. (Tr. 3 at 73.) The Residents’ raise visibility of their residences from the Project’s rooftop decks as a concern. (Ex. 212.) The Commission does not share that concern for the same reason it would not share a concern about visibility from windows;
- (d) Dimensional Requirements. The Penthouse Use relief is available only if the applicable penthouse: (i) does not exceed 10 feet and contain more than one story; (ii) provided such penthouse contains only stair or elevator access to the roof and; (iii) contains a maximum of 30 square feet of ancillary storage space. (11-C DCMR § 1500.4.) The Applicant has provided evidence that the Penthouse Use satisfies the relevant dimensional standards. (Ex. 2 at 59-64; 209.) The proposed penthouse heights are below ten feet and comprise no more than one story. (Ex. 228B.) The penthouses include only stair access to the rooftop and no ancillary storage space; (*Id.*; Tr. 3 at 123.)
- (e) Lot-by-Lot Analysis. The Residents encourage this Commission to review the Applicant’s request for Penthouse Use on a lot-by-lot basis for each theoretical lot requiring such relief. (Ex. 143 at 11; 212 at 13.) In this instance, and given the particular circumstance of this Application, the Commission agrees:
- Plan and Elevation Review. The Commission finds that the Applicant has submitted sufficient materials for the Commission to analyze the requested Penthouse Use relief on a lot-by-lot basis. The Commission recognizes that detailed plans and drawings for each lot are administratively unworkable, and the Commission appreciates the additional materials with respect to the Penthouse Use that the Applicant provided in its Rebuttal Memo and at the Rebuttal Hearing. (Ex. 211D; 228B.) The Commission also notes the depiction of such penthouses on various rendered views and elevations. (*Id.*) Although the Commission is not reviewing materials

²² Opponents of the Project misstate the standard of review for special exception relief as requiring an analysis of “meet[ing] the prevailing character of the surrounding area” (Ex. 204 at 2.) Prevailing character is not relevant to the special exception inquiry.

equivalent to the aggregate of what might be filed if each townhouse lot were to submit for Penthouse Use special exception review individually, the Commission has beyond sufficient information to conduct its review the required for the Penthouse Use of each townhouse under the Special Exception Standard;

- Units 70 and 73. Consistent with its lot-by-lot review of the proposed Penthouse Use, the Commission finds, and the Applicant conceded, that the Penthouse Use is inappropriate for Units 70 and 73, the two end townhouses that frame the rear of the Seminary. (Ex. 15.) This finding is grounded in the importance of the view of the historic Seminary building, and particularly the cupola, from the public realm adjacent to such townhouses. Accordingly, Penthouse Use is not appropriate with respect to such townhouses;
- Setbacks from End Unit Side Façades. The Commission notes approvingly the placement of the penthouse structures at interior walls of the townhouses rather than along any end façade. (*See* Ex. 211D.) The Commission has scrutinized the Project's site plan for locations where such interior placement is inappropriate under the Special Exception Standard and finds none;
- Units 32, 38, 44, 50, 51, 55, and 60. The Commission has also scrutinized carefully the Penthouse Use for the seven townhouses abutting the six existing houses on the same block as the Property. The Commission finds that the design, orientation, and distance from such townhouses to the existing houses appropriately attenuates any adverse effects. For instance, none of the possible rooftop decks would face directly any of the existing houses;
- Units 61-80. The Commission has also scrutinized the Penthouse Use for the townhouses closest to the Seminary. The Commission finds that such Use does not adversely affect views to or the historic significance of the Seminary, except with respect to Units 70 and 73, as described above;
- Units 1, 26-32, 56-60. The Commission also carefully reviewed the Penthouse Use on those townhouses opposite existing residences on Allison Street, N.E., and Sargent Road, N.E. The Commission finds that such use does not tend to have adverse effects with respect to the use of such residences because the rooftop decks are not visible from such residences and all noises emanating therefrom is subject to appropriate controls;
- Remaining Units. For those townhouse Units not expressly identified above, the Commission finds that the Penthouse Use satisfies the Special

Exception Standard because such Units' Penthouse Use would be entirely interior to the Property; and

- Time Restrictions. The Residents advocate time restrictions on the use of the rooftop decks. (Ex. 143 at 11.) The Commission finds such suggestion to be unnecessary in light of the proposed residential use, the design factors that address any possible adverse effects, and the existence of other controlling regimes such as the District noise codes, which would apply evenly to the Project and other residences in the neighborhood.

Penthouse Setback

152. The Applicant also requested the Setback Relief from the penthouse setback requirements of Subtitle C §1502.1 for the rooftop stairway enclosure leading to the optional rooftop decks of the individual townhouses. (Ex. 30D.) The Setback Relief would allow a portion of any penthouse staircase for the individual townhouses to project into the required setbacks from the side and rear walls of the individual buildings. (*Id.*) The Commission finds that the Applicant's request for special exception Setback Relief satisfies the relevant criteria for the following reasons:

- (a) Standard of Review for Setback Relief. The Commission may grant the Applicant's request for a special exception for Setback Relief pursuant to Subtitle C § 1504.1 and the Special Exception Standards. In considering the request for special exception Setback Relief, the Commission may consider, among other factors, whether (i) the strict application of the requirements of Subtitle C, Chapter 15 would result in construction that is unduly restrictive, prohibitively costly, or unreasonable, or is inconsistent with building codes; (ii) operating difficulties such as meeting D.C. Construction Code, Title 12 DCMR requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors; size of building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable; (iii) every effort has been made for the housing for mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks; and (iv) the intent and purpose of Subtitle C, Chapter 15 shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely. In addition to the above considerations to be assessed in weighing this request, the Commission must also determine that the requested Setback Relief satisfies the Special Exception Standards;
- (b) Undue Restrictions. With respect to the Setback Relief from side walls of the townhouses, the penthouse setback requirements are unduly restrictive, and there is no way to construct a rooftop stairway enclosure that satisfies the side setback requirements. Subtitle C § 1501.1(c)(1)(A) requires that on a rowhouse any penthouse (including rooftop stairway enclosures) must be set back from the edge of the side building wall of the roof at a distance equal to the height of such

penthouse. The proposed penthouse has a height of nine feet, but is proposed to be flush against one of the two side walls with no setback from such side wall. (Ex. 228B.) There is no reasonable way for the penthouse enclosure to comply with the side wall setback requirement because the individual rowhouses are only either 16 or 20 feet wide. (Ex. 30D, 209.) The stairway enclosure must be at least nine feet from the top of the roof in order to provide a satisfactory opening (the nine-foot height includes a 16- inch plenum). (*Id.*) Given the height requirements of the stairway enclosure, the 16-foot-wide townhouses could not provide a compliant nine-foot high penthouse stairway enclosure even if the enclosure was placed in the center of the roof deck because a nine-foot setback from one side wall would encroach into the setback requirement for the opposite side wall. (*Id.*) The 20-foot-wide townhouses could provide a two-foot-wide stairway enclosure at the center of the roof deck, but this is an unreasonable restriction and creates building code complications. In any event, locating the stairway enclosure in the center of the roof deck is an inferior outcome from both a design and usability perspective; (*Id.*)

With respect to the Setback Relief from rear walls of the townhouses, every effort has been made to comply with the setback requirements, but the penthouse encroaches approximately three feet into the required setback. Section 1501.1(b) requires that any penthouse (including rooftop stairway enclosures) must be set back from the edge of the rear building wall of the roof at a distance equal to the height of such penthouse. As noted above, the height of the penthouse is nine feet to satisfy the opening requirements. (Ex. 30D.) Redesigning the stairway creates operating difficulties and inefficiencies in the interior of the townhouses. (*Id.*) The overall amount of relief required from the rear setback requirement is relatively minor and appears to be even less so from the ground because the roof overhangs the rear wall by 10 inches; (Ex. 211.)

(c) Other Factors. Other factors weigh in favor of granting the requested relief:

- The penthouse stairway enclosures appear in elevation to be no different than the dormers proposed for certain rowhouses for which no relief is required;
- The pitched roof design of the rowhouse completely shields the penthouse from view from the front of the rowhouse so that there are no adverse light and air impacts on abutters outside the Project;
- The enclosures use high-quality materials and design, consistent with the overall materials palette for the Project;
- The roof decks are optional (at the election of the initial purchaser), so only a subset of the townhouses require the requested relief;

- The two townhouses framing the important view to the Seminary building are restricted from having roof decks and therefore do not require Setback Relief; and
 - The requested relief accommodates private open space for the individual townhouses; (Ex. 30D, 209, 211.)
- (d) No Impairment of Regulatory Purposes. In addition, neither the side nor rear setback relief materially impairs the intent and purpose of the penthouse regulations. The side wall setback is generally consistent with the objectives of the penthouse setback requirements because the penthouse enclosures will be located only along “interior” side walls of the townhouses. Considering the blocks of townhouses as a single unit from a design perspective, the penthouses satisfy the policy objectives of the penthouse requirements by being set back from the side wall of the block at a distance exceeding the height of the penthouse. The rear wall setbacks do not materially impair the intent and purpose of the regulations because the relief is so minor in absolute terms; (Ex. 30D.)
- (e) Harmony. The requested Setback Relief is also in harmony with the Zoning Purposes. As noted above, the side wall setback is generally consistent with the objectives of the penthouse setback considering the blocks of townhouses as a single unit. The rear wall setback does not materially impair the intent and purpose of the regulations because the relief is so minor in absolute terms. (Ex. 30D.) Neither the side nor rear setback relief adversely affects the light and air of adjacent buildings given the dimensions of the enclosures relative to the overall design of the roof and projections such as dormers that are evident elsewhere on the individual rowhouses;
- (f) No Adverse Impacts on Abutters. Finally, neither the side nor rear setback relief adversely affects the light and air of adjacent buildings. The top of the penthouse enclosure is below the top of the peak of the roof. Likewise, from the side, the penthouse enclosure is no more intrusive than a dormer; and (Ex. 30D, 209.)
- (g) Lot-by-Lot Analysis. The lot-by-lot findings set forth above with respect to the Penthouse Use are incorporated by reference and restated here. (FF ¶ 151(e).)
153. The Commission finds that, overall, the Project conforms to the Zoning Regulations, except for the few items of articulated relief set forth in the immediately foregoing paragraphs. Where the Project requires zoning relief, the Commission finds that such relief is either minimal in nature or reasonable in light of the proposed uses and otherwise does not derogate or impair, but rather is in accordance with, the Zoning Purposes.
154. 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 single-family residential uses and protected open spaces, and promotes land uses that create favorable conditions with respect to recreation, culture, and transportation. The Project is

also generally consistent with the height, density, and dimensional aspects of the Zoning Regulations, requiring only modest flexibility to shift density across the Property and to obtain minor relief for rear and side yards and for roof structures. For the reasons set forth above, the Commission grants the requested Development Incentives.

XI. PUD Requirements

155. 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”): (X §§ 300.1, 300.2, 300.5.)

(a) For the following reasons, the Project is superior to the development of the Property under the matter-of-right standards:

- Open Space Preservation. A matter-of-right development of the Property under the R-2 zone would not have enjoyed the mechanism or the incentive to cluster development in the manner proposed by the Project. (See 11-D DCMR § 302.1.) It is likely that much or all of the Property’s open space would have been lost under a matter-of-right development;
- Overall Number of Townhouses. The Project includes a greater number of three- and four-bedroom townhouses than would have been feasible under a matter-of-right development, given the Seminary preservation goals;
- Overall Number and Level of Affordability of Townhouses. The Project includes a greater number of IZ townhouses than would have been feasible under a matter-of-right development. Moreover, more than half of the Project’s IZ townhouses are, as a Public Benefit, reserved at a deeper level of affordability than would be required for a matter-of-right project;
- Preservation of Seminary. The Project preserves the Seminary and allows the Josephites to continue their mission in the historic building that they have called home for nearly a century. The Josephites might have made a different election under a matter-of-right project;
- Other Public Benefits. The Project includes other Public Benefits, not discussed in this Paragraph 155(a), none of which would be required or feasible under a matter-of-right development.

- Community Engagement. A matter-of-right development would not have afforded the community as many opportunities to engage with the Applicant and provide feedback. Accordingly, the Project would not have been revised as it was in accordance with community preferences.
- (b) The Public Benefits are commendable in number and quality. The Project’s Public Benefits are enumerated above and discussed in detail below. (See FF ¶¶ 63 and 191-205.) For the reasons set forth more fully therein, the Public Benefits are of a commendable quality. There are 15 distinct categories of Public Benefits, 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. (FF ¶ 61-62, 205.)
- (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. (Ex. 2 at 33-35.) The Project includes a number of mitigation measures, notably the CMP, the Project’s Parks, and the preservation of other open space, that protect and affirmatively advance the public health. The Project also encourages walking and active mobility, measures that advance public health;
 - Safety. The Project protects and advances safety: it provides traffic calming measures that work towards reducing traffic hazards for drivers and pedestrians alike. (See FF ¶ 202.) The Project also has been designed in a manner that puts “eyes on the street” to promote public realm safety. Finally, the Project’s open spaces have been designed in consultation with MPD to ensure adequate policing of and safety in such spaces; (Tr. 3 at 104.)
 - Welfare. The Project protects and advances the public welfare by providing for housing and affordable housing and having a net positive fiscal impact; and (Ex. 208.)
 - Convenience. Finally, the Project protects and advances the public convenience by making improvements to the transportation network, adding a Capital Bikeshare station, and adding new housing townhouses in proximity to transit options and non-residential uses. (Ex. 2 at 12-14; 195.)
- (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; (See FF ¶¶ 162-178.)

- (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 § 101.1.) Findings regarding the Project's protection and advancement of the public health, safety, convenience, and welfare are provided above: (FF ¶ 155(c).)
- Morals. The Project promotes public morals. The Application was undertaken with extensive community outreach. (FF ¶¶ 61-62.) The Public Hearing process involved comments and discussion from a number of interested parties. The Commission finds that this community dialogue exemplifies the public morals as expressed through the Zoning Regulations;
 - 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 expressly contemplated as part of the PUD process; and (X §§ 300.1, 303.1.)
 - Prosperity. As noted with respect to public welfare above, the Project promotes prosperity by putting to productive use land that is currently vacant. (FF ¶ 127(c).) The Project provides prosperity to the Josephites and allows them to remain in their Seminary and continue their mission. (FF ¶ 47.) The Project also promotes public prosperity with respect to its net positive fiscal impact; and (Ex. 208.)
- (f) The Project has undergone a comprehensive public review by this 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 which now includes more than 200 total exhibits, detailed briefings from the Applicant and the Residents, reports from numerous District agencies, and dozens upon dozens of letters and other items of written testimony from Supporters and Opponents. The Commission had two evenings of presentations on the Application and had the opportunity to ask questions of the Applicant, OP, DDOT, the ANCs, Supporters, and Opponents. The Commission had the opportunity to ask questions of and request additional information from the Applicant on three occasions. In every material way, the Applicant responded satisfactorily to such requests from the Commission. The Applicant has also responded thoroughly to the District agencies (notably OP, DDOT, and UFA), the Residents, and the many Opponents. The record in this matter is unquestionably full, and the Commission has reviewed it in its entirety.

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

XII. PUD Evaluation Standards

PUD Balancing

157. As set forth in the Zoning Regulations, the Commission must evaluate and grant or deny a PUD application according to the standards of X § 304. The Applicant has the burden of proof to justify the granting of the Application according to such standards. (X § 304.2.)

158. 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).) 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. (Ex. 2, 15, 22, 30, 190A, 206, 209, 21, 228B (plus exhibits thereto).) This Commission, in its reasonable determination, accepts such filings as containing evidence adequate to support the findings contained herein.

159. Pursuant to X § 304.3, in deciding this PUD Application the Commission has, according to the specific circumstances of this 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 X § 303.12 the requested Map Amendment is a type of PUD Incentive), and (c) any potential adverse effects (collectively, the "PUD Balancing Test").

(a) The Public Benefits are numerous and of a high quality. In sum, the Project provides the numerous Public Benefits. A full accounting of the Public Benefits is provided below. (*See* FF ¶¶ 191-204.)

(b) 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 vast majority of which accommodate the Project's preservation and dedication of open space for public use. The Project's individual Development Incentives are described above. (*See* FF ¶¶ 143-154.) The Development Incentives include the Map Amendment and the Lot Relief, which together allow the Applicant to construct the Project to a higher density than it could as a matter of right. However, the Applicant utilizes none of the additional density available under the Map Amendment and none of the additional height (except for less than two additional feet of height for eight of the Project's townhouses). Rather than allowing additional height or density, the Development Incentives are primarily to accommodate the site plan's form, which minimizes side and rear yards in favor of clustered open space. Because the individual townhouses within the Project generally lack such private yard space, the Project includes special exception

relief to allow the penthouse rooftop decks (i.e., the Penthouse Use), which require the Setback Relief. Thus, the Map Amendment, Townhouse Use, Lot Relief, Penthouse Use, and Setback Relief all go towards the layout of the Project's site plan in a manner that facilitates the Project's clustering of townhouses and associated preservation and dedication of open space for public use. The final Development Incentive, the Seminary Use, allows the Josephites to remain on the Property and in the preserved Seminary, which is yet another of the Public Benefits. Accordingly, the Development Incentives underlie and indeed make possible the Public Benefits.

(c) Any potential adverse effects of the Project are appropriately mitigated or outweighed by the Public Benefits. ANC 5B, the Residents and Opponents together list numerous potential adverse effects of the Project. (*See* FF ¶¶ 101-140.) The Applicant separately identified and studied potential adverse impacts of the Project. (*See* FF ¶¶ 179-190.) As this Commission found in response to each individual articulated concern or objection to the Project, these potential adverse effects are either capable of being mitigated or appropriate in light of the Project's many Public Benefits:

- Aesthetic, design, and community character effects. The Commission finds that the Project's architecture and site plan are highly contextual and that the Applicant has been responsive to concerns raised by the community and the Commission. In light of the Project's superior architecture, site plan, and landscaping, the Commission finds that the design, site plan, and Public Benefits offset any potential adverse aesthetic, design or character impacts;
- Traffic congestion, traffic safety, and parking effects. The Commission finds that the streets surrounding the Property currently experience congestion and traffic safety issues. However, the Applicant has provided an appropriate balance of transportation mitigation and traffic calming, TDM, and mobility-related Public Benefits to offset any potential adverse effects of the Project;
- Social, human health, safety and economic effects. The Commission finds that the positive qualities of the Public Benefits of relevance to these impacts more than outweigh any potential adverse effects. For instance, the Applicant has proffered the Tax Relief Fund to address economic impacts, has developed a commendable housing and affordable housing plan, and has agreed to work with GBBA to involve local businesses in the development of the Project. Others of these potential adverse effects are appropriately mitigated by the Project's design. For instance, the Project's "eyes on the street" design mitigates potential adverse public safety effects. Likewise, the Project's dedication of publicly-accessible open space and restoration of the tree canopy addresses possible mental health

effects from the loss of some open space. The Commission has made complete findings on each category of potential adverse effect above; and

- Effects on District infrastructure and the environment. The Project's effects on District infrastructure and the environment are appropriately balanced by the Project's comprehensive package of Public Benefits, including the preservation of open space for public use and preservation of the Seminary. The Commission finds that the Project is likely to be revenue positive from the perspective of the District; and
- (d) The Project's total number of townhouses, IZ townhouses, Project Parks, preserved open space, and Seminary preservation together outweigh the Project's potential adverse effects. The Commission returns to a familiar point in its review of the record in this proceeding: the Project provides much-needed family-sized housing (i.e., three- and four-bedroom townhouses), provides much-needed affordable family-sized housing (at levels of affordability below that required under the Zoning Regulations), preserves a notable landmark in Ward 5, and offers dedicated publicly-accessible open space currently under institutional control for perpetual public use. These items are the crux of the Project's trade-off for the reasonable additional density sought through the Application.

160. 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

161. 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 X § 304.3.)

The Project Is Not Inconsistent with the Plan

162. 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 DC Code § 1-306.01(b).) Generally, the Project advances these purposes by furthering the social and economic development of the District through the construction of new townhouses on underutilized land, dedicating significant portions of the Property to formal recreational open spaces available to residents and neighbors, offering a design that prioritizes transit and active mobility over automobiles, and improving the urban design and public space surrounding the Property. (Ex. 2 at 44-59.)

163. Comprehensive Plan Guiding Principles. The OP Final Report finds that the Project furthers six of the Comprehensive Plan’s “Guiding Principles.” (See Ex. 36 at 16 (citing 10-A §§ 217.1, 217.2, 217.3, 218.2, 218.3, 218.4 as the Guiding Principles that the Project affirmatively furthers).) The Commission gives the requisite great weight to these OP findings and incorporates them herein.
164. Future Land Use Map. The Project’s consistency with the Future Land Use Map is in part addressed in findings in the Core Issues section of this Order. (FF ¶ 127(a).) Such findings are incorporated by reference here.
165. Generalized Policy Map. The Project’s consistency with the Generalized Policy Map is addressed in the Core Issues section of this Order. (FF ¶ 127(b).) Such findings are incorporated by reference here.
166. Land Use (“LU”) Element. The Project is not inconsistent with the LU Element. The Project’s consistency with the Land Use Element is in part addressed in findings above in the Core Issues section of this Order. (FF ¶ 127(c)-(h).) Such findings are incorporated by reference here, and the Commission makes the following additional findings with respect to the specific objectives of the Land Use Element:
 - (a) Transit-Oriented Development. With regard to transit-oriented development, the Plan notes a preference for a diversity of housing types around Metrorail stations, prioritizing pedestrian connections, providing open space, and stepping down densities as distances increase from such stations. (10-A §§ 301.6, 306.4.) The Project is located less than a mile, an approximately 15-minute walk, from the Brookland/CUA Metrorail Station and along multiple bus routes. By providing IZ townhouses, the Project increases the diversity of housing types in the Greater Brookland and Michigan Park neighborhood and provides a step down in massing from the hospital site to the west of the Property to the triplexes to the north and east of the Property and to the single family and duplex homes beyond. The Project’s density steps down to the lowest development density that is appropriate within a transit walkshed; (Ex. 2 at 46-48.)
 - (b) Infill Development. The Comprehensive Plan also provides that infill development should complement the established character of its surrounding area and facilitate the reuse of vacant lots through acquisition and unique partnerships if necessary. (10-A §§ 307.5, 307.6.) The Project achieves these objectives as an

infill development that blends into the existing neighborhood and as a creative venture of a long-time institutional anchor in the neighborhood and an established developer that addresses ownership constraints on a long-vacant lot; (Ex. 2 at 47.)

- (c) Residential Neighborhood Protections. Placing an emphasis on residential neighborhoods, the Plan encourages preserving and enhancing the positive elements of identity and character, protecting the height and scale of row house neighborhoods, and discouraging multifamily development where it is inappropriate. (10-A §§ 309.5, 309.13.) The Project achieves these objectives by providing single-family townhouses that are appropriate for the surroundings. The Plan encourages parking to be designed to maintain an attractive environment and landscaping and tree-planting to be provided to improve neighborhood visual quality. The Project is consistent with these objectives by providing street parking and rear alley parking and avoiding any new surface lots. In addition, the Project proposes high-quality landscaping and tree plans that benefit the neighborhood; and (Ex. 2 at 46-48.)
- (d) Institutional Uses. Finally, the Plan recognizes the importance of religious and institutional uses as part of the District's fabric. (10-A §§ 311.7, 311.8.) The Project allows a religious institution with long roots in the community to remain in place and continue serving its mission in the District. (Ex. 2 at 46-48.)
167. Transportation Element. The Comprehensive Plan emphasizes non-vehicular transportation and creating a strong pedestrian environment. The Plan notes the importance of strengthening the linkage between land use and transportation as new development takes place and on undertaking "smart growth" solutions. (10-A §§ 403.2, 404.8, 405.3.) The Project is located near the Brookland-CUA Metrorail Station and bus lines, thereby promoting public transportation use. (Ex. 2 at 48-49.) The Project's design de-emphasizes automobile use and places a priority on pedestrian safety and connections: the Project's sidewalks are wide and attractive, curb cuts are minimized, and new buildings are oriented to the sidewalk. (See 10-A § 410.5.) The Project responds to the Plan's directive for smart growth as a regional solution. (See 10-A § 410.5.) The Project offers new housing in the District to serve those who currently live outside and commute in or who are looking to start or expand a family in the District. (Ex. 2 at 48-49.) As a result, the Project has the potential for positive impacts on the region's traffic, as encouraged by the Comprehensive Plan. Finally, as noted elsewhere, the Applicant provides a TDM that is in keeping with the Plan's objective of studying transportation effects of new development. (Ex. 81; see 10-A § 414.8.) Accordingly, the Project is not inconsistent with the Transportation Element.
168. Housing Element. The Project is consistent with the Comprehensive Plan's clear housing objectives: build more mixed-income housing to allow families to remain in or move to the District. (See *id.* §§ 501.1, 502.2.) The Comprehensive Plan focuses on increasing the District's housing supply and encouraging private sector involvement. (*Id.* § 503.2.) Moreover, the Plan prioritizes balancing growth across the District and ensuring that land is zoned appropriately to meet growing housing needs. (*Id.* § 503.2.) The Comprehensive

Plan articulates a clear need for particular types of housing: affordable, mixed-income, “family-sized,” and for sale housing are all priorities of the Comprehensive Plan. (*See id.* §§ 503.6, 504.8, 505.6, 512.4.) The Project includes 80 three- and four-bedroom townhouses at a density and in a manner consistent with the surrounding community while still providing a significant addition of new housing for families in the District. Finally, the Project achieves the Plan’s targets for the type of housing developed. The Project mixes without visual distinction affordable and market-rate for-sale townhouses in the same development and provides exclusively “family-sized” townhouses. The Project’s 10 affordable for-sale townhouses are a public benefit in a part of the District that has experienced increasing housing prices. The Project is a rare opportunity to expand the pool of townhouses for families without displacing any existing townhouses. Accordingly, the Project is not inconsistent with the Housing Element. (Ex. 2 at 50-51.)

169. Environmental Protection (“E”) Element. The Project’s consistency with the Environmental Protection Element is in part addressed in findings above in the Core Issues section of this Order. (FF ¶ 127(i).) Such findings are incorporated by reference here. The Project is not inconsistent with this Element as a whole, and the Commission makes the following additional findings. With respect to environmental protection, the Comprehensive Plan sets forth a comprehensive array of sustainability objectives. The Plan encourages street trees, tree planting, landscaping, permeable surfaces, and greenscaping for stormwater control. (*See* 10-A §§ 603.4, 603.5, 603.6, 613.2, 613.3.) The Applicant incorporates these objectives into the Project. (Ex. 2 at 51; 211 at 4-5.) Likewise, the Plan promotes low impact construction technologies, energy efficiency efforts, and “green” materials and finishes. (*Id.*) Accordingly, the Project’s townhouses have low-e glass on all windows, third-party tested duct leakage performance, third-party tested building envelope air infiltration performance, Energy Star appliances, high-efficiency HVAC equipment, and various WaterSense labelled plumbing fixtures, among other sustainable features. (*Id.*) Homes constructed with these components offer homebuyers all the amenities they want in a new home, plus sustainability-oriented improvements that deliver better performance, greater comfort, and lower utility bills. (*See* 10-A §§ 610.3, 610.5.) Finally, the Project’s designers have complied with all best management practices (e.g., erosion controls) in protecting environmental elements during construction. (Ex. 2 at 53; *see* 10-A § 605.2.)
170. Parks, Recreation, and Open Space (“PROS”) Element. The Project’s consistency with the PROS Element is in part addressed in findings above in the Core Issues section of this Order. (FF ¶ 127(j), (k).) Such findings are incorporated by reference here. The Project is not inconsistent with this Element. The PROS Element of the Comprehensive Plan includes a number of policy objectives that are applicable to private sector-led developments. The Comprehensive Plan identifies a variety of open spaces, including recreational areas embedded in the fabric of residential neighborhoods especially where there gaps between parks. (*See* 10-A §§ 804.10, 805.5.) The Project proposes a mix of open space types including the formal lawn in front of the Seminary and a pocket-park along the extended Webster Street, N.E. (Ex. 2 at 53-55.) In addition, the Project includes the Playground in a location chosen, in part, to encourage use by residents of the existing neighborhood, residents of the Project, and employees, visitors and patients of the

Hospital. (*Id.*) The PROS Element also encourages compatibility between open spaces and the adjacent uses. (*See id.* § 806.8.) The Project includes a unique opportunity to ensure the new development is compatible with the new open space and that such open space is likewise compatible with the surrounding residential and institutional uses. (Ex. 2 at 53-55.) The PROS Element notes that functional open spaces “are particularly important in neighborhoods like Brookland, where conventional parks are in short supply. There and elsewhere in the District, the grounds of seminaries, hospitals, and cemeteries are informally serving some of the functions usually associated with a neighborhood park.” (10-A § 818.1; *see also id.* § 818.3 (encouraging religious institutions such as the Seminary to make open space available for public use).) The Project implements this objective of the Plan and formalizes the cooperative recreational use of the currently fenced off and underutilized Seminary grounds.

171. Urban Design (“UD”) Element. The Project’s consistency with the UD Element is in part addressed in findings above in the Core Issues section of this Order. (FF ¶ 127(i), (l).) Such findings are incorporated by reference here. The Project is not inconsistent with the UD Element. The Urban Design Element seeks to ensure, conserve and strengthen existing neighborhoods’ visual character. (10-A §§ 910.6, 910.7, 910.12.) The Project accomplishes these objectives because its density, scale, orientation, form, and materials palette strongly relate to and complement the existing context. The Project’s street frontages are highly articulated and offer visually compelling detail for pedestrians. (Ex. 2 at 55-57.) The Project presents an opportunity to gradually step down the density from the Hospital that is to the west of the Property to the triplexes and detached houses to the east of the Property. (*Id.*) The Project, with its townhouses and the existing Seminary building, ties the adjacent densities together in a coherent fashion. (*Id.*) The Project’s townhouses have a marginally greater density than some neighboring blocks to the east and north and the existing Seminary building at the south of the Property. (*Id.*) This slightly higher density on the Project site satisfies the Comprehensive Plan’s objective of having gradual transitions in intensity. (10-A § 910.11.) As an infill development, the Project attains sufficient density to be economically viable without presenting any meaningful contrast from surrounding residential uses. (*Id.* § 910.15.) The Comprehensive Plan calls for the thoughtful reintegration of large sites into the existing city form and gives a general preference for a fine-grained street grid. (*Id.* § 911.12.) The Project is consistent with these objectives as the Property is an existing superblock that will be carved into much smaller blocks that are consistent in form and use with surrounding residential blocks. (*Id.* § 911.14.) However, the assets of the existing large block—the historic Seminary and its open space—are integrated into the program for the Project to become a community focal point. (*See id.* § 911.8.) Finally, the Project prioritizes pedestrian and transit access and de-emphasizes vehicle travel. (*See id.* § 913.12.)
172. Historic Preservation (“HP”) Element. The Project’s consistency with the HP Element is in part addressed in findings above in the Core Issues section of this Order, and such findings are incorporated by reference here. (FF ¶ 127(h), (j).) The inclusion of the historic Seminary and surrounding grounds in the Project gives it an historical component that advances objectives of the Plan. (Ex. 2 at 57-58.) Consistent with the Plan, the

Applicant and the Josephites have sought to have the Seminary formally designated as a historic structure under the District's historic preservation laws. (Ex. 2 at 57-58; *see* 10-A § 1005.6.) The new construction proposed as part of the Project is all highly compatible with the scale, context, and materials of the historic Seminary. (*See* 10-A § 1011.8.) Likewise, the Project advances the Comprehensive Plan's objective of retaining grounds around historically significant structures to preserve the integrity of the Seminary's presentation to the neighborhood. (*See id.* § 1012.7.)

173. Upper Northeast Area ("UNE") Element. The Property is located in the Upper Northeast Planning Area of the Plan. (Ex. 2 at 58.) It is not located within the boundaries of any Policy Focus Area of that Area Element. (*Id.*) The Project's consistency with the UNE Element is in part addressed in findings above in the Core Issues section of this Order, and such findings are incorporated by reference here. The Area Element's primary objectives applicable to the Project include conserving the existing residential neighborhood, ensuring new infill development is compatible with surrounding neighborhoods, protecting historic resources in the UNE area, and recognizing the opportunities afforded by institutional open spaces. (*See id.* §§ 2408.2, 2408.3, 2409.2, 2409.7.) The Project is not inconsistent with any of these objectives. The Project does not harm the residential character of Brookland and Michigan Park and provides significant amenities that enhance the surrounding residential areas. Among these enhancements is the designation of the Seminary and a significant portion of the surrounding grounds as an historic landmark, and the creation of significant community open space from the Seminary grounds. (Ex. 2 at 58-59.) Overall, the Project is the type of compatible infill development encouraged by the Area Element and the Plan as a whole. (*Id.*)
174. The Project is not within the boundaries of any Small Area Plan.
175. MoveDC. The Applicant presented evidence that certain transportation improvements of the Project are consistent with the objectives of MoveDC, DDOT's multimodal, long-range transportation plan. (Ex. 15 at 5; 22 at 5.)
176. Tree Canopy Protection Act.²³ The Residents make more than passing mention of the TCPA and its predecessors. (Ex. 143, 212.) Although such allegations are not structured in the nature of an assertion that the Project is inconsistent with such adopted public policy, the Commission hereby makes findings that this Application and the effects resulting therefrom expressly are not inconsistent with the TCPA. Broadly, the TCPA seeks to preserve the District's tree canopy as one of the District's natural resources. (*See* DC Code § 8-651.01.) However, as noted by UFA, the TCPA as applicable to the trees on the Property did not go into effect until permit applications to remove certain of such trees were filed. (Ex. 134 at 1.) The TCPA expressly contemplates such an effective date. Moreover, the Applicant has committed to restoring the canopy lost by removing such existing trees. (*See* Condition B.5 (a); Ex. 192.) The Commission therefore finds that, on

²³ Other than those specific policies of the Plan addressed herein, none of the Applicant, the Residents, the ANCs or any Opponent presented any evidence of other adopted public policies or active programs related to the Property nor any claims of inconsistency therewith, and the Commission takes no notice thereof.

the whole, the Project is not inconsistent with the TCPA even though the Project could be made more consistent with the TCPA.

177. On balance, given the numerous ways that the Project is affirmatively consistent with the Plan, and given the enormity of the magnitude of such affirmative consistency, the Commission it finds it of relatively no significance that the Project's consistency with the TCPA is such a close call.
178. 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.
179. Project Impacts. For the following reasons, the Commission finds that the Project 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.
180. Housing Impacts. This Commission finds that the Project's housing impacts are not unacceptable but are instead favorable for the surrounding neighborhoods and the District as a whole because the Project helps address a dire housing shortage. The Project delivers 80 townhouses of much-needed family-sized and affordable for-sale housing in a mixed-income development, a housing type of particular policy focus in the District. Brookland, Michigan Park and other Metro-accessible neighborhoods in the District's Northeast quadrant continue to experience seemingly insatiable demand for housing. (Ex. 2 at 26-27.) As a result, housing prices in the neighborhood have increased dramatically in recent years. (Ex. 208.) For long-time residents, the recent increase in values has been an opportunity for wealth creation, but for new working residents, young families, and those looking to settle in a mature and stable neighborhood and take advantage of the District's services and amenities, the housing price run-up can be a major obstacle to financial security. (Ex. 2 at 26-27.) The Project contributes to this much needed housing supply in an incremental and thoughtful way, offering townhouses with large bedroom counts and configurations proximate to the adjacent hospital and many Northeast DC institutions, and accessible via a short Metro or bus ride to Downtown's vast array of jobs and services. (*Id.*) The Project's contribution of fresh housing supply keeps the neighborhood feeling vibrant and active and signifies a healthy renewal and continuation of investment. Additional findings regarding the Project's impacts on housing are set forth above. (*See* FF ¶ 121(b).) The Project has an overall favorable impact on the surrounding area and the District as a whole from a housing perspective.
181. Land Use Impacts. The Commission finds that the Project's land uses create no unacceptable impacts on surrounding neighborhoods but are instead generally favorable or acceptable given the quality of the Public Benefits. The Project's proposed mix of single-family residential, institutional, and open space uses is compatible with existing land use patterns and existing zoning in the vicinity of the Property and creates no unacceptable negative impacts with respect to land use. As noted above, the areas around the Property are generally characterized by a mix of religiously-affiliated institutional campuses and attached and detached single-family residences. (Ex. 2 at 27-29.) From a

land use perspective, the Project causes no unacceptable impacts because the Project's new townhouse residential uses and the surrounding single-family residential uses are entirely compatible. In addition, the intensity of the Project's proposed uses is comparable to existing surrounding uses. There is no proposed change to the intensity of the existing Seminary use, which is already a considerably lower-intensity use relative to the adjacent Hospital. (*Id.*) From a zoning perspective, the PUD is consistent with surrounding areas. As noted above, the Property would be remapped to the RA-1 zone, which is the current designation immediately west of the Property. The proposed zoning allows single-family attached housing and religious institution uses. The areas to the north, east and south are in the R-2 zone, which generally allows detached and semi-detached single-family residential uses. (*Id.*) The proposed relationship between the proposed RA-1 zone designation of the Property and the surrounding R-2 zones is not uncommon in northeast DC, and there are multiple existing examples of the two zones co-existing. (Ex. 2G at 1.) For instance, the Hospital immediately adjacent to the Property is in the RA-1 zone and is bordered on three sides by the R-2 zone. (*Id.*) Elsewhere, RA-1 zone residential uses co-exist immediately adjacent to lower-density R-2 zone residential uses along Buchanan Street, N.E. (between 6th and 7th Streets, N.E.) and along 10th Street, N.E. between Taylor and Shepherd Streets, N.E. (*Id.*) The 10th Street, N.E. example is particularly enlightening because the residences in the RA-1 zone there are configured as rowhouses at approximately the same density as proposed in the Project, and the immediately neighboring residences in the adjacent R-2 zone are all detached residences. (Tr. 3 at 39-40; Ex. 190A at 35.) Again, at that location the mix of single-family residential uses co-exist side-by-side. Accordingly, the overall land use impacts of the Project are not unacceptable and are either entirely favorable or acceptable given the quality of the Public Benefits.

182. Open Space Impacts. The Project contributes incrementally to the recreational open space network in Northeast DC, a Project impact that the Commission finds favorable. This publicly-accessible open space contribution is another favorable impact of the Project on its surrounding areas because of the shortage of similar publicly accessible passive recreation amenities nearby. Though this portion of Northeast DC lacks the expansive tracts of open space found throughout other parts of the District, there are opportunities, such as in the instant proposal, to establish appropriately-scaled parks and communal spaces that serve immediate neighbors and existing residents. (Ex. 2 at 29.) While the existing privately-owned Property has been used for recreation over the years, the Project formalizes this access via the Easement over more than two and a half acres of the Property. The new open spaces remain privately-owned so that the costs of maintaining and improving such areas are borne not by the District as a whole, but rather by the HOA. (*Id.*) This concept of formally preserving open space in perpetuity as religious institutions develop in northeast DC sets a good precedent for future development applications. To the extent there are impacts on surrounding areas from the Project's open spaces, such impacts are acceptable given the quality of this particular Public Benefit.
183. Transportation Impacts. The Commission finds that this Project's transportation impacts are not unacceptable and are capable of being mitigated subject to the Conditions of this

Order. The Applicant has prepared a robust TDM in concert with review and analysis by DDOT. (Ex. 37.) The proposed Project does not have an adverse impact on the public transportation facilities or roadways that it relies upon for service. (Ex. 22, 37.) The Project's vehicular traffic impacts are strongly mitigated by its transit options, and the Project achieves the right balance of mobility. (Ex. 2 at 29-31.) The Property is well served by transit and vehicular infrastructure, and the Project's relatively small scale does not introduce adverse impacts on either system. The Project contains adequate vehicular and bicycle parking, and such parking has been well-integrated into the design of the Project. The Project makes reasonable accommodations for those who choose to or must drive without interfering with the parking supply of neighboring residents. The Project provides sufficient new off-street parking to serve new residents, but not so much parking as to induce unnecessary driving. (Ex. 22; Ex. 2 at 29-31.) The Project's physical form—the placement and number of curb cuts, new construction facing the street, on-street parallel parking, a tree-lined streetscape, enclosed garage parking—mitigates traffic impacts by promoting and encouraging active mobility over driving. (*Id.*) The Project also produces favorable impacts to the surrounding pedestrian environment by creating new narrow well-lit streets conducive to walking and biking. The Project enhances the pedestrian experience by removing the existing chain-link fence and infilling the lot along the rear of the Property; improves the landscaping throughout the site; and results in a pleasant experience for pedestrians. (*Id.*) Finally, the Project has favorable impacts insofar as it extends Webster Street, N.E. through the Property and creates additional points of connectivity. In general, the Project's transportation impacts are all either favorable, capable of being mitigated or acceptable given the quality of public benefits in the project, and the Project is designed as a model of infill residential development.

184. Aesthetic, Architectural, and Urban Design Impacts. The Project's proposed height, massing, and architecture produce no unacceptable impacts and instead are highly favorable. The Project's site plan and layout are generally consistent with the block size and character of adjacent residential areas. The individual townhouses that make up the Project feature a style, material palette, and landscaping that allows the new townhouses to blend harmoniously into the neighborhood without appearing unnecessarily imitative. (Ex. 2 at 31-32.) The Project's townhouses facing existing streets are set back from the street at a distance similar to houses on most surrounding streets, provide tasteful front landscaping, and add no unnecessary curb cuts. Access to garages is via rear alleys. The height of the Project's proposed residential structures is an appropriate transition between the existing six- to eight-story structure on the hospital site, the approximately 57-foot-tall, four-story Seminary, and the two- and three-story residential structures nearby. (*Id.*) The Project's overall design and its detailing strongly reinforce and strengthen the character of the surrounding residential areas. The creative approach of utilizing contextual duplex and triplex pairings across from the existing residences allows the homes to strongly reflect the character and grain of the existing neighborhood but in a slightly denser arrangement to allow for communal open space. (*Id.*) The Project creates a series of appropriately-sized open spaces that provide inviting passive and active recreational opportunities for neighbors and residents. Thus, the Project's design produces a largely favorable impact on the surrounding area from a physical design perspective. This Commission finds that the Project's impact from an open space, urban

design, and massing perspective is not at all unacceptable and generally favorable in light of the Public Benefits.

185. Land Value Impact. The Applicant commissioned the RCLCO Report to analyze whether the development of the Project would result in the destabilization of land values near the Property. (Ex. 208.) The Commission finds the RCLCO Report uses a sound methodology and provides substantial evidence that the Project does not have any unacceptable impacts on surrounding land values or economic conditions but instead has largely favorable impacts from a housing supply perspective. The RCLCO Report concludes that gentrification is underway in the neighborhoods surrounding the Property because of continuing growth, change, and housing demand relative to supply that have no relationship to the Project. (*Id.* at 1-3.) The RCLCO Report also concludes that “Overall, not only will the [Project] not add in any significant way to the price and rent increases that have already been occurring in the surrounding neighborhoods, it will mitigate many of the negative impacts of gentrification and deliver many positive impacts. The [Project] will increase the total number of housing units, which will help to correct the imbalance between housing demand and supply, and specifically provide affordable townhouses; help local businesses; and provide specific help for homeowners who are seniors and/or have restricted incomes. These are exactly the types of benefits that are vital to offsetting the negative impacts of the gentrification that is already well underway in the neighborhood.” (*Id.* at 9.) This Commission finds that the Project’s impact from a land value perspective is not at all unacceptable and generally favorable in light of the Project’s contribution of housing supply and IZ townhouses. The Commission further finds that the Tax Relief Fund, and more particularly its novel approach, provides mitigating effects on any land value impacts that the Project might have.
186. Fiscal Impacts. The RCLCO Report also concludes that “over a period of 30 years, District revenues from the Development will be approximately \$55 million and District operating expenditures will be approximately \$20 million, resulting in a net fiscal benefit to the District from the Development of approximately \$35 million.” (*Id.* at 8.) This Commission finds that the Project’s fiscal impact is not at all unacceptable and generally favorable.
187. Environmental Impact. The Commission finds the Project’s environmental impacts either acceptable or capable of being mitigated. The Project is designed so as to minimize any adverse environmental impacts that would otherwise result from the construction of this Project. The Project has been designed to achieve high levels of on-site stormwater retention. (Ex. 2 at 32-33.) The proposed bio-retention basin planters, green roofs, and permeable pavement are designed to meet or exceed DOEE stormwater management retention and detention requirements, and the requisite inlets and closed pipe system are designed to be constructed in compliance with the standards set by DOEE, DC Water, and DDOT. (*Id.*) The Project is designed to exceed compliance with the District’s Building Code with respect to energy efficiency. (*Id.*; Ex. 211 at 4-5.) Conformance to code standards minimizes the amounts of energy needed for the heat, ventilation, hot water, electrical distribution, and lighting systems contained in the building. (*Id.*) The Project removes dead, dying or unsafe trees and results in the planting of three new trees for each

tree that is removed as part of construction of the Project. (Ex. 2 at 33.) The Project achieves an environmentally sustainable design.

188. Services and Facilities Impact. The Commission finds that the Project has an acceptable impact on the District's services and facilities given the quality of the Public Benefits. The Project's increase in demand on water and sanitary services can be met by the existing District water system. (Ex. 210.) Solid waste and recycling materials generated by the Project will be collected regularly by a private trash collection contractor. (Ex. 2 at 34.) The Project is highly unlikely to have an unacceptable impact on schools in the District given the size of the Project, its mix and type of units, and the capacity for the District's nearby schools to take on additional students. (*Id.* at 35.) As a result, there is unlikely to be a material net new impact on the District's school system.
189. Historic Preservation Impact. The Project produces the dual favorable outcomes of preserving the Seminary building and supporting the Josephites ongoing mission in Northeast DC. As part of the Project, the Seminary and portions of the grounds are designated a historic landmark. At the same time, this PUD gives the Josephites the opportunity to extract significant value from their landholdings, which are currently underutilized. This value has a stabilizing impact on the neighborhood because it allows the Josephites to continue their mission in their current location from which they have operated for decades. The Project has been designed in consultation with HPO staff. The townhouses closest to the Seminary have been specially designed to be respectful to such resource. (Tr. 3 at 29, 36, 41-43.)
190. Other Impacts. The Core Issues section of this Order and findings related to issues raised by Opponents and the Residents together include additional discussion on the Project's impacts and the Commission's balancing thereof.

Public Benefits

191. 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. (X § 305.1.) The Project achieves the goals of the PUD process by creating a high quality residential project with significant family-sized and affordable housing opportunities. 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.
192. X § 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 related to the area of the ANCs.
193. Urban Design, Architecture, and Landscaping. This Commission finds that the Project's urban design, architecture, and landscaping are superior public benefits. (*See* X § 305.5(a), (b).) The Project incorporates numerous urban design precepts that guide

attractive urban design in the District and that represent significant improvements over the existing aesthetic and functional conditions of the existing buildings on the Property:

- (a) This Commission judges the following elements indicative of superior design and architecture: (Ex. 228B.)
- This Project includes pedestrian-friendly streets that are defined by elements such as buildings close to the street, front porches, street trees, on-street parking, residential garages accessed from rear alleys, few curb cuts, and narrow, low-speed travel lanes. The high-quality pedestrian network and public realm make walking pleasurable;
 - With the exception of access to the private rear yards of the townhouses facing the Seminary building, the Project does not include any gates or barriers preventing members of the public from gaining access to the publicly accessible portions of the site, and indeed removes existing fences that enclose the Property's rear areas;
 - In addition, the Project's improvements to the interconnected street grid network will disperse automobile traffic and facilitate pedestrian movement, connecting the homes to the public streets and integrating the entire development into the existing neighborhood; it does not create a self-contained suburban-style village;
 - The architecture and land use patterns of the Project are derived from the building traditions of the surrounding neighborhood and the District's oldest neighborhoods which traditionally place high value on the quality of the public realm in order to reinforce the urban nature of the Project. The Project's townhouses are well-proportioned and defer to one-another to define the overall fabric;
 - The Project's townhouses complement and elevate the level of architectural quality and design in this area of the District and set a design standard for new construction in the community;
 - The façades of the majority of the townhouses have been designed in a traditional brick, with a porch-front vernacular that is predominant in the area, with siding used only on alley facades; the proposed townhouses are all red brick, with slight color variations predetermined for the entire site to ensure an appealing streetscape;
 - The blocks of rowhouses are further broken down into pairs and triples to be consistent with the duplexes and triplexes in the Michigan Park neighborhood. Each pair or triple will have consistent color and design features to distinguish it from the next set of attached homes; and

- The homes located near the existing historic Seminary building have been designed in a complementing architectural style, in an effort to provide for a cohesive environment and a seamless transition to the more traditional Seminary architecture;
- (b) For the foregoing reasons, the Project's design and architecture are commendable; and
- (c) The Project's superior design and architecture elements are benefits that accrue primarily to the areas immediately surrounding the Property and therefore within the areas of the affected ANCs.
194. Site Planning. The Project's site plan is another superior benefit of the Project. (X § 305.5(c).) The benefits of the Project's site plan and efficient land utilization are captured in the Project's overall density and absolute number of new townhouses provided:
- (a) This Commission judges the following elements indicative of superior site planning:
- The proposed density of the Project is appropriate for the Property. The Project's overall FAR (0.95) and lot occupancy (approximately 29%) are well within the density standards allowed in the RA-1 zone even without the benefit of a PUD (i.e., with only a fraction of the IZ density bonus); (Ex. 228B.)
 - The Project makes efficient use of the Property, employing a general pattern of orthogonal streets and blocks. The Project is laid out in the tradition of older neighborhoods, with small blocks with housing types arranged to complement active streets, parks and landscaped courtyards. The Project's site plan serves the broader community by using street and pedestrian networks to link adjoining neighborhoods, and by providing direct access to a central green; and (*Id.*)
 - The Project's site plan provides sidewalks, street trees, and on-street parking, slowing automobile traffic and promoting pedestrian activity; this, in turn, encourages the casual meetings that form the bonds of community. Neighborhood streets are laid out to create efficient blocks for building sites and to shorten pedestrian routes; (*Id.*)
- (b) For the foregoing reasons, the Project's site plan is commendable: it achieves a laudable balance of new housing, historic preservation, and preservation of open space for public use; and

- (c) The Project's superior site planning elements are benefits that accrue primarily to the areas immediately surrounding the Property and therefore are within the boundaries of the affected ANCs.
195. Public Art. The Applicant has committed to commission a local artist to create an art piece or series of pieces to be applied to the playground railing along 12th Street, N.E. either to the west of the Seminary or within the Playground. The provision of public art is a public benefit. (X § 305.5(d).) The exact type and location of the art is yet to be determined. However, the Applicant has committed to use a local artist to create the art piece and to spend up to \$25,000 for such piece. The art piece, or series of art pieces, will be installed upon completion of one-half (40) of the townhouses. The Applicant's commitment to use a local artist who can interpret the local context makes this Benefit particularly commendable. The use of a local artist ensures the public art benefit accrues primarily to the area immediately surrounding the Property.
196. Historic Preservation of Private Structures and Parks. The Project's historic preservation measures with respect to the Seminary and associated grounds are also superior public benefits. (*Id.* § 305.5(e).) As noted above, portions of the Property, including the Seminary itself, are to be designated a historic landmark and preserved indefinitely from future redevelopment. The Landmark Application will be filed prior to the issuance of the first building permit for construction of the townhouses on the Property. The Applicant's and Josephites' commitment to include both the Seminary and grounds in the Landmark Application make this benefit commendable. The Commission finds that this benefit accrues primarily within the boundaries of the ANC although there are ancillary benefits to the District as a whole.
197. Housing and Affordable Housing. Production of family-sized and affordable housing are public benefits that the PUD process is designed to encourage. (*Id.* §§ 305.5(f), (g).) For the following reasons, the Project's housing and affordable housing benefits are commendable:
- (a) Given the rapid appreciation in value of existing homes in the District, affordable housing is one of the most challenging issues today. Such housing is particularly valued when it is produced at a level above what would be required in a matter-of-right development or when it provides townhouses with three or more bedrooms. The proposal here does both. In support of the housing benefit, the proposed Project adds 80 new, for-sale residential townhouses, all of which contain three or more bedrooms (the vast majority of which contain four bedrooms). Perhaps most significantly, the Project adds multi-bedroom townhouses without displacing any existing townhouses;
- (b) The Project's provision of affordable housing is also significant, and the amount of affordable housing provided as part of the Project is much higher than what would be provided as part of a matter-of-right development. The Project provides 10 IZ townhouses. The affordable and market rate townhouses are fully integrated

into the Project and indistinguishable from the market rate townhouses from the exterior;

- (c) As a public benefit, the Applicant proposes deeper levels of affordability than required under the IZ regulations. That is, the Applicant proposes to reserve six of the Project's 10 affordable townhouses for families earning 50% of AMI (approximate sales price of \$200,000/unit). The other four townhouses would be reserved for families earning 80% AMI (approximate sales price of \$350,000/unit). The cost to the Applicant for this public benefit is approximately \$900,000 or \$12,800 per market-rate home (\$900,000/70 market rate new homes);
- (d) The Applicant proposes that approximately 11.2% of the total gross floor area of the Project is dedicated for the aforementioned 10 affordable dwelling townhouses, an area in excess of the 10% set-aside requirement of the Zoning Regulations. (*See* 11-C DCMR § 1003.) More importantly, for a project that consists of new townhouses, 12.5% of the new townhouses are reserved as affordable dwelling townhouses. Finally, all of the Project's affordable townhouses include at least three bedrooms, and make a critical contribution to the dire shortage of family-sized housing in the District;
- (e) Three of the project's IZ townhouses (all reserved at 80% AMI) contain four bedrooms, and the remaining seven IZ townhouses (six reserved at 50% AMI, one reserved at 80% AMI) have three bedrooms. Two of the three-bedroom IZ townhouses are capable of being converted to four-bedrooms; and
- (f) The Project's housing and affordable housing Benefits accrue across the District.

198. Employment and Training Opportunities. The Applicant has proffered two separate employment and training benefits that are Public Benefits: (*Id.* § 305.5(h).)

- (a) High School Outreach. The Applicant runs a sophisticated land development company that engages in projects across the greater DC region. The Applicant has committed to offer construction education tours for local high school students at the Phelps ACE High School and, at the urging of ANC 5A and the Residents, Luke C. Moore High School, Dunbar High School, and McKinley High School. (Tr. 3 at 148-49; Ex. 212.) The Applicant hopes such program is a knowledge resource and an inspiring extra-curricular event for local high school students;
- (b) GBBA. The Applicant has committed to work with GBBA to ensure that local businesses and contractors are aware of potential contracts and bid dates and to assist them in bidding for work; (Ex. 211.)
- (c) Development and construction trades present meaningful economic advancement opportunities for young District residents. The Applicant wields significant purchasing power and engages in Projects throughout the region. (*Id.*) Therefore, the benefits to working with GBBA extend beyond the instant Project. For the

foregoing reasons, the Project's employment and training benefits are commendable; and

- (d) The Project's employment and training benefits accrue to students in businesses with a strong nexus to Ward 5.
199. Social Services and Facilities. The Josephites' are an anchor institution for the immediately surrounding neighborhoods and a contributing member of the constellation of religiously-affiliated institutions in the Northeast quadrant of the District. The construction of the townhouse portion of the Project provides the Josephites with resources it needs to continue to serve its important educational, social, and religious mission. Its preservation as part of the Project is a significant benefit to the neighborhood and the District as a whole. (X § 305.5(i).)
200. Environmental and Sustainable Benefits. The Project's tree preservation efforts are a public benefit because such efforts exceed the requirements for tree preservation under the relevant regulations. (*Id.* § 305.5(k).) The Applicant will use special construction measures in order to preserve the beautiful oak trees along 12th Street, N.E. and the Oak Tree. (Ex. 192.) The Applicant's tree preservation efforts are commendable and accrue primarily to the immediate area surrounding the Project.
201. Creation or Preservation of Open Spaces; Outdoor Children's Play Area. The Project's provision of significant on-site formal community open space, the Project Parks, is a superior public benefit. (*Id.* § 305.5(m), (n).) As part of the Project, the Applicant proposes to construct and dedicate for public use more than two and a half acres of open space on the Property. Such efforts preserve and formalize a large portion of the Property's existing open space and is commendable for the following reasons:
- (a) The Project Parks are designed and intended to be accessible to all and preserved in perpetuity; (Ex. 211E.)
- (b) The Applicant has created a larger than ordinary open space by combining what would otherwise have been private yard space of the individual townhouses with the objective of pooling such space as a shared resource;
- (c) The Project's newly created open spaces include the Playground, which is to be constructed in a manner consistent with § 305.5(m):
- The Playground is public, active, outdoor, secure, separated from parking and maneuvering areas, and designed to facilitate adult supervision. The proposed play area includes natural features, sculpture and artwork suitable for preschool and elementary aged children to play with and climb on. The proposed play area exceeds 500 square feet; and
 - The Playground will be complete upon delivery of one-half (40) of the newly constructed townhouses;

- (d) The Project creates two additional Project Parks north of the Seminary among the townhouses: The Contemplative Garden, south of the extended Webster Street, N.E. and adjacent to the Josephites' contemplative outdoor space; and the Neighborhood Green north of Webster Street, N.E. across from the Contemplative Garden: (FF ¶ 56.)
- Both spaces contain landscaping, benches, pathways, and some hardscape features. Both will be open to the public from dawn until dusk and maintained by the HOA; and (*Id.*)
 - Improvements will be complete upon completion of three-quarters (60) of the newly constructed townhouses;
- (e) In accordance with X § 305.5(n), the responsibility for maintenance of the new parks will be borne initially by the Applicant and ultimately the HOA for the life of the development; and
- (f) The Project's open spaces are public benefits that accrue primarily within the boundaries of the affected ANCs.

202. Transportation Infrastructure. Transportation infrastructure beyond that needed to mitigate any potential adverse impacts of the application including, but not limited to, dedication and/or construction of a public street or alley; maintenance of a street median; or provision of a public easement for a pedestrian walkway that would not otherwise be required are public benefits. (*Id.* § 305.5(o).) The Project provides extensive transportation improvements to the immediately surrounding area, and those improvements are additional superior aspects of the Project:

- (a) The Project provides multiple points of access to the surrounding streets in order for pedestrians and vehicular traffic to enter and exit the development safely and efficiently; (Ex. 2 at 42.)
- (b) The new internal road system, which generally allows for two-way traffic and its narrow street widths requires vehicles to traverse through the Project slowly and in a manner that is safe for pedestrians and cyclists; (*Id.*)
- (c) The extension of Webster Street, N.E. creates additional connectivity, particularly for pedestrians; (*Id.*)
- (d) Safe and ample sidewalks are created along the surrounding public streets and throughout the site to encourage pedestrian activity and to mitigate pedestrian/vehicular conflicts; (*Id.*)
- (e) In addition, the Project includes the dedication of a public easement for pedestrian access to the public open spaces on the Property; and (*Id.*)

- (f) The Applicant proposes a number of transportation and infrastructure related Public Benefits (all subject to final DDOT approval):
- In addition to upgrading the sidewalks that surround the site at locations that are being reconstructed as part of the Project, the Applicant will also repair and replace as necessary the sidewalks along portions of 12th Street, N.E., 13th Street, N.E., and Varnum Street, N.E. that are adjacent to the Seminary but not being reconstructed as part of the project. This includes fixing and patching the sidewalk to ensure there are no accessibility issues;
 - The Applicant will create a new pedestrian crossing across 12th Street, N.E. on the south side of Allison Street, N.E. by installing a curb ramp on the west side of the street and working with DDOT to install a corresponding curb ramp on the western side of 12th Street, N.E.;
 - The Applicant proposes improvements at the intersection of 13th Street, N.E./Sargent Road, N.E. and Webster Street, N.E. in an effort to deter speeding and enhance pedestrian safety. The Applicant proposes to add curb extensions and ADA-compliant ramps on the east side of the street, connecting to the new ADA-compliant ramps on the west side of the street. Curb extensions will narrow the effective width of the roadway, causing drivers to instinctively slow down and narrowing the crossing distance for pedestrians;
 - The Applicant has proposed changes to 12th Street, N.E. in response to the community's desire for traffic calming measures, improved pedestrian safety, and additional bicycle infrastructure. The Applicant proposes improvements to 12th Street, N.E. between Varnum Street, N.E. and Allison Street, N.E. that would add striped bicycle lanes as called for in the MoveDC long-range transportation plan and in order to calm the current speeds of auto traffic. The new bike lanes would not impact the maneuverability of auto traffic, trucks and ambulances in the vicinity;
 - The Applicant will undertake the Allison Street Improvements; and
 - Finally, in order to keep construction traffic as far away from existing single homes as possible, the Applicant shall locate its construction entrance on 12th Street, N.E. across from the hospital and use existing streets designated for use by trucks for the delivery of materials to the site; and
- (g) The proposed transportation infrastructure improvement benefits are commendable given their scope and cost and moreover accrue primarily within the boundaries of the affected ANCs.

203. Capital Bikeshare Station; Car Share. Mass transit improvements, including, but not limited to, location and funding of a shared bike station are public benefits: (X § 305.5(q).)
- (a) The Applicant proposes to install a Capital Bikeshare station as part of the Project. The station is proposed to be located along 12th Street, N.E., north of the existing bus stop that is directly across from the Hospital. (Ex. 228B.) Currently, the Bikeshare stations nearest to the Property are located almost a mile away at the nearby Metrorail stations. The Project's provision of a station fills a large gap in northeast DC as there are currently no stations north of Otis Street, N.E. and east of Puerto Rico Avenue, N.E.; (Ex. 2 at 43.)
 - (b) The Applicant has also committed to offering a dedicated parking space for a car-share service on the Property on a right of first refusal basis; (Ex. 190A at 53.)
 - (c) The Project's Bikeshare benefit is commendable given its expense; and
 - (d) The Bikeshare and car share benefits accrue primarily within the boundaries of the affected ANCs.
204. Uses of Special Value to the Neighborhood. The Project also includes items of special benefit to the neighborhood. (*Id.* § 305.5(q).) The Applicant held public meetings with neighbors, consulted with numerous community members, the ANC, and a representative of the Ward 5 Councilmember to develop the Project's Public Benefits to address the needs and desires of the community:
- (a) As part of the input received from neighbors and the Michigan Park Citizens Association, the Applicant agreed to pay for and install a water connection in the existing local park located at Michigan Avenue and 12th Street, N.E. so that residents can maintain the park more easily; (Ex. 2 at 43.)
 - (b) At the request of a neighbor of the Project, and following discussions with neighborhood residents concerned about the economic impacts of development in the neighborhood, the Applicant committed to make the Tax Relief Fund, a \$10,000.00 contribution to HCS, a non-profit fund that assists seniors and other District residents on restricted incomes; (*See Ex. 30E; 211 at 7-8.*)
 - HCS will administer the Tax Relief Fund to assist those earning 50% of AMI and residing in a defined area near the Project; and
 - The Tax Relief Fund is a model that can be used in other cases to address issues related to the financial impacts that PUD projects can have on existing property owners in the surrounding area; and
 - (c) The Project's uses of special value are commendable public benefits that accrue primarily within the boundaries of the affected ANCs.

Consistency of the Public Benefits with the Plan

205. 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.

CONCLUSIONS OF LAWProcedural and Jurisdictional Conclusions

1. A PUD application must adhere to certain procedural requirements. (X § 307.1; Z §§ 205, 300, 400-408, 600-606.) The Commission must hear any PUD case in accordance with the contested case procedures of Subtitle Z, Chapter 4. (X § 300.3.) This Commission has found and hereby concludes: (i) the Application satisfies the PUD application requirements, and (ii) the Applicant, OZ, OP, and this Commission have satisfied the applicable procedural requirements, including the applicable notice requirements of the Zoning Regulations. (FF ¶¶ 1-34.)
2. The minimum area included within a proposed PUD must be no less than 15,000 square feet and all such area must be contiguous. (X § 301.) The Application satisfies these minimum area and contiguity requirements. (FF ¶ 1.)
3. 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").

Evidentiary Standards

4. The Applicant has the burden of proof to justify the granting of the Application according to the PUD and Map Amendment standards enumerated above. (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 "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

5. 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.” (X § 300.1.) This Commission concludes that the approval of the Application is an appropriate result of the PUD process. The Project is a high-quality development that is superior to what could be constructed on the Property as a matter-of-right via the underlying zoning. (See FF ¶ 155.) This Commission has found that the Public Benefits are meaningful and are commendable both in number and quality. (FF ¶ 155(b).) Finally, this Commission has found that the Project will not injure but instead advances the public health, safety, welfare or convenience, and is not inconsistent with the Comprehensive Plan. (*Id.* ¶¶ 155(c), 162-178.)

6. 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.” (X § 300.2.) The Commission has found that the Project generally conforms to the requirements of the Zoning Regulations except for the few areas of articulated zoning relief, which are nonetheless consistent with the intent and purposes of the Zoning Regulations. (FF ¶ 155(e).) The Project is not inconsistent with the Comprehensive Plan. (*Id.* ¶ 162-78.) Therefore, the Commission concludes that Project does not circumvent the Zoning Regulations and is not inconsistent with the Comprehensive Plan.

Evaluation Standards

7. The Commission must evaluate the Map Amendment request and approve it only if it is not inconsistent with the Plan. (X §§ 500.1, 500.3.) The Commission concludes that the Map Amendment is not inconsistent with the Plan. (FF ¶¶ 119(b), 145-147.) Accordingly, the Map Amendment satisfies the relevant standard for approval.
8. 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). (X §§ 303.1, 303.11.) The Applicant seeks the following elements of relief from the Zoning Regulations: Seminary Use pursuant to the Special Exception Standards, Townhouse Use pursuant to the Special Exception Standards, Lot Relief pursuant to the Commission’s discretion to grant relief from any development standards of the Zoning Regulations, Penthouse Use pursuant to the Special Exception Standards and related considerations, and Setback Relief for the proposed penthouses. (FF ¶¶ 143-154.) The Commission has found that these items of relief do not impair the purposes or intent of the Zoning Regulations and are not inconsistent with the Comprehensive Plan, except as follows: the Commission concludes that the Penthouse Use does not satisfy the Special Exception Standard with respect to Units 70 and 73 only. (*Id.*) The Commission concludes that it has the discretion to grant the requested Lot Relief without strictly applying the variance standards of the Zoning Regulations, but that such Lot Relief nonetheless satisfies such standards. Therefore, the Commission concludes it may exercise its discretion to grant such items of relief subject to the Conditions hereof.

9. 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.” (X § 304.4.) The Commission has reviewed the entire record and issued findings to support its conclusion that the Application satisfies the PUD Evaluation Standards. (See FF ¶¶ 160-205.) In particular, the Commission concludes the Project is consistent with all aspects of the Plan, accepts the entirety of the Applicant’s impact analysis contained in the record and concludes that the Project will not have any unacceptable impacts. The Commission further concludes that the Project includes the Public Benefits, which are also not inconsistent with the Plan.
10. 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.” (X § 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.” (X § 304.3.) The Map Amendment is a development incentive against which the Commission must weigh the benefits of the PUD. (X § 303.12.)
11. This Commission heard the Application at the Public Hearing and Rebuttal Hearing and followed the contested case procedures of the Zoning Regulations. This 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.
12. The Commission’s review of the Application has been comprehensive. The Commission has reviewed the entire record and has identified and examined the many issues, concerns, and objections to the Project raised by the Residents and Opponents. The Commission has appropriately considered the testimony of the Josephites and the Project’s many Supporters. The Commission has also considered the substantial evidence presented by Applicant. The Commission grants appropriate weight to the reports and testimony of the various reviewing District and Federal agencies and the ANCs. Except as expressly noted herein, 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.
13. The Project warrants the Development Incentives (including the Map Amendment) and flexibility in light of the Project’s extensive and comprehensive Public Benefits. The Development Incentives are comparatively minor and largely and directly support the

Project's provision of the open space and historic preservation benefits. (FF ¶ 159(b).) The Development Incentives also support the provision of the Project's housing and affordable housing benefits to the significant degree proposed as part of the Project. (*Id.*) The minor and Public Benefit-supporting nature of the Development Incentives affords the Public Benefits ample cushion to offset any potential adverse effects. (FF ¶ 159(c).) The Project has largely been designed to avoid such effects. However, to the extent such effects exist as a result of the Project—for instance with respect to traffic and the loss of large trees on the Property—the magnitude of the Public Benefits provides sufficient justification for the Project notwithstanding such effects. (*Id.*) Moreover, the Public Benefits generally accrue most significantly to the area immediately surrounding the Project. (FF ¶ 192.) Therefore, those most likely to be adversely affected by the Project nonetheless also benefit most from it. The Commission concludes that the Project's density is warranted in light of the Public Benefits, when considering the specific nature of the area surrounding the Project and the Project's overall consistency with the Comprehensive Plan.

14. Accordingly, the Project's Public Benefits justify the Development Incentives requested even in light of the background concerns of Opponents and the Residents regarding the potential adverse effects of the Project. The Application satisfies the PUD Requirements.
15. 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). In this case there were several reports submitted by ANCs 5A and 5B. The following are the Commission's conclusions for the issues and concerns expressed in the reports.

(a) ANC 5B submitted three reports.

- (1) The first was dated February 23, 2017 (Ex. 20.) The report stated that ANC 5B was opposed to the PUD for three reasons:
 - i. The townhouse development proposed in the PUD was out of character with the existing area, which is presently zoned R-2, developed predominantly with semi-detached housing, and less dense than the Project;

For the reasons more fully stated in the "Core Issues" section of this Order that discuss project density, the Commission does not find this advice persuasive because it finds that the Project is compatible with, and has a similar character to, the existing

development in the area. While the Project is denser than most of the surrounding neighborhood, the increase is minor;

- ii. The Applicant's method of computing FAR for the whole Project, rather than by individual lot, is unacceptable.

As stated in the "Core Issues" section of this Order, the Commission finds that the proper method of calculating the FAR, per the Zoning Regulations, is across the FAR site. The Applicant's computation was consistent with the regulations. The Commission therefore does not find this advice persuasive; and

- iii. Increased traffic from the Project would interfere with emergency vehicles operating on 12th Street, N.E. and entering the Providence Hospital emergency room area.

For the reasons stated more fully in the "Core Issues" section of this Order, the Commission finds that the Project is unlikely to increase traffic sufficiently to have a material adverse effect on these conditions. The Applicant's proposed traffic calming and TDM measures will reduce the relatively minor impact that the Project will have on traffic. As a result, the Project will not have any unacceptable impacts on emergency vehicles. The Commission therefore does not find this advice persuasive;

- (2) The second ANC 5B report was submitted June 8, 2017. (Ex. 214.) The report repeated the issues and concerns stated in the first report, and added that:

- i. The PUD proposal was in conflict with the Upper Northeast section of the Comprehensive Plan.

For the reasons stated more fully in "Core Issues" section of this Order, the Commission does not find this advice persuasive because it does not believe the Project is in conflict with the Upper Northeast Element of the Comprehensive Plan; and

- ii. Increased traffic would contribute to rush hour intersection failures already experienced in ANC 5B.

For the reasons discussed more fully in the "Core Issues" section of this Order, the Commission believes the Project is unlikely to increase traffic enough to have a materially adverse effect on the intersections, and the Applicant's proposed traffic calming and TDM measures will reduce the relatively minor impact that the Project will have on traffic. As a result, the Project will not

contribute to any intersection failures. The Commission therefore does not find this advice persuasive.

- (3) The third ANC 5B report was submitted June 28, 2017. (Ex. 223.) The report stated the ANC was concerned about potential alley traffic as a result of the PUD, stated the ANC believed the proposals to address the issue in DDOT's Supplemental report were inadequate to address the concern, suggested that additional one way alleys should be considered, and that further consideration of alley traffic was needed.

After reviewing ANC 5B's third report, the Commission requested a response from DDOT to the issues raised in the report. In response, DDOT submitted a Second Supplemental Report on August 11, 2017. (Ex. 227.) The report stated that DDOT had given further consideration to the alley issues, and that it continued to believe the Project's proposed alley measures were adequate. The report also concluded that opening additional alleys to one-way traffic would not be advisable because it would increase alley cut-throughs, and as result pose a threat to public safety. The Commission was convinced by DDOT's report that it had given sufficient consideration to the alley safety issues, that the alleys would be safe, and the one-way alley suggested by the ANC would be worse. The Commission therefore did not find the advice persuasive.

- (b) ANC 5A submitted two reports²⁴. The first report was submitted April 19, 2017. (Ex. 41.) It stated that the ANC supported the PUD, and recited facts that formed the basis of that support. The second report was submitted June 8, 2017. (Ex. 219.) The report responded to comments made at the hearing by community members to the effect that questioned the appropriateness of the ANC's support of the PUD, and recounted the reasons for the ANC's support. Neither report listed any issues or concerns about the Project.

The District of Columbia Court of Appeals has noted that the ANC Act does not require an agency "to give 'great weight' to the ANC's recommendation but requires the [the agency] to give great weight to any issues and concerns raised by the ANC in reaching its decision." (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1086 (D.C. 2016).) The court thus held that in the context of a BZA application, although "it may be helpful to an applicant seeking a variance or a special exception to have the support of the local ANC, that body's recommendation in favor of a project does not provide any substantial support to justify the BZA's decision." (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) Thus the Commission did not consider the ANC's recommendation of approval as providing substantial

²⁴ ANC 5A04 Single Member Commissioner also submitted a letter in support of the PUD. However, only reports of the full ANC are afforded "great weight" under the ANC Act.

support to justify its decision to grant this application, except to the extent it reflected community sentiment.

16. The Commission is also required to give great weight to the recommendations of OP. (D.C. Code § 6-623.04; Z § 405.8.) The Commission has reviewed the OP Setdown Report and OP Final Report and heard testimony from OP. (FF ¶¶ 4, 17, 77-85.) The Commission gives OP's recommendation to approve the Application great weight, and concurs with OP's conclusions.

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 review and approval of the consolidated PUD and the related Map Amendment to the RA-1 zone for the Property that are the subject of the Application. The approval of this PUD is subject to the following guidelines, conditions, and standards ("Conditions").

A. PROJECT DEVELOPMENT

1. The Project shall be developed in accordance with plans and drawings filed in the record in this case as Exhibit 228B1-228B9 ("Final Plans"), as modified by the guidelines, conditions, and standards herein.
2. The Project shall consist of 80 townhouses, the preservation of open spaces on the Property, the creation of new parks, private roads, alleys and parking, the continued presence of the Seminary building, and the provision of certain other public benefits associated therewith, all as shown on the Final Plans and as further described herein. The individual townhouses shall comply with the height, yard, setback, and other dimensional requirements set forth in the Final Plans. The Project shall include an overall density of 0.95 FAR, 179,892 square feet of new GFA in the townhouses, a maximum lot occupancy of approximately 29%, and 154 new parking spaces, subject to Condition A3.
3. The Applicant shall have flexibility with the design of the Project in the following areas:
 - (a) To vary the location of the IZ townhouses, provided that the location of the IZ townhouses are moved only within the same block of townhouses and to a townhouse of similar size (in respect to both width and number of bedrooms);
 - (b) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;

- (c) To vary the final selection of the colors of the exterior materials proposed based on availability at the time of construction, provided such colors are within the color ranges proposed in the Final Plans;
- (d) To vary the final streetscape design and materials and the placement of any items in the public right-of-way, including the curb cuts and the Capital Bikeshare station, as required by District public space permitting authorities;
- (e) To vary the final building height of each townhouse to a building height that is no greater than 40 feet or the height shown on Sheets 18A and 18B (Exhibit 228B6) of the Approved Plans, whichever is greater;
- (f) To vary the final landscaping and LID components of the Project in order to satisfy any permitting requirements of DC Water, DDOT, DOEE, or the Department of Consumer and Regulatory Affairs (“DCRA”); and
- (g) To make minor refinements to exterior details and dimensions, including without limitation to belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes that do not significantly alter the exterior design.

B. PUBLIC BENEFITS

1. **Public Art. Prior to the approval of the 40th DCRA Building Permit Zoning inspection of a townhouse**, the Applicant shall provide proof to the Zoning Administrator that the Applicant shall install or cause to be installed a piece of art or series of pieces of art (“Public Art”) on the Property, west of the Seminary or within the Playground, provided such Public Art shall:
 - (a) Such Public Art shall be designed and/or completed by an artist(s) who reside(s) in the District of Columbia, which artist(s) shall be selected by the Applicant. The Applicant shall ensure through its contracts that the artist(s) shall engage members of the community in the creation of the Public Art and the Applicant shall provide evidence of such consultation in a memorandum from the Applicant to the Zoning Administrator, with a copy delivered to OZ; and
 - (b) The Applicant shall spend \$25,000.00 for the design, completion, and installation of the Public Art.
2. **Historic Preservation. Prior to the issuance of the first building permit for the Project**, the Applicant shall submit a historic landmark application, seeking historic designation of the Seminary Building and associated grounds, with the District of Columbia Historic Preservation Office.
3. **Housing and Affordable Housing. For the life of the Project**, the Applicant shall:

- (a) Set aside six of the Project’s townhouses (“50% Townhouses”) as inclusionary units reserved for residents earning no more than 50% MFI, and at least one of the 50% Townhouses shall have no fewer than four bedrooms;
- (b) Set aside four of the Project’s townhouses (“80% Townhouses”) as inclusionary units reserved for residents earning no more than 80% MFI, and a minimum of three of the Project’s 80% Townhouses shall have no fewer than four bedrooms;
- (c) No less than 11.1% of the Project’s GFA shall be dedicated to the 10 IZ townhouses required pursuant to this Condition B.3;
- (d) Distribute the inclusionary units in accordance with the Plans marked as Sheet 16B (Exhibit 228B6) of the Approved Plans, and provide the inclusionary units in accordance with the chart below; and

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type	Notes
Total	179,892	80				
Market Rate	159,949	70	Market			
IZ at 80%	8,662/4.8%	4	80% AMI	For so long as project exists	4 Bedrooms	
IZ at 50%	11,282/6.3%	6	50% AMI	For so long as project exists	3 and 4 Bedrooms	

- (e) Record the covenant required by D.C. Official Code §§ 6-1041.05(a)(2)(2012 Repl.) which shall include a provision or provisions requiring compliance with this Condition.
4. Employment and Training Opportunities. The Applicant shall provide the following employment and training opportunities:
- (a) **After the commencement of construction activities on the Project site,** offer a construction tour to students with an interest in design and construction from each of Phelps ACE High School, Luke C. Moore High School, McKinley High School, and Dunbar High School no less frequently than two times a year, provide informal guidance and career advice to such students during the course of such tours, and offer internship opportunities to such students;
 - (b) **Prior to the issuance of the first building permit for the Project,** provide to GBBA no less frequently than one time every 90 days: bid dates, schedules, and any update(s) to the Applicant’s prequalification criteria, with the first delivery of the Applicant’s prequalification criteria, with the first delivery of the Applicant’s prequalification criteria being due to GBBA no less than 90 days in advance of the first bid date or schedule release;

- (c) **Prior to the issuance of the first building permit for the Project,** review all prequalification applications from GBBA for local businesses received in advance of a bid date for such applications that are delivered to the Applicant no less than 30 days in advance of each bid; and
- (d) **Prior to the issuance of the first building permit for the Project,** maintain a list of prequalified contractors and deliver any applicable bid notices for any Applicant-led project in the metropolitan area directly to such contractors.

By no later than the first anniversary of the effective date of this Order, the Applicant shall provide a written memorandum to the Zoning Administrator, with a copy to OZ, providing evidence compliance (which evidence may be by, without limitation, a sworn affidavit) with this Condition B.4.

- 5. **Environmental and Sustainable Benefits.** The Applicant shall provide the following environmental and sustainable benefits:
 - (a) **As part of each building permit application package,** the Applicant shall provide written documentation to UFA and the Zoning Administrator, with a copy to OZ, that the Project is then in compliance with the Tree Plan; and
 - (b) **As part of each building permit application package,** the Applicant shall provide written documentation as to how the Project shall achieve certification of the new homes under the ENERGY STAR v3.1, or an equivalent energy efficiency performance metric mutually agreed to by the Applicant and DOEE during the permitting phase of the Project.
- 6. **Creation or Preservation of Open Spaces; Outdoor Children's Play Area.**
 - (a) **Prior to the approval of the 40th DCRA Building Permit Zoning Inspection of a townhouse,** the Applicant shall provide proof to the Zoning Administrator that construction of the Playground, in accordance with the Final Plans, has been completed;
 - (b) **Prior to the approval of the 60th DCRA Building Permit Zoning Inspection of a townhouse,** the Applicant shall provide proof to the Zoning Administrator that complete construction of the Neighborhood Green and Contemplative Garden, all in accordance with the Final Plans, has been completed; and
 - (c) **Prior to the approval of the final DCRA Building Permit Zoning Inspection for the last townhouse,** the Applicant shall file in the land records of the District of Columbia: (i) the Easement over the Project's Parks, and (ii) a covenant and restrictions obligating the HOA to maintain the Project's Parks for the life of the Project.

7. Transportation Infrastructure.
- (a) **Prior to the approval of the final DCRA Building Permit Zoning Inspection for the last townhouse**, the Applicant shall provide proof to the Zoning Administrator that construction of all alleys, roadways, and sidewalks in the Project in accordance with the Final Plans;
- (b) **Prior to the approval of the final DCRA Building Permit Zoning Inspection for the last townhouse**, The Applicant shall file in the land records of the District of Columbia an easement (“Access Easement”) granting pedestrian and vehicular access over the Project’s roadways to the public for the purpose of visiting the Project’s Parks, which easement shall contain a covenant running in perpetuity that the extension of Webster Street, N.E. through the Project and the Project’s Private Street “A” shall not be converted to public streets;
- (c) **Prior to the approval of the final DCRA Building Permit Zoning Inspection for the last townhouse**, the Applicant shall, subject to obtaining the required approvals from DDOT, and in accordance with the Final Plans:
- i. Complete repairs of the sidewalks surrounding the Project as shown on the Final Plans;
 - ii. Repair and replace as necessary the sidewalks along portions of 12th Street, N.E., 13th Street, N.E., and Varnum Street, N.E. that are adjacent to the Seminary but not being reconstructed as part of the Project, which repairs include fixing and patching the sidewalk to applicable accessibility (“ADA”) standards;
 - iii. Create a new pedestrian crossing across 12th Street, N.E. on the south side of Allison Street, N.E. by installing a curb ramp on the west side of 12th Street, N.E.;
 - iv. Add curb extensions and ADA-compliant ramps on the east side of 13th Street, N.E. to connect to new ADA-compliant ramps on the west side of the 13th Street, N.E.;
 - v. Complete the proposed changes to 12th Street, N.E. between Varnum Street, N.E. and Allison Street, N.E. to add striped bicycle lanes and striped on-street parking on the west side of 12th Street, N.E.;
 - vi. Remove three parking spaces on the south side of Allison Street, N.E. adjacent to the intersection with 12th Street, N.E. and one parking space on the north side of Allison Street, N.E.;

- vii. Install lane transition markings across the intersection of 12th and Allison Streets, N.E. in order to define more clearly the east-west traffic pattern through such intersection; and
 - viii. Enhance and upgrade high visibility crosswalks, curb extensions and curb ramps at the 12th and Allison Street, N.E. intersection, and new stop bar and centerline striping in order to make the intersection safer for pedestrian and vehicular traffic; and
- (d) **For the duration of construction of the Project**, the Applicant shall locate the Project's sole construction entrance on 12th Street, N.E. across from the Hospital and limit to existing streets designated for use by trucks all access to the Project site by construction vehicles delivering materials.
8. Capital Bikeshare Station; Car Share.
- (a) **Prior to the approval of the (40th) DCRA Building Permit Zoning Inspection of a townhouse**, the Applicant shall provide proof to the Zoning Administrator, that it either (i) delivered a Capital Bikeshare station at a cost not to exceed \$63,000.00 along 12th Street, N.E. at a location to be determined in coordination with DDOT or (ii) deliver \$63,000.00 to the District for the District to install a Capital Bikeshare station; and
 - (b) **Prior to the approval of the 40th DCRA Building Permit Zoning Inspection of a townhouse**, the Applicant shall provide proof to the Zoning Administrator that it offered on a right of first offer basis on then-prevailing market terms, one street on-parking space to a car share company of the Applicant's election, provided that if such car share company declines to exercise such right, and the Applicant provides evidence to the Zoning Administrator that the car sharing companies have declined to exercise this opportunity, this right shall be forfeited and this Condition B.8.(b) shall be deemed satisfied.
9. Uses of Special Value to the Neighborhood. **Prior to the commencement of construction of the first townhouse**, the Applicant shall provide proof to the Zoning Administrator, that it delivered to Housing Counseling Services ("HCS") an amount not less than \$10,000.00 to be expended by HCS for the administration of the Tax Relief Fund ("TRF") which will assist residents on restricted incomes in offsetting possible increases in property taxes. **By no later than the first anniversary of the effective date of this Order**, the Applicant shall provide an annual report to the Zoning Administrator, with a copy to OZ, which includes information on HCS's use of the TRF funds. Residents that are able to participate in this program must reside in the area delineated in Exhibit 30E and meet the following requirements:

- The resident must have an annual income at 50% of AMI or below;
- The resident must be the current owner and resident of the house located within the boundary area shown in Exhibit 30E;
- The resident must be current on tax payments to the City or must become current with the help of the TRF payment;
- The resident must meet/speak with an HCS representative about an individual housing plan;
- The resident must be able to show that there has been an increase in taxes owed on the house above the base year tax rate as described below;
- If relief is granted to the resident, the funds will be paid by HCS directly to the District of Columbia; and
- An approved resident is eligible for a maximum of three years of tax assistance through the TRF.

C. **Transportation and Construction Mitigation**

1. **Transportation Demand Management**. **For the life of the Project** (except as expressly set forth below), the Applicant (or its successor HOA) shall:
 - (a) Identify a TDM Coordinator (for planning, construction, and operations) who shall work with Project residents to distribute and market transportation alternatives and who shall provide updated contact information and report TDM efforts and amenities to goDCgo staff once per year;
 - (b) Establish a TDM marketing program that provides detailed transportation information and promotes walking, cycling, and transit and compile such information for distribution to residents, utilizing and providing website links to CommuterConnections.com and goDCgo.com;
 - (c) Encourage all alternative transportation modes, including bicycling; and
 - (d) Maintain the car-share space, provided such space is established pursuant to Condition B.8.(b), and provided further that this Condition C.1.(d) shall be applicable only as long as a car-share market exists in the District of Columbia.
2. **Residential Parking Program**. In the event that future residents of the Project are able to obtain RPP stickers that allow such residents to park on neighboring public streets, the Applicant (or its successor HOA) shall amend the Access Easement to grant rights to the public to park in designated parking spaces (other than the Reserved Parking) on the private roads within the Project.
3. **Construction Management Plan**. **Throughout construction of the Project**, the Applicant shall comply with the following terms of the CMP (as restated here to incorporate certain requests of the Residents):

- (a) The Applicant shall designate a representative to be the key contact during the period of construction of the Project for interaction with the owners of all property within 200 feet of the Property. The Applicant's representative (the "Representative") will have a local office and will be accessible during all business hours. At any time, construction activity is occurring on the Property, the Representative or his/her designee shall be available on-site or by telephone to receive communications from the surrounding community. In addition, a name and telephone number of a person designated by the Applicant to contact in case of emergency during hours in which no construction activity is occurring shall be readily available to members of the community;
- (b) The Representative and his/her designee will be able to answer questions and receive comments about the site activities, address any concerns members of the community might have throughout the construction process, and have authority to remedy promptly violations of the CMP and enforce its provisions. The Representative, designee and emergency contact shall:
- i. Monitor activity during construction hours and post-construction cleanup measures;
 - ii. Receive notice of violations of the CMP;
 - iii. Provide notice to the surrounding community of any anticipated public space work (limited street or sidewalk closures) that may impact pedestrian or vehicular circulation around the Property;
 - iv. Respond as soon as possible, to the person who has reported the violation, and to the Neighborhood Contact Person (described below); and
 - v. Act to remedy the violation as soon as possible;
- (c) The Applicant will work with representatives of the adjacent neighborhood to designate a single contact person ("Neighborhood Contact Person"), who may change from time to time, to represent the surrounding community. The initial Neighborhood Contact Person shall be designated by the community and will be determined prior to the start of construction activity on the Property. The Neighborhood Contact Person will receive and disseminate information from the Applicant to the community. The Applicant shall provide to the Neighborhood Contact Person, and keep updated, the names of and pertinent information about the Representative, the designee and emergency contact, including their home phone numbers, as appropriate. In the event that a single Neighborhood Contact Person cannot be agreed upon, the Applicant shall

provide the information described in the CMP to the ANC 5A03 Single-Member District Commissioner for the Property;

- (d) The Applicant shall require that all of their personnel and vendors, including supply and service vendors, will comply with all applicable District of Columbia Municipal Regulations applicable to hours of work, noise, dirt, trash, and public health and safety. The following is a discussion of construction-related issues and shall be binding on the Applicant, its general contractor and all subcontractors;
- (e) The Applicant will secure all permits that are required to complete the Project. All plans and permits will be on-site as required under the DC Construction Code;
- (f) The Applicant and its contractors will work with community members and DCRA to maintain temporary storm water management/sediment erosion control systems throughout the Project's construction until such time as the permanent facilities are constructed, approved and functioning so that there shall be no adverse water impacts on the adjacent neighborhood. The Applicant will locate toilets, fences, materials and equipment on the Property so as to minimize impact on adjacent residential properties. The Applicant will take all necessary steps to limit any service disruptions to neighboring properties;
- (g) Any temporary lighting that may be installed shall be directed away from residential properties;
- (h) No tower cranes shall be installed during the construction of the Project;
- (i) The Applicant will remove rubbish and construction debris continuously during the construction period during the normal construction workday. In addition, the Applicant will monitor and police the construction site daily or more often as required to ensure cleanliness. The Applicant, as necessary, will undertake a program of pest control to ensure that no increase in pest activity occurs during the construction period. All excavation or back fill trucks will be covered before proceeding from the Property onto city streets. Dust and debris will be removed from the Property on an as needed basis;
- (j) Work Hours:
 - i. The normal construction work week will be Monday through Friday from 7:30 a.m. until 6:30 p.m., and Saturday from 8:00 a.m. until 4:00 p.m. No construction activity will occur on Sundays. All trucks for delivery of materials, construction or otherwise, will arrive, depart and operate on the Property only during the

- foregoing hours. There will be no queuing of construction related vehicles on the adjacent streets prior to the stated work hours; and
- ii. The Applicant will make good faith efforts to limit work and noise that could disturb the residents of the adjacent neighborhoods to weekdays, except where limitations on work during the week require work on Saturdays to meet the requirements of construction teams for a 40-hour work week;
- (k) The Applicant will require that all contractors and subcontractors be contractually required to follow the terms of, and comply with, the policies set forth in the CMP. The Applicant will also require that all contractors and subcontractors use only licensed vehicles and drivers and they comply with all DC traffic laws and regulations;
- (l) Traffic, Loading, and Parking.
- i. Specific truck queuing and routing will be worked out with the DC Department of Transportation and adjacent property owners during the public space permit review process of the Applicant's Traffic Control Plan. Additional issues that will be addressed will include vehicular ingress and egress, parking and idling of trucks, pedestrian access, and street closures;
 - ii. A flagperson will be assigned to expedite movement of construction related traffic, if any consistent traffic backups occur on any of the streets adjacent to the Property;
 - iii. The Applicant will take all possible steps to avoid any obstructions to the alleys behind existing homes on Allison Street, N.E., Buchanan Street, N.E., 12th Street, N.E., 12th Place, N.E., 13th Street, N.E., 13th Place, N.E., Sargent Road, N.E., Varnum Street, N.E., and Webster Street, N.E.; and
 - iv. Parking for construction workers will be provided on-site and the curb lane immediately adjacent to the sites frontage. No construction related parking will be permitted on the adjacent neighborhood streets.
- (m) **Prior to commencement of the excavation work on the Property** the Applicant will seek consent from the owners of the following properties: 4608 12th Street, N.E., 1200 Webster Street, N.E., 1210 Webster Street, N.E., 1212 Webster Street, N.E., 1214 Webster Street, N.E., 1218 Webster Street, N.E., 1220 Webster Street, N.E., 1222 Webster Street, N.E., 1300 Webster Street, N.E., 4600 Sargent Road, N.E., 4522 Sargent Road, N.E., 4520 Sargent Road, N.E., 4518 Sargent Road, N.E., 4514 Sargent Road, N.E., 4512 Sargent Road, N.E., 4510 Sargent Road, N.E., 4513 Sargent

Road, N.E., 4509 Sargent Road, N.E., 4505 Sargent Road, N.E., 4445 Sargent Road, N.E., 4443 Sargent Road, N.E., and 4441 Sargent Road, N.E. (“Adjacent Owner”) to have their property and all improvements on their property thoroughly surveyed by an independent professional. The surveys will include photographic evidence of the condition of each surveyed Adjacent Owner property. The survey is intended to provide the parties a reference point from which to determine the effect, if any, that excavation and construction activity on the Property had on Adjacent Owner properties. The survey will be performed at the Applicant’s sole cost and expense. Each survey report shall be provided to the Applicant and to the Adjacent Owner. If the Applicant is not permitted access to an Adjacent Owner property, the Applicant is not required to perform the above-noted survey for that particular Adjacent Owner property; and

- (n) The Applicant agrees to repair, at its own expense and as promptly as reasonably possible, any damage to the property or improvements thereon of an Adjacent Owner, which is proximately caused by the construction activity on the Property.

D. MISCELLANEOUS

1. The Zoning Regulations Division of DCRA shall not issue any building permits for the PUD until the Applicant has recorded a Covenant (the “PUD Covenant”) in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division, DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The change of zoning to the RA-1 zone shall be effective upon the recordation of the covenant discussed in Condition No. D.1.
3. The PUD shall remain valid for a period of two years from the effective date of this Order. The filing of the first building permit for a townhouse in the Project shall vest this Order for the entirety of the Project. All building permit applications for the remainder of the 80 townhouses must be filed within seven years of the effective date of this Order (the “Permit Application Deadline”). If building permit applications for less than 80 townhouses have been filed by the Permit Application Deadline, this PUD shall expire as to any townhouse for which no permit application was filed.
4. 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, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic

information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is 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 July 10, 2017, upon the motion of Commissioner Shapiro, as seconded by Chairman Hood, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the application 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 September 11, 2017, upon the motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission took **FINAL ACTION** to **APPROVE** the Application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, 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, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on February 2, 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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