

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
COMMITTEE REPORT**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

TO: All Councilmembers

FROM: Chairman Phil Mendelson
Committee of the Whole

DATE: November 10, 2020

SUBJECT: Report on Bill 23-883, “Omnibus Kenilworth Courts Redevelopment Act of 2020”

The Committee of the Whole, to which Bill 23-883, the “Omnibus Kenilworth Courts Redevelopment Act of 2020” was referred, reports favorably thereon with amendments and recommends approval by the Council.

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I. BACKGROUND AND NEED

On July 31, 2020, Bill 23-883, the “Omnibus Kenilworth Courts Redevelopment Act of 2020” was introduced by Councilmember Vincent Gray. Bill 23-883 would close the public alley in Square 5116 and accept a dedication of “T” shaped land between Kenilworth Avenue, N.E., 45th Street, N.E., and Quarles Street, N.E., for street purpose. The bill would also remove the 15-foot building restriction lines on Square 5116 along 45th and Quarles Streets. Square 5116 is located in Northeast, in Ward 7, situated between Kenilworth Avenue and 45th Street, and between Douglas and Quarles Streets.

The closing of the public alley and dedication of land will facilitate phase one of the redevelopment of D.C. Housing Authority property at Kenilworth Courts. This includes the reconfiguration of the existing street and alley system in the square. Phase one of the development will consist of 166 residential units, 89 of which will replace demolished public housing units. Sixty-five units will be in a multifamily building, 42 units will be in a senior building, 44 units will be townhomes, and 15 units will be stacked flats. Phase one of the redevelopment will utilize

4.4 acres of the 14 acre Kenilworth Courts site. The second and third phases will add 364 residential units, for a total of 530 units. Most of these units will be rentals affordable to families making up to 60% of area median income (AMI).

Legal Background

The Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-201 *et seq.*) (“Act”) establishes procedures for closing streets and alleys, opening new streets and alleys, naming public spaces, and other procedures related to streets and alleys. The Act authorizes the Council to close all or part of a street or alley and establishes one standard for reviewing a street or alley closing application: whether the street or alley is determined by the Council to be needed for street or alley purposes. The Act also authorizes the Council to make approval of a street or alley closing contingent upon: (1) the dedication of land for street or alley purposes if the public interest would be served by such action; (2) the granting to the District of specific easements for public purposes; and (3) any other condition that the Council considers necessary.

Pursuant to the Act, street and alley closing applications are submitted to the Surveyor of the District of Columbia, who assigns a Surveyor’s Order (S.O.) number and collects applicable fees. The Surveyor requests comments from executive branch agencies and public utilities. A plat is prepared, and the application is forwarded through the Mayor’s Office of Policy and Legislative Affairs, which also solicits comments from executive branch agencies. When these reviews are completed, the application is transmitted to the Council in the form of a bill from the Mayor. Councilmembers may also initiate an alley or street closing by introducing a bill. In such cases, the Act provides that the Council cannot consider such a bill until the required reviews have been completed. Regarding Bill 23-883, all of the reviews have been completed. As discussed on pages 3 and 4, the District Department of Transportation and Washington Gas have objections to the alley closing and dedication. These are addressed in detail elsewhere in the report.

The Act establishes notice requirements for street and alley closing legislation. The Council is required to publish notice of a street or alley closing in the *District of Columbia Register*. Further, the applicant is required to give written notice to all property owners abutting a block or alley affected by the proposed street or alley closure. The applicant is also required to post signs at each end of a block or each entrance to an alley affected by the street or alley closing legislation. The applicant is required to give the Council certification of compliance with these requirements. Regarding Bill 23-883, these requirements have been met.

After the street or alley closing legislation becomes law and all conditions required by the Council and the Act have been satisfied, the Surveyor records a copy of the act and plat in the Office of the Surveyor. Thereafter, the street or alley is deemed closed, and title to the land reverts or vests in fee simple to the abutting record owners, as shown on the plat. The land becomes subject to tax and zoning laws in the same manner as the abutting land. The right of the public to use the street or alley typically ceases, and any proprietary interest of the United States or the District of Columbia in the street or alley ceases. If a closing plat shows an easement or dedication of land for public purposes, the land encompassed by the easement or dedication becomes available for the specified public purposes.

The Development Project

Kenilworth Courts was constructed in the late 1950s by the National Capital Housing Authority.¹ Like many public housing projects built then, Kenilworth Courts fell into a state of disrepair in the late '70s and early '80s from which it has not been able to recover.² Recognizing the need for redevelopment, the D.C. Housing Authority began planning for the demolition of the existing structures and the construction of new units in 2014. To that end, D.C. Housing Authority and Kenilworth Revitalization I JV, LLC, submitted an application to the Zoning Commission for the approval of a mixed-use, mixed-income development on August 31, 2015. Pursuant to Zoning Commission Order No. 15-21, the development will consist of 530 units total and approximately 4,500 square feet of gross floor area dedicated to non-residential uses. Of the 530 residential units, 290, or 54% of all units, will be for families making up to 50% of AMI. Another 133 units will be for families making up to 60% AMI. The units will stay at these income levels for a minimum of 40 years.

Table 1. Affordable Units at Kenilworth Development

Target Income	Units	Affordable Control Period
< = 50% AMI	290	Minimum of 40 years
< = 60% AMI	133	Minimum of 40 years
< = 80% AMI	65	Minimum of 30 years
< = 120% AMI	42	First sale only

Note: There will be a diversity of bedroom mix and unit size, from one-bedroom to five-bedroom, and 625 to 1,798 square feet.

According to the Zoning Commission order, the development will be constructed in phases. The closing of the public alley and dedication of land for street purposes will facilitate the construction of phase one. Phase one will consist of 166 residential units, 89 of which will be replacement units for the demolished public housing units. The units will be built as follows:

- 65 one, two, three, and four-bedroom units in a multifamily building;
- 42 one and two-bedroom units for seniors (ages 55 and above) in a senior building;
- 44 townhomes; and
- 15 stacked flats.

At the Committee’s public hearing on October 14, 2020, Anna Chamberlin, Associate Director of the Planning and Sustainability Division of the District Department of Transportation (DDOT), stated that DDOT has several objections. These include:

- That the applicant enter into a project-specific agreement known as a Horizontal Public Use Agreement for the design review, construction, inspection, and acceptance of Phase 1

¹ “D.C. Agency Plans Own Building,” *The Washington Post*, October 9, 1957, pg. A13.

² See, for instance, LaBarbara Bowman, “Warm Bath No Easy Thing in NE Housing Project,” *The Washington Post*, March 7, 1977, pg. C1.

of the Kenilworth Courts PUD to verify that public space improvements meet DDOT standards and specifications;

- A *preliminary* dedication plat shall be recorded with a note that “The dedication shall not be effective until DDOT has accepted the public space improvements and the Certificate of Occupancy shall not be issued until DDOT has re-recorded the plat of dedication with an acknowledgment of acceptance”;
- The final dedication plat shall not be re-recorded until DDOT has confirmed that the public space improvements have been constructed to DDOT standards and specifications, all statutory warranties have been provided, and DDOT has agreed to accept the improvements;
- A bond is posted in an amount to be determined by DDOT for the public space improvements; and
- The Applicant compensates DDOT in the amount of \$89,173.38 for the street lighting facilities in the existing alley network.

At the Committee’s public hearing, the applicant stated that it agrees with all of these conditions. Twelve days after the public hearing, the applicant submitted to the Committee a signed and executed Horizontal Public Space Agreement with DDOT. Consistent with DDOT policy,³ the agreement includes provisions that the applicant must submit intermediate design review plans, and final design review plans to DDOT for review and approval. The agreement is attached to this report.

In addition to the objections from DDOT, Joseph Snider, Deputy Surveyor of the Office of the Surveyor, reported that Washington Gas objects to the alley closure and street dedication in a letter dated August 14, 2020, until it is able to abandon the gas main between Quarles Street, N.E., and 45th Street, N.E., and confirm that there are no other Washington Gas facilities in the affected area. In a follow-up letter received by the Committee on November 10, 2020, Washington Gas states, “... Washington Gas has completed the design for the necessary gas main abandonment and authorized this work to be completed under BCA 296540.”⁴ Upon completion of the project and confirmation that no other facilities will be affected, “Washington Gas will be able to issue a letter of approval for the closure of the alley.”⁵

Given that the only outstanding objections are those from DDOT and Washington Gas and the applicant has agreed to these conditions, the Committee Print includes language in section 3 stating that the approval of the public alley closing and street dedication is contingent upon the satisfaction of all conditions from DDOT and Washington Gas as set forth in the official S.O. file.

Conclusion

The redevelopment of Kenilworth Courts will bring a host of benefits to the community, including the addition of significant low-income housing stock that is desperately needed. While

³ DDOT Design and Engineering Manual, January 2019, 3.7.3 and 3.7.4.

⁴ Letter from Washington Gas, Re: BCA 296540 - Alley Closure and New Right-of-Way in Square 5116 (Kenilworth Courts),” dated November 9, 2020.

⁵ *Id.*

there are outstanding objections to the alley closure and street dedication, the applicant has agreed to all of these conditions, and they are incorporated into the Committee Print as a condition of the closing and rededication. Importantly, the alley to be closed will be replaced by a “T” shaped street system that will improve traffic movements inside the square.⁶ Given these improvements, the existing alley is no longer necessary for public alley purposes. Accordingly, the Committee recommends Council approval of the Committee Print for Bill 23-883.

II. LEGISLATIVE CHRONOLOGY

- July 31, 2020 Bill 23-883, the “Omnibus Kenilworth Courts Redevelopment Act of 2020” is introduced by Councilmember Vincent Gray.
- August 14, 2020 Notice of Intent to Act on Bill 23-883 is published in the *District of Columbia Register*.
- September 14, 2020 Notice of a Public Hearing on Bill 23-883 is filed with the D.C. Council Office of the Secretary.
- September 18, 2020 Notice of a Public Hearing on Bill 23-883 is published in the *District of Columbia Register*.
- September 22, 2020 Bill 23-883 is “read” at a legislative meeting; on this date the referral of the bill to the Committee of the Whole is official.
- October 14, 2020 The Committee of the Whole holds a public hearing on Bill 23-883.
- November 10, 2020 The Committee of the Whole marks-up Bill 23-883.

III. POSITION OF THE EXECUTIVE

Joseph Snider, Deputy Surveyor of the D.C. Office of the Surveyor, testified at the Committee’s public hearing on October 14, 2020. Mr. Snider stated that DDOT objects to the alley closure, street dedication, and building restriction lines removed until certain conditions are met. No other Executive Branch agencies object. He said that the only utility company to object is Washington Gas, as it has been determined that there are active natural gas facilities within the limits of the proposed alley closure and street dedication.

Anna Chamberlin, Associate Director of the Planning and Sustainability Division of DDOT, testified at the Committee’s public hearing on October 14, 2020. Ms. Chamberlin stated that DDOT filed a report with the Surveyor’s Office on August 11, 2020 objecting to the alley closure and street dedication until a number of conditions are met. These are summarized on page 4.

⁶ The Committee notes that the new public streets are not named, and designating them will require Council approval.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

Advisory Neighborhood Commission (ANC) 7D did not comment to the Council, but in a letter to the Surveyor's Office dated September 12, 2020, ANC 7D Chair Siraaj Hasan stated that the ANC voted 4-0-0 in support of the closure at a meeting held on September 8, 2020. The ANC letter is attached to this report.

V. NATIONAL CAPITAL PLANNING COMMISSION REVIEW

Diane Sullivan, Director of Urban Design and Plan Review at the National Capital Planning Commission (NCPC), provided comments to the applicant, finding that the proposed alley closing and street dedication falls under an exception in Chapter 8 (Exceptions and Project Changes) of NCPC's submission guidelines and is exempt from Commission Review. NCPC's letter is attached.

VI. SUMMARY OF TESTIMONY

The Committee of the Whole held a public hearing on several bills, including Bill 23-883, on Wednesday, October 14, 2020. The testimony summarized below pertains to Bill 23-883. Copies of written testimony are attached to this report.

Leila Batties, Holland & Knight, testified as counsel to the applicant. Ms. Batties noted that the alley to be closed will facilitate the redevelopment of property owned by the D.C. Housing Authority. She stated that the alley closing and street dedication are necessary to facilitate phase one of the redevelopment of Kenilworth Courts as approved by the Zoning Commission Order No. 15-21.

Christopher Earley, Michaels Development, a development partner with the D.C. Housing Authority, testified in support of Bill 23-883. Mr. Earley said that phase one will consist of one building with 65 units for families, a senior housing facility with 42 units, 44 townhomes, and 15 stacked flats. The development will also feature 4,500 square feet of non-residential uses, which will include a place for fresh food on the first floor.

Kolby Williams, The Warrenton Group, also a development partner with the D.C. Housing Authority, testified in support of Bill 23-883.

Joseph Snider, Deputy Surveyor of the D.C. Office of the Surveyor, testified on behalf of the Executive. His testimony is summarized in Section III. Mr. Snider noted that the most probable value for the public alley to be closed is \$407,060 and for the street dedication and building restriction line removed is \$2,084,390, for a total of \$2,491,450 (62,893 square feet multiplied by \$39.57).

Anna Chamberlin, Associate Director of the Planning and Sustainability Division of DDOT, testified on behalf of the Executive. Her testimony is summarized in Section III.

VII. IMPACT ON EXISTING LAW

Bill 23-883 has no impact on existing law. The Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-201 *et seq.*) (“Act”) establishes procedures for closing streets and alleys, opening new streets and alleys, naming public spaces, and other procedures related to streets and alleys. Additionally, it authorizes the Council to close all or part of a street or alley. In approving Bill 23-883, the Committee finds that the requirements of the Act have been satisfied.

VIII. FISCAL IMPACT

The November 10, 2020 fiscal impact statement from the District’s Chief Financial Officer states that funds are sufficient in the FY 2021 through FY 2024 budget and financial plan to implement the bill.

IX. SECTION-BY-SECTION ANALYSIS

<u>Section 1</u>	Short title.
<u>Section 2</u>	(a) Order the closing of the public alley in Square 5116, as shown on the Surveyor’ plat filed under S.O. 16-23580. (b) Accepts the dedication of land for street purposes, as shown on the Surveyor’s plat filed under S.O. File 16-23580. (c) Orders the removal of the building restriction lines along 45 th and Quarles Streets within Square 5116.
<u>Section 3</u>	Conditions the closing of the alley, street dedication, and building restriction line removal on satisfying conditions from DDOT and Washington Gas.
<u>Section 4</u>	Fiscal impact statement.
<u>Section 5</u>	Effective date.

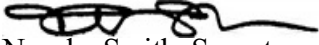
X. COMMITTEE ACTION

XI. ATTACHMENTS

1. Bill 23-883 as introduced.
2. Written Testimony.
3. NCPC Comments.
4. Surveyor's Plat.
5. Fiscal Impact Statement for Bill 23-883.
6. Legal Sufficiency Determination for Bill 23-883.
7. Committee Print for Bill 23-883.

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council
From :  Nyasha Smith, Secretary to the Council
Date : Monday, August 3, 2020
Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Office of the Secretary on Friday, July 31, 2020. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Omnibus Kenilworth Courts Redevelopment Act of 2020 ", B23-0883

INTRODUCED BY: Councilmember Gray

The Chairman is referring this legislation to Committee of the Whole.

Attachment
cc: General Counsel
Budget Director
Legislative Services

Vincent C. Gray
Councilmember Vincent C. Gray

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A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To order the closing of the existing public alley in Square 5116, which runs from 45th Street, N.E. to Quarles Street, N.E.; to accept the dedication of land for a new east-west public street between Kenilworth Avenue, N.E. and 45th Street, N.E. and a new north-south street extending from Quarles Street, N.E.; to accept the dedication of property along the east side of 45th Street, N.E. and the south side of Quarles Street, N.E. for public street purposes; and to remove the existing building restriction lines along the east side of 45th Street, N.E. and the south side of Quarles Street, N.E.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Omnibus Kenilworth Courts Redevelopment Act of 2020".

Sec. 2. Pursuant to Section 201 of the Street and Alley Closing Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-202.01, et seq.) (the "Act"), the Council of the District of Columbia finds the public alley in Square 5116, as shown on the Surveyor's plat filed under S.O. 16-23580, is unnecessary for alley purposes and orders it closed, with title to the land to vest as shown on the Surveyor's plat. The approval of the Council of this closing is contingent upon the satisfaction of all the conditions set forth in the official S.O. File 16-23580.

24 Sec. 3. Pursuant to sections 302 and 401 of the Street and Alley Closing and Acquisition
25 Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-
26 203.02 and 9-204.01) ("Act"), and notwithstanding the requirements set forth in Sections 303,
27 304 and 402 of the Act (D.C. Official Code §§ 9-203.03, 9 203.04, and 9-204.02), the Council
28 accepts the dedication of land for street purposes and further orders the removal of building
29 restriction lines as shown on the Surveyor's plat filed under S.O. File 16-23580. The approval of
30 the Council of this dedication is contingent upon the satisfaction of all the conditions set forth in
31 the official S.O. File 16-23580.

32 Sec. 4. The approval of the Council of this dedication is conditioned upon the
33 construction of the street improvements to the standards and specifications of the District
34 Department of Transportation, the submittal by the owner of a signed a document, which shall be
35 attached to the DDOT Statement, that indemnifies and holds harmless the District and all of its
36 officers, agents, and servants against any and all claims or liability arising from or based on, or
37 as a consequence or result of, any latent defects, act, omission, or default of the owner of the
38 property, his employees, agents, servants, contractors, or subcontractors, in the performance of,
39 or in connection with, any work required, contemplated, or performed in connection with the
40 construction of the street and the satisfaction of all the conditions set forth in the official file for
41 S.O. 16-23580.

42 Sec. 5. Notwithstanding section 306 of the Act (D.C. Official Code § 9-203.06), the
43 Mayor is authorized to record the plat only after the satisfaction of all the conditions set forth in
44 the official S.O. File 16-23580.

45 Sec. 6. Fiscal impact statement.

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

49 Sec. 4. Effective date.

50 This act shall take effect following approval by the Mayor (or in the event of veto by the
51 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
52 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
53 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
54 Columbia Register.

KENILWORTH COURTS – BILL 23-0883

Alley Closing, Street Dedication and Removal of BRLs

Leila Batties, Holland & Knight, Presentation to City Council

Wednesday, October 14, 2020

Introduction

Leila Batties with the law firm of Holland & Knight. I am joined by my colleague, Chris Cohen. We are here on behalf of Kenilworth Revitalization I, JV, LLC, which is the developer of Kenilworth Courts in Ward 7.

The developer is a joint venture between the Michaels Company, the Warrenton Group, and the DC Housing Authority, which controls the property to be redeveloped. There are a few members of the development team participating in the hearing, including Mr. Christopher Earley who will testify shortly.

Summary of Legislation

The legislation before the Council provides for the closing of a public alley, the dedication of land for public street purposes, and the removal of two building restriction lines.

The alley to be closed consists of 10,286 square feet of land area, where 56,541 square feet of land will be dedicated to the District for street purposes. Also, each building restriction line to be removed is 15 feet in width, one extending along 45th Street and one along Quarles Street.

Purpose of Legislation

Each of these elements is necessary to facilitate the first phase of redevelopment for Kenilworth Courts, as approved by the Zoning Commission pursuant to Zoning Commission Order 15-21.

Once the legislation is passed, the developer can proceed with subdividing the property with the Office of the Surveyor; once that occurs, the developer can proceed with the permitting process and start construction.

Agency Review

The development team has spent the past several months working with DDOT on the MOU necessary to facilitate the street dedication, and with the Office of the Surveyor and other agencies in order to complete the review process leading up to this hearing.

The developer agrees with all of the conditions listed in the agency reports and will continue to work with the various agencies as necessary to satisfy the conditions.

Conclusion

There is a sense of urgency in closing the alley. It will allow the developer to completely secure a site that otherwise presents significant public safety concerns.

Thank you for your time. Turn the presentation over to Christopher Earely with the Michaels Company.

Witness Testimony for Bill 23-0883 from Christopher Earley of Michaels Development

I. Introduction

- Good afternoon, Mr. Chairman. My name is Christopher Earley, and I serve as Vice President of Development with Michaels Development Company (“Michaels”). I am joined here by representatives from the DC Housing Authority (“DCHA”), The Warrenton Group and our civil engineering advisor Wiles Mensch.
- In January 2012, DCHA issued a Request for Proposals (RFP) to procure a development partner to undertake the redevelopment of Kenilworth Courts. Subsequently, DCHA selected a partnership between Michaels and The Warrenton Group. As such, Michaels and The Warrenton Group are co-developers with DCHA in the joint venture entity known as *Kenilworth Revitalization 1 JV LLC*, the entity of record for the redevelopment of Kenilworth Courts.
- In working diligently to get to this point today, we very much appreciate your time and consideration of Bill 23-0883, which involves closing of the existing alley, dedication of land for public street purposes, and removal of building restriction lines in Square 5116. In short, this legislation reflects an important milestone toward facilitating the initial phase of the Kenilworth Courts redevelopment plan in Ward 7.

II. Summary of the Kenilworth Courts Redevelopment

- Kenilworth 166, as Phase I of the Kenilworth Courts redevelopment plan, will be built upon 4.4 acres of the 14-acre Kenilworth Courts site.
- Upon completion, Kenilworth 166 will consist of the following:
 - A Family building containing 65 units;
 - A Senior (55+) building containing 42 units;
 - 44 townhomes; and
 - 15 stacked flats

- Of the 166 units, *i*) 118 will be rent-subsidized public housing units built to replace the 89 vacant public housing units being razed on the site during demolition, and *ii*) 48 units will be non-subsidized rent-restricted units at 50% AMI. All of which will be financed Low-Income Housing Tax Credits and other public and private financing sources.
- Within the unit count, there will be a diversity of bedroom mix and unit sizes, with the bedroom mix containing 1BR through 5BR units and unit sizes ranging from 625-1798 sf.
- Kenilworth 166 will also include 4,500 square feet of non-residential uses, a portion of which will include a fresh food use located on the first floor of the 65-unit Family building.

III. Positive Impacts

- Approval of Bill 23-0883 will enable us to implement a public street and private alley system that allows for better overall site planning and design and will improve pedestrian and vehicular connectivity within the community.
- The existing alley would be replaced by two 75-foot wide public streets: *i*) an east/west extension of Ponds Street through Square 5116; and *ii*) a to-be-named road section extending northward from Ponds Street to Quarles Street. Private alleys will also provide vehicular access to the apartment buildings and off-street parking and loading at the rear of townhouses and stacked flats.
- More broadly, the redevelopment of Kenilworth Courts will preserve and create new affordable housing units using a “Build First” strategy, replacing 60-year old, dilapidated public housing units with newly-built units of varying sizes, thus enhancing the quality of housing and quality of life for Kenilworth Courts residents and the community as a whole.

IV. Conclusion

Thank you for listening to my testimony this afternoon. Our team is very excited to deliver this important development to Ward 7 and the District and Columbia, and we very much depend on your approval of this Application to do so. Along with my teammates, I am happy to answer any questions you may have.

TESTIMONY OF KOLBY WILLIAMS, THE WARRENTON GROUP

BILL 23-883 / OMNIBUS KENILWORTH COURTS REDEVELOPMENT ACT OF 2020

October 14, 2020

Good afternoon, Kolby Williams of the Warrenton Group. I'd like to take this opportunity to thank Councilmember Gray for introducing this legislation, and Chairman Mendelson for scheduling this hearing.

The Warrenton Group has been working with its development partners – the Michaels Company and the DC Housing Authority – and the community, including residents of Kenilworth courts and the ANC, for several years to realize the redevelopment of the Kenilworth Courts community.

We respectfully request the approval of the Omnibus Kenilworth Courts Redevelopment Act of 2020. Timing is critical because, with structures being razed, the property is an active construction site and we need to be able to secure the property in its entirety to enhance safety. Also, approval of the bill brings us a major step closer to being able to pull permits to start the construction of Phase I of the Kenilworth Courts, which will allow us to deliver replacement units, senior housing, and new mixed income housing for Wards 7 and the District, generally.

Thank you.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs



Public Hearing on

B23-788, “Dedication of Lot 252 in Square 620 for the First Street Right-of-Way, S.O. 19-48848 Act of 2020;”

B23-876, “Closing of a Portion of Potomac Avenue, S.E., adjacent to Reservation 248 and Square 744-SS, S.O. 19-46967 Act of 2020;”

and

B23-883, “Omnibus Kenilworth Courts Redevelopment S.O. 16-23580 Act of 2020”

Background Information Provided by

Joseph Snider

Deputy Surveyor of the District of Columbia

Department of Consumer and Regulatory Affairs

Before the

Committee of the Whole

Chairman Phil Mendelson

Council of the District of Columbia

October 14, 2020

12:00 p.m.

Good Afternoon, Chairman Mendelson, members and staff of the Committee of the Whole. I am Joseph Snider, the Deputy Surveyor of the District of Columbia at the Department of Consumer and Regulatory Affairs (DCRA). I appear before you today to provide background information on B23-788, “Dedication of Lot 252 in Square 620 for the First Street, N.W., Right-of-Way in Square 620, Act of 2020,” B23-876, “Closing of a Portion of Potomac Avenue, S.E., adjacent to Reservation 248 and Square 744-SS, S.O. 19-46967 Act of 2020;” and B23-883, “Omnibus Kenilworth Courts Redevelopment S.O. 16-23580 Act of 2020”.

B23-788, “Dedication of Lot 252 in Square 620 for the First Street, N.W., Right-of-Way in Square 620, Act of 2020”

Starting with B23-788, this bill would order the dedication of lot 252 in Square 620 for the widening of First Street, N.W., increasing the right-of-way from 60 to 90 feet between Pierce Street, N.W., and L Street N.W. in Ward 6. This will facilitate pedestrian improvements as part of a private development of Sursum Corda. The Bill was introduced by Chairman Mendelson and Councilmember Allen.

Lot 252 in Square 620 was created by a subdivision which was recorded in Subdivision Book 216 Page 72 and recorded on September 27, 2019 in the Office

of the Surveyor. Title to Lot 252, as shown in the Office of Tax and Revenue records as being owned by TBSC Owner I, LLC.

The most probable estimate of value as of January 1, 2020, which represents tax year 2021, for the public street dedication in Square 620 is \$1,249,670.00 (6,494 S.F. x \$192.43 estimated square foot). The estimate is rounded and based on neighboring lot 255 in Square 620.

The applicant for this closing is TBSC Owner I, LLC, who is represented by Holland & Knight.

The Office of the Surveyor notified the relevant Executive Branch agencies and the Utility companies of this application on January 21, 2020. They have no objections.

Pursuant to D.C. Official Code §9-202.02(3), the Surveyor's Office notified the National Capital Planning Commission (NCPC) of these applications on January 21, 2020. In a letter dated February 26, 2020, NCPC found that pursuant to delegation of authority adopted by the Commission on October 3, 1996 and per DC Code §9-202.02, the proposed dedication of right-of-way in Lot 252 in northwest Washington, DC, would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital, nor would it adversely affect other federal interests.

Pursuant to D.C. Official Code §9-202.02(5), Advisory Neighborhood Commission (ANC) 6E was notified of this application on January 21, 2020. In a letter dated May 26, 2020, ANC 6E indicated that they support the dedication. The applicant is the owner of the property abutting the Lot 252 to be dedicated.

B23-876, “Closing of a Portion of Potomac Avenue, S.E., adjacent to Reservation 248 and Square 744-SS, S.O. 19-46967 Act of 2020

Turning now to B23-876, “Closing of a Portion of Potomac Avenue, S.E., adjacent to Reservation 248 and Square 744-SS, S.O. 19-46967,” Act of 2020, which was introduced by Councilmember Cheh.

The purpose of this bill is to close a portion of Potomac Avenue, S.E., between First Street, S.E., and the former Canal Street, S.E., in Ward 6.

The portion of Potomac Avenue, S.E. to be closed was created by the establishment of the Federal City of Washington. The street is shown on the King Plats on Plate 13 (shown as Georgia Avenue) in the year 1803. Title to the closed portion of Potomac Avenue is determined to be held by the United States.

The most probable estimate of value as of January 1, 2020 which represents tax year 2021 for the part of Potomac Avenue S.E. closed adjacent to Reservation 248 and Square 744-SS is \$3,625,000.00 (36,250 square feet x \$100.00 estimated square foot). The estimate is rounded based on lot 801 in Square South 744-SS.

The applicant for this closing is District of Columbia Water and Sewer Authority (DC Water), who is represented by Carolyn Brown of The Brown Law Firm, PLLC. The Office of the Surveyor notified the relevant Executive Branch agencies and utility companies on October 21, 2019. In a letter dated December 14, 2019, the District Department of Transportation (DDOT) objected to this closure indicating that the partial closure of Potomac Avenue S.E., as requested by the applicant until they apply for and receive public space occupancy permits for use of the adjacent Canal Street and 2nd Street, S.E. right-of-way. In a Supplemental letter dated September 30, 2020, DDOT indicated that DDOT and DC Water have come to an agreement on a resolution to the issues raised in the December 14, 2019 letter. DDOT removed their objection to the approval of the closing. DDOT expects DC Water will continue to work with DDOT to obtain the appropriate public space occupancy permits for their use of DDOT's Canal Street, S.E. right-of-way. I will defer to my colleague at DDOT for further clarification on the agreement if needed. The remaining Executive Branch agencies have no objections.

Pursuant to D.C. Official Code §9-202.02(3), the Surveyor's Office notified the National Capital Planning Commission (NCPC) of this application on October 21, 2019. In a Commission Action dated January 9, 2020, NCPC notes that this portion of Potomac Avenue is an unbuilt section of the roadway that has never

been developed and has been shown historically as either on the shore of or within the Anacostia River. A portion of the DC Water headquarters property has been built on this section of the roadway. NCPC approves comments to the Council of the District of Columbia that this portion of Potomac Avenue can be closed for the reasons stated above. NCPC notes future development will remain in viewshed along this portion of roadway through building setbacks and massing.

Pursuant to D.C. Official Code §9-202.02(5) Advisory Neighborhood Commission (ANC) 6D was notified of this application on October 21, 2019. In a letter dated September 30, ANC 6D indicated their support for the proposed street closing.

“Omnibus Kenilworth Courts Redevelopment S.O. 16-23580 Act of 2020”

Finally, B23-883, the “Omnibus Kenilworth Courts Redevelopment Act of 2020,” was introduced by Councilmember Gray. This bill would order the closing of the existing alley in Square 5116, between Quarles Street, N.E. and 45th Street, N.E., and order the dedication of a portion of land for street purposes between Kenilworth Avenue, N.E., 45th Street, N.E. and Quarles Street, N.E., also along the East line of 45th Street, N.E., and the South line of Quarles Street, N.E. The bill would also remove an existing 15-foot Building Restriction Line along the East line of 45th Street, N.E., and the South line of Quarles Street, N.E., in Ward 7.

The 16-foot to 18-foot wide improved alley to be closed was created by a plat of Dedication of Land for Public Highways and Public Alleys. It was recorded in Subdivision Book 137 on Page 141 on October 24, 1956 in the Office of the Surveyor.

Title to the alley and portions of streets to be closed could not be determined to be held by the District or the United States.

The most probable estimate of value as of January 1, 2020, which represents tax year 2021, for the public alley closed, street dedication and building restriction lines eliminated in Square 5116 is \$2,491,450.00 (62,893 square feet x \$39.57).

The estimation is explained as follows:

- The public alley closed estimate is \$407,060 (10,287 square feet x \$39.57).
- The street dedication and building restriction line estimate is \$2,084,390 (52,676 square feet x \$39.57). Estimates are rounded and based on lots 172 to 180 in Square 5116.

The applicant for this closing is the D.C. Housing Authority, who is represented by Holland and Knight. The Office of the Surveyor notified the relevant Executive Branch agencies and the utility companies on May 7, 2020. Within a letter dated August 11, 2020, the District Department of Transportation (DDOT) objected to the proposed alley closure, street dedication and removal of BRLs until the following conditions are satisfied:

- The applicant enters into a project specific agreement known as a “Horizontal Public Use Agreement” with DDOT for the design review, construction, inspection and acceptance of Phase 1 so that DDOT can verify that the design and construction meets or exceeds DDOT standards and specifications for the public space infrastructure improvements including but not limited to, streetscape, drainage, lighting, paving, and other public space elements;
- The applicant coordinates with DDOT on the development of the project specific Horizontal Public Use Agreement, and DDOT will coordinate with the Agency providing an estimate for the application fees, bonds, and other costs and requirements related to DDOT design reviews and inspections, as well as provide guidance on the dedication and process for DDOT acceptance;
- The preliminary dedication plat for Phase 1, prior to the subdivision of the existing lots, shall be recorded with a note that “The dedication shall not be effective until DDOT has accepted the public space improvements and the Certificate of Occupancy shall not be issued until DDOT has re-recorded the plat of dedication with an acknowledgement of acceptance;
- The final dedication plat for Phase 1 shall not be re-recorded until DDOT has confirmed that the Public Space improvements have been constructed to

DDOT standards and specifications, all statutory warranties have been provided, and DDOT has agreed to accept the improvements; and

- A bond is posted in an amount to be determined by DDOT for the public space improvements; and
- The applicant compensates DDOT in the amount of \$89,173.38 for the street lighting facilities in the existing alley network.

The remaining agencies have no objections to the proposed alley closure, street dedication and removal of BRLs.

The utility companies were notified on May 7, 2020. Within a letter dated June 24, 2020, Washington Gas objected to the alley closure, street dedication and removal of building restriction line. It has been determined that Washington Gas has active natural gas facilities within the limits of the proposed alley closure, street dedication and removal of a building restriction line that would be impacted by this proposal.

Pursuant to D.C. Official Code §9-202.02(3), the Surveyor's Office notified the National Capital Planning Commission (NCPC) of this application on May 7, 2020. In a letter dated July 1, 2020, NCPC determined that the proposed project falls under an exception listed in Chapter 8 (Exceptions and Project Changes) of NCPC's submission guidelines. Accordingly, staff has determined that this project is exempt from Commission review.

Pursuant to D.C. Official Code §9-202.02(5) Advisory Neighborhood Commission (ANC) 7D was notified of this application on May 7, 2020. In a letter dated September 12, 2020, ANC 7D indicated their support for the alley closure, street dedication and removal of building restriction line.

This concludes my testimony. I appreciate the opportunity to appear before you today and welcome any questions you may have regarding this matter. Thank you.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
District Department of Transportation



Public Hearing on
B23-876, Closing of a Portion of Potomac Avenue, S.E., Adjacent to Reservation
248 and Square South 744S Act of 2020

B23-788, Dedication of Lot 252 in Square 620 for the First Street, NW, Right-of-
Way, S.O. 19-48848 Act of 2020

B23-883, Omnibus Kenilworth Courts Redevelopment Act of 2020

Testimony of
Anna Chamberlin

Associate Director, Planning & Sustainability Division
District Department of Transportation

Before the
Committee of the Whole

Council of the District of Columbia

Wednesday, October 14, 2020
10:00 a.m.

John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004



Good morning Chairman Mendelson, members of the Council, staff, and District residents. My name is Anna Chamberlin, and I am the Associate Director of the Planning and Sustainability Division at the District Department of Transportation, commonly referred to as DDOT. I am here today to present testimony on behalf of Mayor Muriel Bowser and DDOT Director Jeff Marootian regarding three bills, which are Bill 23-876, the “Closing of a Portion of Potomac Avenue, S.E., Adjacent to Reservation 248 and Square South 744S Act of 2020,” Bill 23-788, the “Dedication of Lot 252 in Square 620 for the First Street, NW, Right-of-Way, S.O. 19-48848 Act of 2020, and Bill 23-883, the “Omnibus Kenilworth Courts Redevelopment Act of 2020.”

The stated purpose of Bill 23-876 is to close a portion of Potomac Avenue, S.E., adjacent to Reservation 248 and Square South 744S, in Ward 6. DDOT filed a supplemental report with the Office of the Surveyor on September 30, 2020, related to S.O. No. 19-46967. DDOT’s report noted that DDOT and DC Water had come to an agreement regarding outstanding questions related to DC Water’s use of public space in this vicinity. Accordingly, DDOT has no objections to the proposed closures in this bill.

The stated purpose of Bill 23-788 is to dedicate Lot 252 in Square 620 for the First Street, N.W., right-of-way. DDOT filed a report with the Office of the Surveyor on June 10, 2020, related to S.O. No. 19-46967. DDOT’s report noted that DDOT objects to the dedication until the following conditions are met:

- The Applicant must enter into a project specific Horizontal Public Use Agreement with DDOT for the design review, construction, inspection and acceptance of First Street NW and First Place NW for DDOT to verify the design and construction meet or exceed DDOT standards for streetscape, drainage, lighting, paving, and other public space elements;
- The Applicant will coordinate with Renan Snowden at DDOT on the development of the project specific Horizontal Public Use Agreement, and she will coordinate the Agency providing an estimate for the applicable fees related to DDOT design reviews and inspections, as well as provide guidance on the dedication of the proposed new ROW as well as the process for DDOT acceptance; and
- The dedication plat for First Street NW shall not be recorded until DDOT has confirmed that the Public Space improvements have been constructed to DDOT standards and specifications, all statutory warranties have been provided, and DDOT has agreed to accept the improvements.

DDOT can report that we are in discussions with the Applicant to finalize the required Horizontal Public Use Agreement. DDOT notes that Bill 23-788 appropriately, in this case, specifies that recordation of the plat is contingent upon the satisfaction of all conditions set forth in the official file for S.O. No. 19-46967.

The stated purpose of Bill 23-883 is to close the public alley in Square 5116, which runs from 45th Street, N.E. to Quarles Street, N.E., and to accept the dedication of land for surrounding new public streets, as well as remove certain existing building restriction lines. DDOT filed a report with the Office of the Surveyor on August 11, 2020, related to S.O. No. 16-23580. DDOT's report noted that the agency objected to the proposed closure, dedication, and removal of building restriction lines until several conditions are met. Since the conditions are lengthy I will not read them in full, but I have attached our report for the record. Notably, DDOT conditions acceptance of these actions on the Applicant entering into a project specific agreement known as a "Horizontal Public Use Agreement" with DDOT for the design review, construction, inspection and acceptance of Phase 1 of the Kenilworth Courts PUD. The purpose of the agreement is for DDOT to verify that the design and construction meet or exceed DDOT standards and specifications for the public space infrastructure improvements including, but not limited to, streetscape, drainage, lighting, paving, and other public space elements. We also, in this instance, agree to the recordation of a **preliminary** dedication plat for Phase 1, prior to the subdivision of the existing lots, with the condition that it shall be recorded with a note that "The dedication shall not be effective until DDOT has accepted the public space improvements and the Certificate of Occupancy shall not be issued until DDOT has re-recorded the plat of dedication with an acknowledgement of acceptance." The final dedication plat for Phase 1

shall not be re-recorded until DDOT has confirmed that the Public Space improvements have been constructed to DDOT standards and specifications, all statutory warranties have been provided, and DDOT has agreed to accept the improvements.

DDOT can report that we are in discussions with the Applicant to finalize the required Horizontal Public Use Agreement. DDOT notes that Bill 23-883 specifies that recordation of the plat is contingent upon the satisfaction of all conditions set forth in the official file. Normally, DDOT would agree with this legislative condition. However, in this instance, the complicated nature of the phased development process requires a preliminary recordation of a plat before all conditions are met. DDOT would like to work with the committee to more accurately reflect the phased nature of the dedication process, including the recordation of the preliminary plat and recordation of the final plat.

This concludes my testimony. Thank you for allowing me the opportunity to testify before you today. I am available to answer any questions that you may have.



**GOVERNMENT OF THE DISTRICT OF COLUMBIA
ADVISORY NEIGHBORHOOD COMMISSION 7D**

CENTRAL NORTH EAST, DEANWOOD, EASTLAND GARDENS, KENILWORTH, KINGMAN PARK,
MARSHALL HEIGHTS, MAYFAIR, PARKSIDE, RIVER TERRACE

September 12, 2020

Mr. Rick Dreist
District of Columbia Surveyor
Office of the Surveyor for the
District of Columbia
1100 4th Street, SW, Room E320
Washington, D.C. 20024

Re: S.O. 16-23580, Alley Closing, Street Dedication, and Removal of Building Restriction Line at Square 5116 – Kenilworth Courts PUD, Phase I

Dear Mr. Dreist:

At its regularly scheduled public meeting on Tuesday, September 8, 2020, and with a quorum present (four out of seven Commissioners required to be in attendance to achieve a quorum), Advisory Neighborhood Commission (“ANC”) 7D voted ([4] in favor, [0] opposed, [0] abstention) to support the above-referenced application, which would impact Square 5116 as follows:

1. Close a 16-foot wide public alley;
2. Dedicate 52,676 square feet of land area for public street purposes; and
3. Remove a 15-foot wide building restriction line along Quarles Street, NE and 45th Street, NE.

In reviewing this application, ANC 7D determined that these changes are necessary to facilitate the redevelopment of the Kenilworth Courts into a mixed-use mixed income development, as approved by the Zoning Commission under Z.C. Order 15-21/15-21A. In addition, ANC 7D noted that this application will specifically enable the construction of phase one.

In light of the foregoing, ANC 7D does not object to the application identified as Surveyor’s Office (S.O.) File 16-23580, which involves an alley closing, street dedication, and removal of a building restriction line at Square 5116.

Respectfully submitted,

Siraaaj M. Hasan
ANC 7D, Chair

Siraaaj M. Hasan, PMP
Chair, ANC 7D Commission
Advisory Neighborhood Commission 7D02

Single Member District 7D02
(Eastland Gardens, Mayfair, Lotus Square)
(m) 202-903-9540
(e) 7d02@anc.dc.gov

IN REPLY REFER TO:
NCPC File No. 8175

July 1, 2020

Diana Dorsey
District of Columbia Department of Consumer and Regulatory Affairs, Office of the Surveyor
1100 4th Street, SW
Washington, DC 20024

Re: 8175 (Closing of a Public Alley in Square 5116 - S.O. 16-23580)

Dear Diana Dorsey:

The purpose of this letter is to respond to the above-mentioned project submitted to the National Capital Planning Commission (NCPC) for review, in accordance with DC Code § 9-202.02.

Upon review of the project documents, NCPC staff has determined that the proposed project falls under an exception listed in Chapter 8 (Exceptions and Project Changes) of NCPC's submission guidelines. In particular, the project meets the requirements of exception 8, which include the street or alley closings located outside the boundary of the L'Enfant City under the following conditions: 1) the street or alley is not adjacent to federal property; and 2) the street or alley does not provide access to a federal property or affect other federal interests. The requested closure is also consistent with the Commission's approval of ZC 15-21 in December 2016 for a consolidated Planned Urban Development (PUD) and related map amendments. The project was also made available for public review on the NCPC website and no comments were received. Accordingly, staff has determined that this project is exempt from Commission review.

This determination applies only to the project listed above. Determinations to whether a particular project falls within one of the Commission's exceptions are done on a case-by-case basis, either during early consultation or upon request for review. Please note that the applicant cannot make this determination independently and must submit projects to NCPC to confirm that an exception is warranted.

If you have any questions or need additional information, please contact Stephanie Free at (202) 482-7209 or stephanie.free@ncpc.gov.

Sincerely,

Diane Sullivan

Diane Sullivan
Director, Urban Design and Plan Review

**AGREEMENT
GOVERNING THE
ACCEPTANCE AND DEDICATION
OF PUBLIC INFRASTRUCTURE IMPROVEMENTS IN
THE KENILWORTH COURTS REDEVELOPMENT**

THIS AGREEMENT GOVERNING THE ACCEPTANCE AND DEDICATION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS IN THE KENILWORTH COURTS REDEVELOPMENT (ZC ORDER NO. 15-21) (“Agreement”), Transportation Mitigation Master Project is made as of this 26th day of October, 2020 (“Effective Date”) by and between Kenilworth Revitalization I JV, LLC (“KRI” and “Developer”) and its successors and assigns and the DISTRICT OF COLUMBIA (“District” or “DC”), a municipal corporation, acting through the District Department of Transportation (“DDOT”) (collectively, the “Parties” and individually as a “Party”), with the consent of the District of Columbia Office of Property Management pursuant to D.C. Official Code § 50-921.04(a)(1)(H)(2020).

RECITALS

WHEREAS, DCHA issued a solicitation to redevelop all of the lots located Square 5116 and bounded by Kenilworth Avenue, NE, Douglas Street, NE, 45th Street, NE and Quarles Street, NE, and more commonly known as Kenilworth Courts, with a mix of multifamily, senior and townhome housing (the “Project”); and

WHEREAS, given the magnitude of the Project, it will be designed and constructed in three (3) phases; the first of which will be on the property depicted in the attached Exhibit A (“Phase I”), which consists of approximately 4.4 acres of land area; and

WHEREAS, The Warrenton Group and the Michaels Development Company I, LP were selected by the DCHA to be the developers of the Project, in partnership with DCHA, and the Project will be funded through a combination of public and private financing. KRI is the resulting partnership which will ground lease Phase I from DCHA; and

WHEREAS, Phase I contemplates the closure and demolition of existing infrastructure in the public right of way (ROW) and design, construction and dedication of new transportation infrastructure such as streets, alleys, sidewalks, curbs, gutters, streetlights, conduits, duct banks, manholes, catch basins, drop inlets, green infrastructure, signs and sign structures, water and sewer facilities, electric facilities, and telephone and data facilities, and related appurtenances in areas that are, or will be, in the public space (“collectively, the “Public Space Infrastructure Improvements”); and

WHEREAS, as part of Phase I, the Developer is to dedicate land for public ROW (“New ROW”) and pursue the closing of a public alley (the “Alley Closing”) as depicted on the plat attached as Exhibit B; and

WHEREAS, DCHA has provided assurances to KRI that it will participate in the dedication of such roads, execute and record all documents necessary to accomplish same, and release such portions of the Property from the ground lease, and grant all easements as may be necessary in connection with the installation of the utilities, execute and record all documents necessary to accomplish same, and, if appropriate, release such utility easement areas from this Lease; and

WHEREAS, the Developer agrees to cooperate and act in a reasonably timely manner with DDOT on the dedication of the ROW as part of the development of the Property as needed to allow acceptance of the Public Space Infrastructure Improvements; and

WHEREAS, the Transportation Infrastructure and Public Space Impact Mitigation Amendment Act of 2014, effective July 23, 2014 (D.C. Law 20-128; D.C. Official Code 50-9231.02(f)) gives DDOT the authority to enter into an agreement with a developer, property owner, utility company, the federal government or other governmental entity, or other person or entity for the payment for the costs of DDOT's review of a proposed project that affects the transportation infrastructure or public space in the District and provides for payment of the cost associated with the implementation of transportation infrastructure or public improvements or mitigation measures to address the project's impact on the transportation infrastructure; and

WHEREAS, permitting, design and construction of the Public Space Infrastructure Improvements will be done in accordance with DDOT Standards and Guidelines and other applicable agency standards (where standards conflict, DDOT Standards and Guidelines shall govern), collectively known as "**DDOT Standards and Guidelines**," which shall include, but not be limited to, the current applicable DC Water, District Department of Energy and Environment, American Association of State Highway Transportation Officials (AASHTO), and Federal Highway Administration standards as well as the Manual of Uniform Traffic Control Devices (MUTCD), DDOT Design and Engineering Manual, DDOT Standard Specifications for Highways and Structures, and the DDOT Traffic Control Manual; and

WHEREAS, at such time as the Public Space Infrastructure Improvements are completed, they will be accepted by DDOT and, if any part of Public Space Infrastructure Improvements are not already owned by the District and dedicated to the public, such portion of the Public Space Infrastructure Improvements shall be conveyed to the District and/or dedicated to the public, as applicable ("**Dedicated**") on the terms described in this Agreement and subject to the requirements described in Article 7 and all approvals required by District law; and

WHEREAS, the Parties acknowledge that a portion of the Public Space Infrastructure Improvements and their associated Plans and Specifications will be submitted to DDOT through the Transportation Online Permit System ("**TOPS**") and subject to review and approval within the Public Space Permitting Process while the remainder will undergo review by the Infrastructure Project Management Division ("**IPMD**"); and

WHEREAS, the District and the Developer desire to enter into this Agreement to set forth the terms and conditions under which the Developer will design, obtain design approvals consistent with this Agreement, and construct the Public Space Infrastructure Improvements and the terms and conditions under which the District will accept the Public Space Infrastructure Improvements and said Public Space Infrastructure Improvements will be conveyed to the

District and any Public Space Infrastructure Improvements not previously Dedicated will be Dedicated or subject to the documented Covenant of Maintenance for non-standard or stormwater management items as applicable.

WHEREAS, Phase I will be designed and constructed in accordance with the Non-Binding Schedule of Performance attached as Exhibit C;

NOW THEREFORE, in consideration of the foregoing, the Parties do hereby declare as follows:

ARTICLE I: DESIGN REVIEW AND PERMITTING

A. DDOT agrees to implement a review and approval process of the Developer's plan submittals for Phase I with a portion of the Public Space Infrastructure Improvements and their associated Plans and Specifications subject to review and approval within the Public Space Permitting Process while the remainder will undergo review by the IPMD as discussed below:

1. For Public Space Infrastructure Improvements that reside only in the Existing ROW, DDOT will review the Public Space Infrastructure Improvement Plans and Specifications using the Public Space Permitting Process and issue Public Space Permits to the Developer in accordance with applicable DDOT regulations and permitting procedures and the applicable District Agencies, Boards, Commissions and Committees. The Public Space Infrastructure Improvements that will be reviewed through the Public Space Permitting Process are attached as Exhibit D.
2. For Public Space Infrastructure Improvements that reside on New ROW or a combination of New and Existing ROW, DDOT will review the Public Space Infrastructure Improvements Plans and Specifications using IPMD review processes and recommend issuance of the appropriate permits with the applicable District Agencies, Boards, Commissions and Committees. The Public Space Infrastructure Improvements that will be reviewed through the IPMD review process are attached as Exhibit E.

B. DDOT will assign a staff member as the "DDOT Project Manager." Developer shall submit the plans required in this Article to the DDOT Project Manager who will promptly convey the submissions for review by necessary disciplines within DDOT. The DDOT Project Manager will be responsible for conveying and consolidating comments from the DDOT disciplines using IPMD processes. DDOT shall inform the Developer in writing of such selection within ten (10) business days of the execution of this Agreement.

1. Based on the phasing of design and construction of the Public Space Infrastructure Improvements described above, Public Space Infrastructure Improvements Plans and Specification reviews are planned to occur in multiple discrete submittals as follows:

- a. Intermediate (65%) Plan Reviews for Phase I;

b. **Final (100%) Plan and Specifications for Phase I**

2. **65% Plan Review.** The Developer shall submit 65% design review plans for the Project for DDOT's review and approval. The 65% submittal shall include an inventory of all non-standard elements in public space; if non-standard elements are proposed, the Developer is responsible for securing Public Space Permits independent from the process outlined in this agreement, including the recordation of any covenants of maintenance agreements which may be required for the maintenance of non-standard improvements, prior to Acceptance. DDOT shall have a period not to exceed thirty (30) days from the DDOT Design Coordinator's receipt of the Proposed 65% Plans by DDOT to review the Proposed 65% Plans then submitted and approve or disapprove the same, in whole or in part. In the event DDOT disapproves any of the Proposed 65% Plans, in whole or in part, DDOT shall provide the Developer written notice of the same and in such notice DDOT shall include the specific reasons for such disapproval in such detail so as to permit the Developer to revise and resubmit the Proposed 65% Plans ("Proposed Plans Rejection Notice"). In the event that a Proposed 65% Plans Rejection Notice is not delivered by the related Review Deadline, the Developer shall revise the Proposed 65% Plans and resubmit them to DDOT in accordance with the procedures and timelines set forth in Article 2.
3. **100% Plan Review.** The Developer shall submit 100% design review plans for DDOT's review and approval prior to Commencement of Construction (as defined in Article 4) of the Improvements for the Project. DDOT shall have a period not to exceed thirty (30) days from the DDOT Design Coordinator's receipt of the Proposed 100% Plans by DDOT to review the Proposed 100% Plans then submitted and approve or disapprove the same, in whole or in part. In the event DDOT disapproves any of the Proposed 100% Plans, in whole or in part, DDOT shall provide the Developer written notice of the same and in such notice DDOT shall include the specific reasons for such disapproval in such detail so as to permit the Developer to revise and resubmit the Proposed 100% Plans ("Proposed Amended Plans Rejection Notice"). In the event that a Proposed 100% Plans Rejection Notice is not delivered by the related Review Deadline, the Developer shall revise the Proposed 100% Plans and resubmit them to DDOT in accordance with the procedures and timelines set forth in Article 2.
4. **Utilities.** The 100% submittal shall include utility clearance letters from all utilities' operations and new business offices acknowledging that there is no impact to their utility, that the plans accurately reflect any additional utility infrastructure that the utility reasonably believes will be necessary to meet future needs, or a future anticipated utility-led project; or, if there is an impact noted, the Developer has included on the plans the proposed design to mitigate that impact.
5. **Time for Review.** DDOT agrees to conduct initial reviews of the Public Space Infrastructure Improvements Plans and Specifications and provide written comments within thirty (30) days of receipt of the Plans and Specifications from the Developer provided the Plans and Specifications do not include a design

waiver request. In the event that the submitted design is unusually voluminous, complex, or novel, DDOT will require additional time for its review and comment.

6. Public Space Infrastructure Improvements for which Public Space Permits and or Public Space Committee approval are required shall be submitted through TOPS and subject to the applicable time requirements and permit fees. Any non-standard features proposed for public space will require a Covenant of Maintenance, whether part of IPMD review or TOPS review. DDOT will not maintain non-standard items.
 7. All design must meet all DDOT Standards and Guidelines as adopted at the time design approval is sought. Anything that does not meet DDOT's Standards and Guidelines must be submitted to DDOT using a design waiver request at least 15 days in advance of the 65% submission for Phase I. Further, all design waiver requests are subject to the review and approval of DDOT's Chief Engineer.
 8. In the event the design waiver request requires the evaluation and/or approval of the Public Space Committee, the Developer shall submit the design waiver request through TOPS and all time outlined in this section shall be suspended until the Public Space Committee process is complete.
- C. The Developer agrees to comply with DDOT's review and approval processes as discussed in Article 1.A. above and obtain the necessary licenses and permits including but not limited to the following:
1. For Public Space Infrastructure Improvements that reside only in the Existing ROW, as set forth in the attached **Exhibit D**, the Developer is responsible for securing Public Space Permits through the DDOT Public Space Permitting Process and will submit plans and specifications for review through TOPS and pay all applicable fees, permit fees and technology fees (collectively, the "TOPS Fees").
 2. For Public Space Infrastructure Improvements that reside on New ROW, as set forth in the attached **Exhibit E**, the Developer is responsible for securing permits with the applicable District Agencies, Boards, Commissions, and Committees and shall remain subject to IPMD review of the associated Plans and Specifications for those Improvements and the Developer will submit Plans and Specifications for review to the DDOT Chief Engineer.
 3. For Public Space Infrastructure Improvements that reside on a combination of New and Existing ROW, as set forth in the attached **Exhibit E**, the Developer is responsible for securing permits with the applicable District Agencies, Boards, Commissions and Committees and shall remain subject to IPMD review of the associated Plans and Specifications for those Improvements, meet DDOT Standards and Guidelines and any additional requirements from the Public Space

Committee, and the Developer will submit the Plans and Specifications for review to the DDOT Chief Engineer.

D. To support the proposed Plan and Specification reviews defined in Section A.2.i. above, the Developer and DDOT agree to the conditions below:

1. The Developer agrees to fund DDOT design review costs for IPMD design reviews and inspection services based on a 6-month design duration) required to meet DDOT's obligations and responsibilities as set forth in this Agreement. A payment of One Hundred Twenty Thousand and Six Hundred Sixteen Dollars (\$126,616) shall be paid to DDOT by the Developer upon the execution of this Agreement for Phase I design reviews and inspection services ("Phase I Funds") within five (5) business days of the execution of this Agreement. The forgoing fee must be paid to Office of the Chief Financial Officer and made payable to the order of the "DC Treasurer". The Developer shall also pay any costs associated with reviewing changes and/or amendments to the approved plans and specifications as submitted under Article 2.
2. The Developer acknowledges that DDOT design reviews for Phase I cannot begin until the phase funds required to procure the necessary consultants to review the Public Space Infrastructure Improvements Plans and Specifications as set forth in this Agreement are received by DDOT, programmed and contracted appropriately for the Project.
3. The Developer agrees to select a contractor (the "Contractor") to construct the Public Space Infrastructure Improvements, and will procure, administer, and manage the construction contract for the Public Space Infrastructure Improvements as designed in the Public Space Infrastructure Improvements Plans and Specifications.
4. The Developer is solely responsible for obtaining any necessary licenses and permits for the Public Space Infrastructure Improvements and paying any fees, deposits, and performance bonds associated with these licenses and permits.
5. The Developer and DDOT agree to participate in design coordination meetings during the design phase for Phase I.

E. The Developer may prepare amended plans and specifications for the Public Space Infrastructure Improvements phases from time to time. DDOT shall have a period not to exceed thirty (30) days from the DDOT Design Coordinator's receipt of the Proposed 100% Amended Plans by DDOT to review the Proposed 100% Amended Plans then submitted and approve or disapprove the same, in whole or in part. In the event DDOT disapproves any of the Proposed 100% Plans, in whole or in part, DDOT shall provide the Developer written notice of the same and in such notice DDOT shall include the specific reasons for such disapproval in such detail so as to permit the Developer to revise and resubmit the Proposed 100% Plans ("Proposed Amended Plans Rejection Notice"). In the event that a Proposed Amended Plans Rejection Notice is delivered by

the related Review Deadline; the Developer shall revise the Proposed 100% Plans and resubmit them to DDOT in accordance with the procedures and timelines set forth above in this Article. Failure to deliver the Proposed Amended Plans Rejection Notice by the Review Deadline shall not constitute a waiver to comment by DDOT.

- F. If the Developer seeks to use or occupy any portion of the Public Space Infrastructure Improvements after DDOT accepts the Public Space Infrastructure Improvements pursuant to this Agreement or any of the adjacent public space at any time, the Developer shall seek and secure all required public space permits and public space committee approvals through TOPS. Such permits and approvals will be subject to the applicable time requirements and payment of the permit fees customary for public space permits. Any non-standard items proposed for public space will require a Covenant of Maintenance as a condition of their associated public space permit. Bioretention facilities do not require a public space permit but will require a covenant of maintenance to be recorded upon acceptance of the Project by DDOT.

ARTICLE 3: CONDITIONS PRECEDENT TO STREET DEDICATION OR ALLEY CLOSINGS

The Developer shall not initiate a street dedication or alley closure until the following steps are complete to minimize adverse impacts to the public in or near the Project area:

- A. The Developer must certify that the closure does not result in the elimination of the sole means of access for residents to their homes. The Developer will certify these steps by providing the certificate ("Street or Alley Closure Readiness Certificate") found at Exhibit F to DDOT;
- B. The Developer has obtained and provided to DDOT utility clearance letters from all utilities acknowledging that there is no impact to their utility; or, if there is an impact noted, the Developer has made arrangements with the impacted utility to relocate that utility to maintain services to the public and coordinated the return of this same utility, as necessary, to the public space; and
- C. DDOT has reviewed and approved the Public Space Infrastructure Improvements Plans and Specifications associated with the pending street or alley closure for Phase I of the Project consistent with the terms of Article 1.

ARTICLE 4: CONSTRUCTION COMMENCEMENT, INSPECTION FEES, AND INSPECTION RIGHTS

- A. **Commencement.** The Developer may commence construction of the Project at any time after DDOT approval of the 100% design; receipt by DDOT of all funds required to procure the necessary contractors to provide construction support services pursuant to DDOT's responsibilities as outlined in this Agreement; and all required permits have been obtained by the Developer. The Developer will provide the DDOT Project Manager no less than 45 days written notice of its intent to Commence Construction of the Improvements for the Project.

- B. **DDOT Inspections.** At least one-hundred eighty (180) days prior to the Commencement of Construction (as defined in Section 4.A), the Developer shall pay DDOT Three Hundred Ninety Thousand and Three Hundred Seventy-two dollars and Sixty-eight cents (\$390,372) for costs associated with DDOT inspections to inspect the construction of the Improvements within the Project pursuant to this Agreement.
- C. Prior to commencement of construction, the Developer shall provide to DDOT copies of restoration and maintenance bonds in the amount of One Million And Six Hundred Eight And Five Hundred Forty Two Dollars (\$1,608,542) from the Contractor's surety for the Public Space Infrastructure Improvements, which payment and performance bonds shall remain in effect for two (2) years following its completion and final acceptance by DDOT, in accordance with 24 DCMR 3408.8.
- D. **Unused Funds.** Upon DDOT's issuance of the Final Certificate of Completion, any unused funds deposited with DDOT shall be returned to the Developer.
- E. **Construction.** The Developer shall construct the Public Space Infrastructure Improvements (1) in accordance with the Public Space Infrastructure Improvements Plans and Specifications, as they may be amended from time to time as discussed in this Agreement (1) in accordance with the DDOT Standards and Guidelines, (2) in accordance with all required permits and applicable District and federal laws and (3) in a good and workmanlike manner.
- F. **Inspections.** At any time during construction of the Public Space Infrastructure Improvements, the Developer shall maintain a copy of the approved Plans and Specifications and any associated permits or other approvals onsite at the Project and shall allow DDOT (and DDOT's employees, agents, representatives, and contractors) to enter onto the Project to inspect all construction work undertaken by the Developer in connection with the Public Space Infrastructure Improvements for the purpose of confirming that the Improvements are being constructed in accordance with the Plans and Specifications ("Construction Review"). Such Construction Reviews may be made at any time and shall be conducted so as not to impair the progress of the construction of the Public Space Infrastructure Improvements. The Developer shall have the right to designate a representative to be present during such Construction Reviews.
- F. **Certified Lab Testing.** The Developer shall procure a certified lab to test all materials requested as specified by DDOT. Developer shall submit all complete testing results from a certified lab to DDOT and certify results meet DDOT Standards. Materials to be tested shall comply with DDOT standard specifications.
- G. **Construction Coordination.** The Developer and DDOT agree to participate in weekly construction coordination meetings throughout the construction phase of the Project.
- H. To assist DDOT in their planning, a non-binding Schedule of Performance is attached hereto as Exhibit C. The Developer will provide the DDOT Project Manager no less than thirty (30) days written notice of its intent to Commence Construction of the Improvements for Phase I of the Project.

- I. **Utility Coordination.** The Developer shall be solely responsible for coordinating with utility companies on all aspects of the Public Space Infrastructure Improvements and for the proper containment and removal, as necessary, of utilities on or near the Project. Any existing utilities not contained or removed must be transferred to and accepted by a regulated utility company and meet the utility company's standards for acceptance. Any costs associated with upgrading or relocating existing utilities to meet utility company standards for acceptance are the sole responsibility of the Developer. The Developer shall also be solely responsible for the installation and acceptance, by the applicable utility companies, of all utilities related to the Public Space Infrastructure Improvements.
 1. The Developer shall defend and hold harmless the District against any claims made by any utility company for loss or damage to any utilities caused by the Developer or occurring in connection with, or in any way arising from, based on, or as a result of any activities of the Developer or its contractors in their construction of the Public Space Infrastructure Improvements under this Agreement.
 2. The Developer shall be solely responsible for coordinating with the utility companies regarding the Project. The Developer shall be solely responsible for the proper containment and removal of all utility lines on or near the Property. The Developer shall be solely responsible for obtaining acknowledgement of acceptance of maintenance responsibilities in writing from each utility ("Letter of Utility Acceptance").

ARTICLE 5- SUBSTANTIAL COMPLETION

- A. After construction of the Public Space Infrastructure Improvements has been completed, the Developer can elect to turn over all, or a portion of, the Phase I Public Space Infrastructure Improvements. Developer shall provide a certificate to DDOT ("Certificate of Substantial Completion"), in the form attached as Exhibit G hereto, are substantially complete ("Substantially Complete"), except for certain punch list items ("Punch List Items") identified therein. Notwithstanding anything to the contrary in this Agreement:
 - I. In order to be deemed "Substantially Complete:"
 - i. All lanes of vehicular, pedestrian, bicycle, or other forms of traffic (including ramps, interchanges, overpasses, underpasses, sidewalks, bike paths, and other crossings) set forth in the approved Plans and Specifications are in their final configuration as designed and are available for normal operation and safe use;
 - ii. All major safety features are installed and functional in accordance with the approved Plans and Specifications, including as required, shoulders, guard rails, striping and delineations, concrete traffic barriers, bridge

railings, cable safety systems, metal beam guard fences, safety end treatments, terminal anchor sections and crash attenuators;

- iii. All required illumination and lighting for normal and safe use and operation is installed and functional in accordance with the approved Plans and Specifications;
- iv. All required signs, lane indicators, message boards, traffic signals, pavement markings, and all other such indication for normal and safe use and operation are installed and functional in accordance with the approved Plans and Specifications;
- v. The need for temporary traffic controls or for lane closures at any time has ceased (except for any required closures needed for routine maintenance, and except for temporary lane closures in accordance with and as permitted by a Department-approved traffic management plan solely in order to complete punch list items) in accordance with the approved Plans and Specifications;
- vi. The Developer has otherwise completed the Public Space Improvements in accordance with the approved Plans and Specifications such that the Project is in a physical condition that it can be used for normal and safe vehicular, pedestrian, bicycle, or other travel in all lanes and at all points of entry and exit, subject only to punch list items.
- vii. All utilities must be installed and accepted by the applicable utility company; and
- viii. The Developer has recorded a fully executed Covenant of Maintenance against the deed for any non-standard materials installed and provided a copy to DDOT.

2. Notwithstanding the foregoing provisions, if the Developer applies for a public space permit to perform any work associated with a previously dedicated street, then all of the lighting fixtures, final sidewalks, directional signs, trees, tree boxes and planters and other landscaping, benches, LID, bike racks, and trash receptacles must be installed during the term of such public space permit in accordance with the approved Plans and Specifications and DDOT Standards and Guidelines.

B. Within seven (7) days after receiving the Certificate of Substantial Completion, DDOT shall verify whether all of the requirements of this Section have been satisfied, and if DDOT concludes that all of the requirements have been completed DDOT's Chief Engineer will countersign the Certificate of Substantial Completion and return the fully signed Certificate of Substantial Completion to the Developer, with a copy to DCHA. If DDOT concludes that all of the requirements of this Article have not been satisfied,

DDOT shall send the Developer a notice advising it of the deficiencies in substantial completion.

ARTICLE 6: FINAL ACCEPTANCE OF PUBLIC SPACE INFRASTRUCTURE IMPROVEMENTS

- A. The Developer cannot initiate DDOT acceptance of any portion of the Phase I Public Space Infrastructure Improvements until the following conditions precedent to final acceptance for that portion of the Public Space Infrastructure Improvements being turned over to DDOT are complete:
1. The Developer has completed the Substantial Completion requirements outlined in Article 5.
 2. The Developer has removed all construction material, construction equipment and construction refuse from the Public Space Infrastructure Improvements that are recommended for acceptance by the District.
 3. All impacted utilities associated with the Public Space Infrastructure Improvements recommended for acceptance have obtained the appropriate public space permits and have been constructed.
 4. The Developer has identified on the as-built Plans all utilities in the current or future ROW associated with the Public Space Infrastructure Improvements recommended for acceptance and has received acknowledgement of acceptance of maintenance responsibilities in writing from each of these utilities ("Letter of Utility Acceptance").
 5. The Developer has delivered to DDOT's Chief Engineer a set of as-built plans for Phase I of the Public Space Infrastructure Improvements that are recommended for acceptance by the District.
 6. The area to be dedicated as public ROW shall have gone through the dedication process in accordance with Chapter 1400 of Title 24, District of Columbia Municipal Regulations (DCMR). Developer shall pay all costs associated with the dedication and alley closure which is in excess to the amounts paid to DDOT under Article 1 of this Agreement. The plat of dedication may be recorded prior to satisfaction of the requirements in Article 7, however, the recorded plat must include a note indicating: *"The dedication shall not be effective until DDOT has accepted the public space improvements and the final Certificate of Occupancy shall not be issued until DDOT has re-recorded the plat of dedication with an acknowledgement of acceptance."*

7. The Developer has received a Substantial Completion Certificate signed by DDOT's Chief Engineer for the Public Space Infrastructure Improvements that are recommended for acceptance by the District.
 8. The Developer will certify these steps by providing the certificate ("Certificate of Final Completion"), found at Exhibit H, to DDOT.
 9. Within seven (7) days after delivery of the Final Completion Notice, DDOT shall conduct a final inspection of the Public Space Infrastructure Improvements and DDOT shall either (i) cause the Chief Engineer to sign and deliver a Certificate of Final Completion attached as Exhibit For (ii) deliver a letter identifying which Punch List Items are incomplete. In the event the letter identifies incomplete items, the Developer will correct them and upon completion request DDOT re-inspection in writing, repeating the process described above.
- B. The Developer must fulfill the following conditions to obtain final acceptance from DDOT:
1. The Developer has met all requirements outlined in Article 5.A and Article 6.A for Phase I of the Public Space Infrastructure Improvements.
 2. The Developer has completed all punch list items identified in the Certificate of Substantial Completion in accordance with DDOT Standards and Guidelines for the Public Space Infrastructure Improvements.
 3. The Developer, having paid all required fees, shall obtain releases for the Public Space Infrastructure Improvements to DDOT ("Released Property") from the ground lease and corresponding ground lease financing. Once the Developer has recorded the releases from the ground lease and any ground lease financing.
 4. The Developer shall apply for the necessary right-of-entry, license, permit or other such applicable document to repair Latent Defects within ten (10) business days following notification by DDOT and shall repair such Latent Defects within the amount of time stipulated on the permit issued for such work. Such time stipulation shall vary depending on the extent of the work required and the difficulty of obtaining the necessary materials to repair the Latent Defects and shall be subject to applicable time limitations prescribed under the permitting guidelines for the required repairs. The Developer shall make good faith efforts to expeditiously and diligently complete such repairs. During the Latent Defect Period, if the Developer does not repair such Latent Defects within the amount of time stipulated on the permit or fails to make good faith efforts to expeditiously complete such repairs, DDOT shall have the right to extend such amount of time for a reasonable period of time, as determined by DDOT. In the event that DDOT agrees to extend the amount of time for the Developer to repair the Latent Defects, the Developer shall apply for renewal of the required permit(s) for such extended period of time.

5. After the expiration of the Latent Defect Period for any Accepted Infrastructure, the Developer shall assign any warranties, guarantees or other assurances that the Developer may have for such Accepted Infrastructure to the District.

ARTICLE 7: DEDICATION OF PUBLIC SPACE INFRASTRUCTURE IMPROVEMENTS

- A. For the new ROW to be dedicated, the existing alley to be closed and the building restriction line to be vacated, the Developer shall submit an Application for dedication and alley closure to the DC Surveyor ("**DC Surveyor Application**"). It is anticipated that the dedication and alley closure will be advanced consistent with this Agreement and DDOT acceptance shall be expressly conditioned upon DDOT's Final Acceptance of the Public Space Infrastructure Improvements as described in this Agreement.
- B. The Public Space Infrastructure Improvements shall not be considered opened to the public until i) a plat has been recorded with the Office of the D.C. Surveyor and ii) DDOT acceptance of the Public Space Infrastructure Improvements. *Note - The dedication/alley closure plat cannot be re-recorded acknowledging DDOT acceptance until the following conditions are satisfied:*
 1. KRI has certified, as applicable, that the ground lease ~~has been released and/or~~ does not encumber the Public Space Infrastructure Improvements and said certification is recorded among the Land Records for the District of Columbia; and
 2. The Developer provides an opinion of title from an attorney licensed to practice in the District of Columbia that title to the Public Space Infrastructure Improvements is free and clear of all liens and encumbrances; and
 3. The initial plat of Dedication and Alley Closure recorded with the District Office of the Surveyor must include the following note: "*The dedication shall not be effective until DDOT has accepted the public space improvements and the final Certificate of Occupancy shall not be issued until DDOT has re-recorded the plat of dedication with an acknowledgement of acceptance.*"
- C. Once all of the requirements for Final Acceptance in Article 6 have been satisfied, DDOT shall advise the D.C. Surveyor that all of the conditions of this Agreement have been met by the Developer, and the plat will be re-recorded noting DDOT's acceptance and the street can be opened for public use as a public right of way (collectively, "Acceptance").
- D. At such Acceptance, (1) the District, acting through DDOT or its successors, shall accept and maintain, repair, clean, keep in safe condition, and replace the "Accepted Infrastructure" as provided in Article 6 hereof and (2) the Developer shall be released from any liability with respect to the Accepted Infrastructure, except (i) the obligation to complete any Punch List Items pursuant to Final Completion of the Public Space Infrastructure Improvements and (ii) the obligation to repair or cause the repair of any

latent defects (i.e., any defects in the material and/or workmanship of any Accepted Infrastructure which existed at the time of the acceptance of any Accepted Infrastructure by the District, but which were not observable at such time) that are discovered during the Latent Defect Period for the Public Space Infrastructure Improvements.

ARTICLE 8: TERMINATION

The following events shall constitute cause for the Developer, at its option, to terminate this Agreement after any applicable notice and cure rights, if any, as to the Public Space Infrastructure Improvements that have not been commenced by the Developer without the consent of the District:

1. In the event that the Developer ceases to be the Developer of the Project for any reason; or
2. The failure of the Developer and/or DCHA to comply in all material respects with any of the terms or conditions contained in this Agreement that would have a material adverse effect on the Developer's ability to develop and construct Phase I of the Public Space Infrastructure Improvements and such failure is not cured within thirty (30) days after written notice to the Developer.

ARTICLE 9: DISTRICT TERMINATION

The following events shall constitute an "Event of Default" after any applicable notice and cure rights. Upon an Event of Default, the District, may at its option, terminate this Agreement as to Phase I of the Public Space Infrastructure Improvements which have not been commenced by the Developer, without the consent of the Developer:

- A. The failure to enter into, or the termination of, the ground lease agreement between Developer and DCHA for the Project; or
- B. The failure of the Developer to comply in all material respects with any of the terms or conditions contained in this Agreement that would have a material adverse effect on the construction of the Public Space Infrastructure Improvements and such failure is not cured as provided in this Article.
- C. If an event under B. above occurs, DDOT shall give written notice of such event to the Developer, and the Developer agrees to meet and confer with DDOT and DDOT's consultants as to the options available to assure the completion of the Public Space Infrastructure Improvements. If DDOT elects to terminate this Agreement pursuant to this Article, DDOT shall first notify the Developer of the grounds for such termination and allow the Developer a minimum of ninety (90) days to cure or mitigate to the reasonable satisfaction of DDOT the grounds for such termination. Such period shall be extended if the Developer is proceeding with diligence to cure or mitigate such grounds for termination. If at the end of such period (and any extension thereof), the Developer

has not cured or mitigated such grounds, the District may terminate this Agreement as to Phase I of the Public Space Infrastructure Improvements which has not been commenced by the Developer.

In the event that this Agreement is terminated under this Article, the Developer will complete the construction of the Public Space Infrastructure Improvements that have commenced by the Developer as of the date of such termination.

ARTICLE 10: REMEDIES

If the District or Developer shall materially default in its obligations under this Agreement and such default is not cured in accordance with any applicable notice and cure rights, the District or Developer, respectively, may by action, writ, or other proceeding, enforce its right to require the defaulting party to carry out and perform such obligations pursuant to this Agreement or by action, petition to enjoin any acts or things that may be unlawful or in violation of this Agreement.

ARTICLE 11: FORCE MAJEURE

Whenever performance is required of a Party hereunder, that Party shall use commercially reasonable efforts to perform, but if completion of performance is delayed by reasons of floods, earthquakes or other acts of God, war, terrorism, civil commotion, riots, strikes, picketing or other labor disputes, damage to work in progress by casualty or by any other cause beyond the reasonable control of the Party, then the specified time or deadline for performance shall be extended by the amount of the delay actually so caused.

ARTICLE 12: NOTICES

Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either Party shall be deemed to have been received when personally delivered or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by mailing an original of the same within 24 hours after such transmission) or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

To District: District Department of Transportation
55 M Street SE, Suite 400
Washington, DC 20003
Attention: Director

With copies to: District Department of Transportation
Infrastructure Project Management Administration
55 M Street SE, Suite 400
Washington, DC 20003
Attention: Chief Engineer

District Department of Transportation

General Counsel's Office
55 M Street SE, Suite 700
Washington, DC 20003
Attention: General Counsel

To Developer:

District of Columbia Housing Authority
1133 North Capitol Street, NE, Suite 242
Washington, DC 20002
Attn: Tyrone Garrett, Executive Director
Phone: (202) 535-1000
Email: tgarrett@dchousing.org

Michaels Development Company
1700 Diagonal Road, Suite 330
Alexandria, VA 22314
Attn: Nicholas C. Bracco
Phone: (202) 858-8030
Email: nbracco@imo.com

The Warrenton Group
5335 Wisconsin Avenue, Suite 440
Washington, DC 20015
Attn: Warren C. Williams
Phone: (202) 478-6299
Email: wwilliams@warrentongroup.com

with copies to:

District of Columbia Housing Authority
Office of the General Counsel
1133 North Capitol Street, NE, Suite 242
Washington, DC 20002
Attn: General Counsel
Phone: (202) 535-1000

Klein Hornig, LLP
1325 G Street N.W., Suite 770
Washington, DC 20005
Attn: Aaron O'Toole
Phone: 202-842-0127
Email: Aotoole@kleinhornig.com

Stroock & Stroock & Lavan LLP
1875 K Street NW, Suite 800
Washington, DC 20006
Attn: Kelly Booker

Phone: 202-739-2892
Email: kbooker@stroock.com

Each Party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other Party.

ARTICLE 13: SEVERABILITY

If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent possible.

ARTICLE 14: UTILITIES

The Developer shall be solely responsible for coordinating with utility companies on all aspects of the Public Space Infrastructure Improvements and for the proper containment and removal, as necessary, of utilities on or near the Project. Any existing utilities not contained or removed must be transferred to and accepted by a regulated utility company and meet the utility company's standards for acceptance. Any costs associated with upgrading or relocating existing utilities to meet utility company standards for acceptance are the sole responsibility of the Developer. The Developer shall also be solely responsible for the installation and acceptance, by the applicable utility companies, of all utilities related to the Public Space Infrastructure Improvements. The Developer shall defend and hold harmless the District against any claims made by any utility company for loss or damage to any utilities caused by the Developer or occurring in connection with, or in any way arising from, based on, or as a result of any activities of the Developer or its contractors under this Agreement.

ARTICLE 15: LIABILITY

No officer, agent or employee of the District or contractor retained by the District shall be personally liable for the performance of or failure to perform any term or condition of this Agreement.

ARTICLE 16: NO WAIVER

Nothing in this Agreement shall be deemed to waive any rights of any kind that a Party now has, or may hereinafter have, to assert any claim against the other Party or any other person or entity, including, without limitation, claims with respect to any and all past events or activities of the other Party or of any person or entity.

ARTICLE 17: NO RIGHT, TITLE, OR INTEREST

The Developer expressly acknowledges that this Agreement does not constitute a conveyance of real property since District officials do not have the authority to convey District real property, in

whole or in part, absent District of Columbia Council approval as required by D.C. Official Code.

ARTICLE 18: ASSIGNMENT

This Agreement may not be assigned by either Party without the written consent of the non-assigning Party. All terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties hereto and their respective legal representatives, successors and assigns.

ARTICLE 19: APPLICABLE LAW AND BINDING NATURE

This Agreement shall be construed under the laws of the District of Columbia without reference to conflicts of laws principles. This Agreement shall be binding upon the heirs, personal representatives, successors, grantees and assigns of the respective parties hereto.

- A. THE DEVELOPER, THE DISTRICT, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS EACH WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT IN CONNECTION WITH ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE RELATIONSHIP OF THE DISTRICT AND THE DEVELOPER HEREUNDER, OR THE DEVELOPER'S CONSTRUCTION OF THE PUBLIC SPACE INFRASTRUCTURE IMPROVEMENTS.
- B. THE DEVELOPER AND THE DISTRICT EACH WAIVES ANY OBJECTION TO THE VENUE OF ANY ACTION FILED IN ANY COURT SITUATED IN THE DISTRICT OF COLUMBIA, AND WAIVES ANY RIGHT, CLAIM OR POWER, UNDER THE DOCTRINE OF FORUM NON CONVENIENS OR OTHERWISE, TO TRANSFER ANY SUCH ACTION TO ANY OTHER COURT.

ARTICLE 20: ENTIRE AGREEMENT

This Agreement, including all exhibits appended hereto, constitutes the entire Agreement between the Parties with respect to the subject matter hereof and shall not be modified or amended in any manner except by an instrument in writing executed by the Parties as an amendment to this Agreement.

ARTICLE 21: CONSENTS AND APPROVALS

Whenever consent or approval is authorized or required by this Agreement to be given by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, unless otherwise indicated.

ARTICLE 22: AMENDMENTS AND MODIFICATIONS

No amendment, alteration or modification to this Agreement shall be effective unless agreed to in writing by both Parties.

ARTICLE 23: COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original.

ARTICLE 24: CAPTIONS, GENDER, NUMBER, AND LANGUAGE OF INCLUSION

The captions are inserted in this Agreement only for convenience of reference and do not define, limit or describe the scope or intent of any provisions of this Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine and neuter adjectives include one another. As used in this Agreement, the word "including" shall mean "including but not limited to."

ARTICLE 25: EXHIBITS

The following exhibits shall be deemed incorporated into this Agreement in their entirety:

- Exhibit A:* Kenilworth Courts Phase I (Kenilworth 166) Site Plan
- Exhibit B:* Alley Closing and New Right of Way
- Exhibit C:* Non-Binding Schedule of Performance
- Exhibit D:* Public Space Infrastructure Review in TOPS
- Exhibit E:* Public Space Infrastructure Review via IPMD
- Exhibit F:* Street or Alley Closure Readiness Certificate
- Exhibit G:* Substantial Completion Certificate Form
- Exhibit H:* Final Completion Certificate Form

ARTICLE 26: LIABILITY

The District shall have no liability for the actions or negligence of the Developer or the Developer's contractors and their respective agents.

ARTICLE 27: INDEMNIFICATION

The Developer shall indemnify and hold harmless the District, its officials, officers, employees and agents from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property, caused by the Developer occurring in connection with, or in any way arising from, based on, or as a result of any activities of the Developer under this Agreement.

ARTICLE 28: AGREEMENT CONSTRUCTION

Both the District and the Developer have participated in the drafting and negotiation of this Agreement. This Agreement shall not be construed against either the District or the Developer on the basis of which Party drafted this Agreement.

ARTICLE 29: ANTI-DEFICIENCY LIMITATIONS

- A. The obligations of the District to fulfill financial obligations pursuant to this Agreement, or any subsequent agreement entered into pursuant to this Agreement or referenced herein (to which the District is a party), are and shall remain subject to the provisions of (1) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 1511-1519 (2004) (the "Federal ADA"), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (2) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 - 355.08 (2004 Supp.) (the "D.C. ADA" and (1) and (2) collectively, as amended from time to time, the "Anti-Deficiency Acts"); and (3) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2001). Pursuant to the Anti-Deficiency Acts, nothing in this Agreement shall create an obligation of the District in anticipation of an appropriation by Congress for such purpose, and the District's legal liability for the payment of any charges under this Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress.
- B. This Agreement shall not constitute an indebtedness of the District nor shall it constitute an obligation for which the District is obligated to levy or pledge any form of taxation or for which the District has levied or pledged any form of taxation. No District of Columbia Official or employee is authorized to obligate or expend any amount under this Agreement unless such amount has been appropriated by Act of Congress and is lawfully available.

ARTICLE 30: RECITALS

The recitals are incorporated herein by reference.

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

KENILWORTH REVITALIZATION I JV, LLC, a District of Columbia limited liability company

By: **Kenilworth 1 - Michaels LLC**, its Manager

By:



Name:



Title: Vice President

Date:



DISTRICT DEPARTMENT OF TRANSPORTATION

Jeffrey M. Marootian
Director

Date

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

KENILWORTH REVITALIZATION I JV, LLC, a District of Columbia limited liability company

By: **Kenilworth 1 - Michaels LLC**, its Manager

By: _____

Name: _____

Title: Vice President

Date: _____

DISTRICT DEPARTMENT OF TRANSPORTATION



Jeffrey M. Marootian
Director

10/26/2020

Date

November 9, 2020

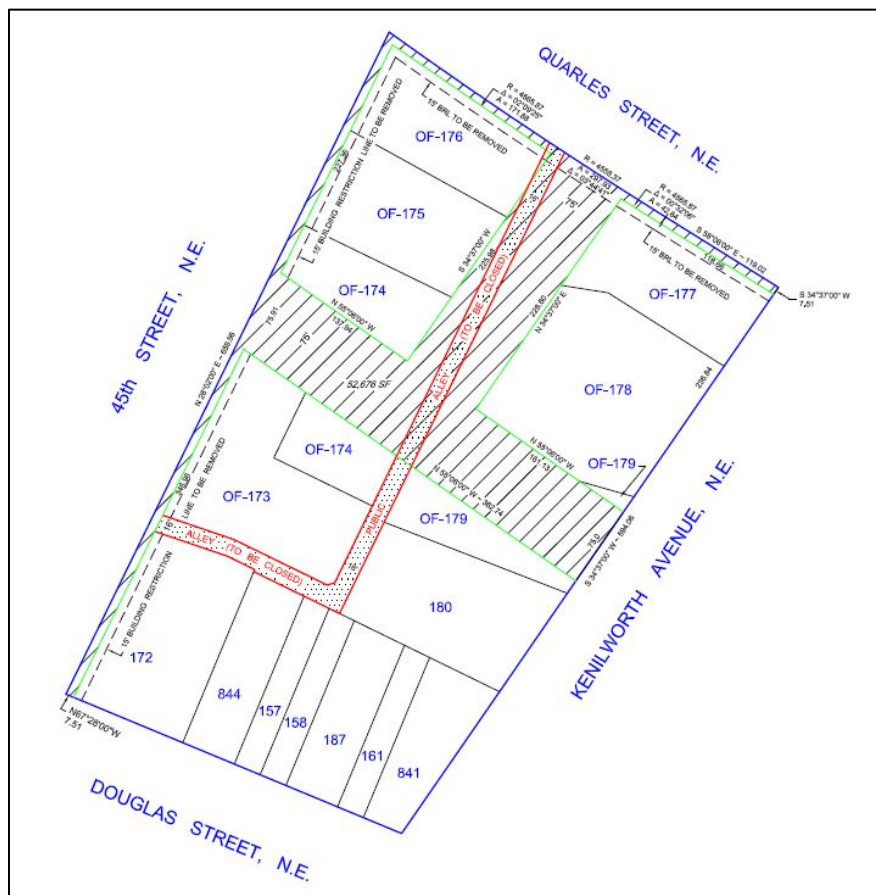
RE: BCA 296540 – Alley Closure and New Right-of-Way in Square 5116 (Kenilworth Courts)

To whom it may concern,

I am writing you regarding the relocation of an existing gas main along the alley between Quarles ST NE and 45th ST NE, as necessary to support the continued construction of the DC Housing Authority project.

The District of Columbia Housing Authority (DCHA) seeks to close an existing public alley to facilitate Phase 1 redevelopment of the site as approved by the Zoning Commission in December 2016 (ZC 15-21). The 4.45-acre Phase 1 site is bounded by Quarles Street NE to the north, Kenilworth Avenue to the east, 45th Street to the west, and Douglas Street to the south.

Washington Gas objects to the proposed alley closure until all affected gas facilities have been abandoned per Washington Gas specifications. See referenced alley closure below:



As requested by the DC Housing Authority, Washington Gas has completed the design for the necessary gas main abandonment and authorized this work to be completed under BCA 296540. This project will include the abandonment of the gas main in the alley between Quarles ST NE and 45th ST NE. The affected gas facility is a 2-inch plastic, medium pressure gas main with ten services. All services will be abandoned per DC Housing request via the Washington Gas Service Abandonment Department prior to the abandonment of the gas main.

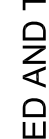
Upon the completion of the main abandonment project (BCA 296540) and confirmation that no other gas facilities will be affected by the alley closure, Washington Gas will be able to issue a letter of approval for the closure of the alley.


Sincerely,



Jonathan Honey
Replacement Engineer II

STREET DEDICATION AND PUBLIC ALLEY CLOSED SQUARE 5116

PURSUANT TO D.C. LAW _____ EFFECTIVE _____, 20____
THE ALLEY SHOWN THUS:  IS CLOSED AND TITLE
VESTS AS SHOWN UPON RECORDATION OF THIS PLAT.

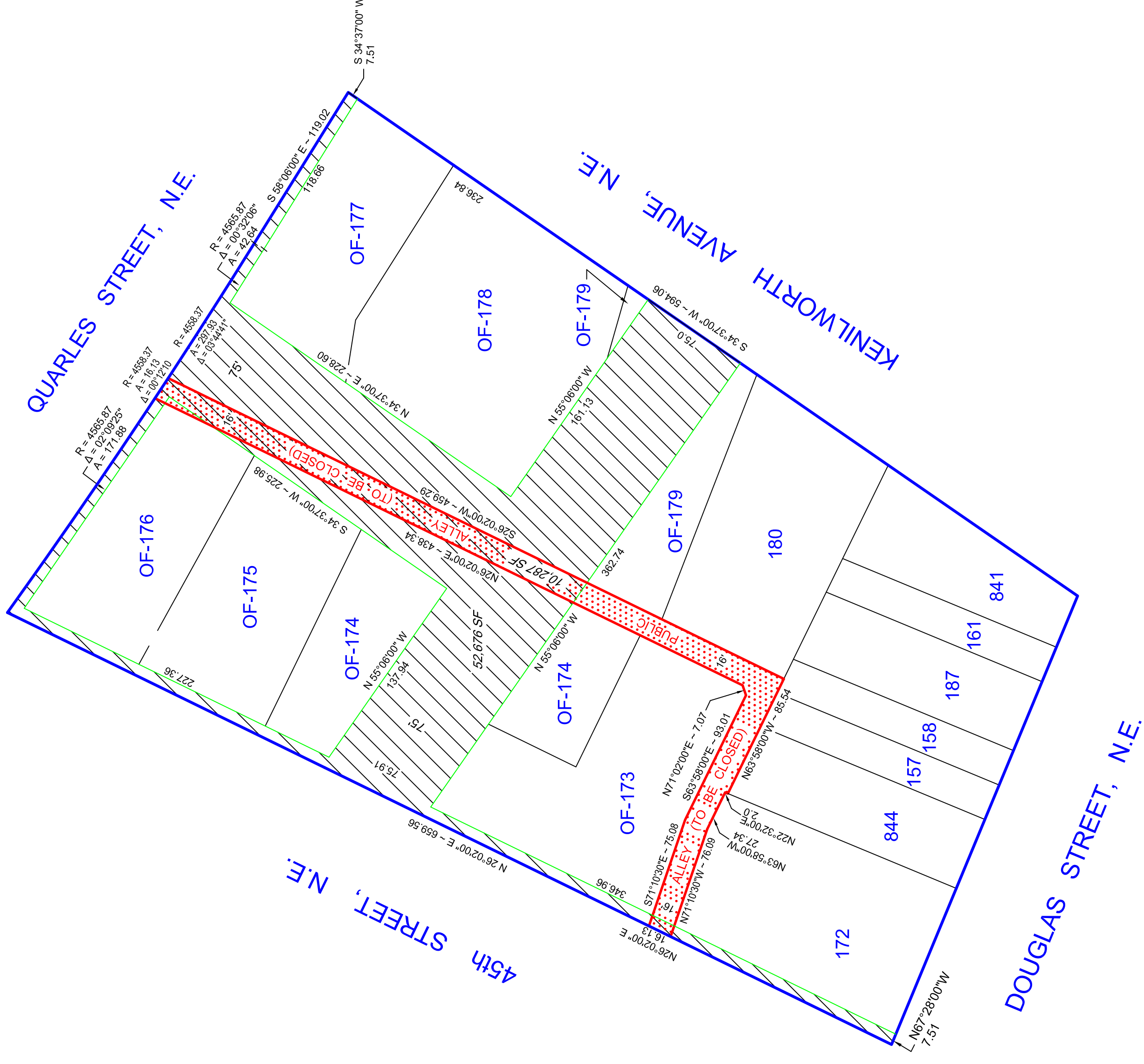
PURSUANT TO D.C. LAW _____ EFFECTIVE _____, 20____
THE LAND SHOWN THUS:  IS DEDICATED IN FEE SIMPLE FOR STREET
PURPOSES.

THE DEDICATION OF THE STREETS WILL OCCUR UPON OFFICIAL CERTIFICATION OF
ACCEPTANCE BY DDOT.

OFFICE OF THE SURVEYOR, D.C.
_____, 20____

I CERTIFY THAT THIS PLAT IS CORRECT AND IS RECORDED.

SURVEYOR, D.C.



SURVEYOR'S OFFICE, D.C.

Made for: SAUL EWING
 Drawn by: L.E.S. Checked by: AB
 Record and computations by: B. MYERS
 Recorded at: _____ Page _____ SR-16-00938
 Scale: 1 inch = 50 feet File No. 16-23580
 2016/STREET_DEDICATION/SR-16-00938-SO.5116


Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: November 10, 2020

SUBJECT: Fiscal Impact Statement - Omnibus Kenilworth Courts Redevelopment Act of 2020

REFERENCE: Bill 23-883, Committee Print provided to the Office of Revenue Analysis on November 5, 2020

Conclusion

Funds are sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill.

Background

The bill approves the closing of the public alley which runs from 45th Street, N.E., to Quarles Street, N.E., the dedication of land on the east side of 45th Street, N.E.¹ and the south side of Quarles Street, N.E., for public street purposes, and the removal of two building restriction lines, to facilitate the development of Kenilworth Courts.² The alley being closed totals 10,286 square feet and the land to be dedicated for street purposes totals 56,541 square feet. The building restriction lines that are being removed are 15 feet wide. The District of Columbia Housing Authority, which controls the property, is awaiting the approval of these changes to subdivide the property and begin permitting for construction.

¹ The alley to be closed and street to be dedicated are in Square 5116, as shown in Surveyor's plat S.O. 16-23580.

² As per the Planned Unit Development in Zoning Commission Order 15-21 (https://app.dcoz.dc.gov/CaseReport/CaseReportPage.aspx?case_id=15-21).

The Honorable Phil Mendelson

FIS: "Omnibus Kenilworth Courts Redevelopment Act of 2020," Bill 23-883, Committee Print as provided to the Office of Revenue Analysis on November 5, 2020.

Financial Plan Impact

Funds are sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill. The District of Columbia Housing Authority will continue to control the land and the current tax status will not change.

The District Department of Transportation has agreed to allowing a preliminary dedication for Phase 1 of the project but is requiring a Horizontal Public Use Agreement be entered into prior to the final recordation of the plat. No other utilities or executive agencies have objected to the dedication or closure.



OFFICE OF THE GENERAL COUNSEL

Council of the District of Columbia
1350 Pennsylvania Avenue NW, Suite 4
Washington, DC 20004
(202) 724-8026

MEMORANDUM

TO: Chairman Phil Mendelson

FROM: Nicole L. Streeter, General Counsel *NLS*

DATE: November 10, 2020

RE: Legal sufficiency determination for Bill 23-833, the
Omnibus Kenilworth Courts Redevelopment Act of 2020

The measure is legally and technically sufficient for Council consideration.

The proposed bill: 1) closes a portion of the public-alley system in Square 5116, as shown on the surveyor's plat in the official file for S.O. 16-23580, pursuant to section 404 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-204.04), and consistent with the Street and Alley Closings and Acquisitions Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-201.01 *et seq.*); and 2) accepts the dedication of land for the widening of 45th Street, N.E., and Quarles Street, N.E., as shown on the Surveyor's plat filed under S.O. 16-23580, and designates those new portions of 45th Street, N.W., and Quarles Street, N.E., pursuant to sections 302 and 401 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 §§ 9-203.02, 9-204.01) ("the Act"); contingent upon the satisfaction of the conditions set forth in the official file for S.O. 16-23580.

I am available if you have any questions.

1 **DRAFT COMMITTEE PRINT**
2 **Committee of the Whole**
3 **November 17, 2020**
4
5

6 A BILL

7
8 23-883
9

10 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
11
12 _____
13

14 To order the closing of the existing public alley in Square 5116, which runs from 45th Street,
15 N.E. to Quarles Street, N.E.; to accept the dedication of land for a new east-west public
16 street between Kenilworth Avenue, N.E. and 45th Street, N.E. and a new north-south
17 street extending from Quarles Street, NE; and to accept the dedication of property along
18 the east side of 45th Street, N.E. and the south side of Quarles Street, N.E. for public
19 street purposes.
20

21 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
22 act may be cited as the “Omnibus Kenilworth Courts Redevelopment Act of 2020”.

23 Sec. 2. (a) Pursuant to section 404 of the District of Columbia Home Rule Act, approved
24 December 24, 1973 (87 Stat. 787; D.C. Official Code § 1-204.04), and consistent with the Street
25 and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law
26 4-201; D.C. Official Code § 9-201.01 *et seq.*) (the “Act”), the Council of the District of
27 Columbia finds a portion of the public alley system in Square 5116, as shown on the Surveyor’s
28 plat filed in S.O. 16-23580, is unnecessary for alley purposes and orders it closed, with title to
29 the land to vest as shown on the Surveyor’s plat.

30 (b) Pursuant to sections 302 and 401 of the Act (D.C. Official Code §§ 9-203.02 and 9-
31 204.01), and notwithstanding the requirements set forth in Sections 303, 304 and 421 of the Act
32 (D.C. Official Code §§ 9-203.03, 9 203.04, and 9-204.21), the Council accepts the dedication of
33 land for street purposes and further orders the removal of building restriction lines on Square

34 5116 along 45th Street, N.E, and Quarles Street N.E., as shown on the Surveyor's plat filed in
35 S.O. File 16-23580.

36 Sec. 3. The ordering of the alley closing, acceptance of the street dedication and removal
37 of building restriction lines stated section 2 are contingent upon the satisfaction of all of the
38 conditions proposed by the District Department of Transportation and Washington Gas as set
39 forth in S.O. 16-23580.

40 Sec. 4. Fiscal impact statement.

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

44 Sec. 5. Effective date.

45 This act shall take effect following approval by the Mayor (or in the event of veto by the
46 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
47 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
48 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
49 Columbia Register.