**MEMORANDUM FROM:**

**MARGARET GENTRY**
**GOVERNMENT RELATIONS & COMMUNICATIONS SERVICES**

TO: Sharon Schellin, Secretary to the Zoning Commission

DATE: January 29, 2007

SUBJECT: **Recordation of Covenant**
**ZC Case and Order No. 05-36 (First Stage & Consolidated PUD & Related Map Amendment-200 K Street N.E.)**

Pursuant to § 2409.3 of the Zoning Regulations (11 DCMR § 2409.3) and Paragraph 18 of the Decision portion of ZC Order No. 05-36, please find attached a certified copy of the Planned Unit Development and Affordable Housing Covenant recorded by the Applicant in the above-listed case with the D.C. Recorder of Deeds on January 26, 2007.

Margaret Gentry
Consultant to the Cohen Companies

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ZONING COMMISSION
District of Columbia
CASE NO._____
EXHIBIT NO._____

ZONING COMMISSION
District of Columbia
CASE NO. 05-36
EXHIBIT NO. 36

*907 Sixth Street S.W., # 415*
*Washington, D.C. 20024*
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ZONING COMMISSION
District of Columbia
CASE NO.05-36
EXHIBIT NO.36

LT1-5-2007012725-1

**PLANNED UNIT DEVELOPMENT AND AFFORDABLE HOUSING COVENANT**

THIS COVENANT, made as of this 26 day of January 2007, by and between K Street Developers, LLC, a District of Columbia limited liability company, successor in interest to 200 K Street LP; Casco, Incorporated, a Maryland corporation.; Three Cee Investors, LLC, a Maryland limited liability company; and Union North Corporation, a District of Columbia corporation, (hereinafter referenced collectively as the "Developer") and the DISTRICT OF COLUMBIA, a municipal corporation (the "District").

**WITNESSETH:**

WHEREAS, the Developer is the owner of Lots 32-43, 64-65, 2-4, 27-29, 44-46, and 57-59 in Square 749, which in whole or in part are more fully described as the Consolidated Planned Unit Development in Zoning Commission Case No. 05-36, and in Exhibit A attached hereto and made a part of this Covenant (the "Subject Site"); and

WHEREAS, the Developer intends to develop the Subject Site for use as a Planned Unit Development (the "Project") under Chapter 24 of the Zoning Regulations of the District of Columbia in accordance with Zoning Commission Order No. 05-36 effective October 13, 2006, in Zoning Commission Case No. 05-36;

WHEREAS, the Developer has agreed to set aside a portion of the residential units in the Project as affordable units as defined by the District;

WHEREAS, the Zoning Commission of the District of Columbia (the "Zoning Commission") requires the Developer to enter into this Covenant with the District assuring that the Developer (and its respective successors in title) reserve and administer the affordable units

LT2-0-0-35

as approved by the Zoning Commission in Order No. 05-36, and all modifications, alterations or amendments thereto; and

WHEREAS, said Chapter 24 further requires the Developer to enter into this Covenant with the District to assure that the Developer (and its respective successors in title) will develop and use the Project as approved by the Zoning Commission in Order No. 05-36 and all modifications, alterations or amendments thereto.

NOW, THEREFORE, in consideration of the foregoing recitals, which are a material part hereof, it is agreed among the parties hereto as follows:

1. Approved Plans. The terms and conditions of the Zoning Commission's approval of the Consolidated Planned Unit Development and Amendment to the Zoning Map under Order No. 05-36 effective October 13, 2006, in Zoning Commission Case No. 05-36 as the same may be amended and/or modified from time to time (the "Order"), are incorporated herein by reference and made a part hereof as Exhibit B and shall be considered a part of this Covenant. The Subject Site will be developed and used in accordance with the plans approved by said Order and in accordance with the conditions and restrictions contained in said Order, subject to such changes thereto as the Zoning Commission and/or the Zoning Administrator of the District of Columbia may authorize pursuant to 11 DCMR §§ 2409.6 and 2409.9, respectively. Developer covenants that it will use the Subject Site only in accordance with the terms of the Order, as the same may be further amended and/or modified from time to time by the Zoning Commission, subject to the terms and conditions contained herein and the provisions of Chapter 24 of the Zoning Regulations.

2. Affordable Housing-Development Standards. Developer covenants that the Project will contain 233,206 gross square feet devoted to residential use apportioned among 202 residential units, of which 13.8% or 32,182 gross square feet apportioned among 28 units shall be set aside as affordable to households within the targeted income range (hereinafter referred to as "affordable units"). Developer further covenants that:

a. The mixture of affordable units shall be comparable to the mixture of market-rate unit types, and the proportion of affordable one-bedroom, one-bedroom-plus-den, and two-bedroom units shall be consistent with the proportional mix of market-rate one-bedroom, one-bedroom-plus-den, and two-bedroom units, respectively;

b. The internal square footage of affordable units shall be comparable to the internal square footage of market-rate units;

c. The affordable units shall be fairly and equitably distributed vertically and horizontally throughout residential floors one (1) through five (5) of the Project;

d. In external design and materials, the affordable units shall be indistinguishable from market-rate units; and

e. Internally, appliances and finishes of affordable units shall be comparable to appliances and finishes of market-rate units but may be of different quality.

3. Affordable Housing-Household Eligibility Standards. Developer covenants that the affordable units shall be reserved for purchase by or rental to eligible households. Eligible households are defined as those households which:

a. Have household income not exceeding 80% of the Area Median Income for the Washington, D.C., Metropolitan Statistical Area and adjusted for family size, as

determined and published annually by the U.S. Department of Housing and Urban Development;

b. Meet other eligibility criteria established by the D.C. Department of Housing and Community Development or any successor entity (referenced hereinafter as "DHCD" to include any successor entity) for participation in the District's Affordable Housing Program; and

c. Have an income eligibility certification letter issued by DHCD.

4. Affordable Housing-Unit Cost. Developer covenants that the sale price and terms or the rental rate, as applicable, of the affordable units shall be determined by DHCD, in accordance with the regulations and procedures applicable to the District's Affordable Housing Program, so as to assure that the monthly housing payment of the buyer or renter shall not exceed thirty percent (30%) of the buyer's or renter's monthly household income, as defined by DHCD.

5. Affordable Housing-Affordability Period. Developer covenants that the affordable units, if offered for sale, shall be dedicated as affordable units for a period of ten (10) years and, if offered for rent, shall be dedicated as affordable units for a period of twenty (20) years, beginning on the date of the initial sale ("Initial Unit Closing Date") or rental ("Initial Unit Lease Date") of each unit. The ten (10)-year and twenty (20)-year periods described above are referenced hereinafter as the "affordability period".

6. Affordable Housing-Resale Restrictions. Developer covenants that deeds and covenants executed in the sale of affordable units shall include restrictions on resale of the affordable units as follows:

a. During the ten (10)-year affordability period, the buyer of an affordable unit may sell the unit only to another eligible buyer identified by DHCD through the District's Affordable Housing Program;

b. The sale price and terms of resale of an affordable unit during the affordability period shall be determined by DHCD in accordance with the regulations and procedures of the District's Affordable Housing Program; and

c. The resale of an affordable unit during the ten (10)-year affordability period shall create a new ten (10)-year affordability period beginning on the closing date of the resale ("Resale Closing Date").

7. Affordable Housing-Application and Enforcement of Covenants. The covenants herein for the provision of affordable housing as required by the Zoning Commission in Order No. 05-36 shall apply to Developer, its successors, heirs, executors, administrators, assigns, sub-lessees, and any purchaser or nominee at foreclosure, except as may be otherwise provided in the laws and regulations of the District. The District has the right to specifically enforce the affordable housing covenants contained herein.

8. Affordable Housing-Expiration of Covenants. The covenants herein for the provision of affordable housing shall terminate, as to each unit, at the end of ten (10) years from the Unit Closing Date or the Resale Closing Date, as applicable, in the case of units offered for sale, or at the end of twenty (20) years from the Initial Lease Date in the case of units offered for rent.

9. Additional Time To Construct Consolidated Planned Unit Development. If Developer should fail to file for a building permit and to commence construction of the approved Planned Unit Development within the time specified in the Order, the Zoning

Commission may duly consider an application for an extension of time in accordance with 11 DCMR § 2408.10.

10. Default. In the event that Developer fails to file for a building permit and to commence construction of the approved Consolidated Planned Unit Development within the time specified in the Order or within any extension of time granted by the Zoning Commission for good cause shown pursuant to 11 DCMR § 2408.10, the benefits granted by the Order shall terminate pursuant to Section 2400.7 of the Zoning Regulations.

11. Future Conveyance. Developer covenants that if any conveyance of all or any part of the Subject Site takes place, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns to develop and use the Subject Site in accordance with the terms and conditions of this Covenant.

12. Successors and Assigns. The covenants and restrictions contained herein shall be deemed real covenants running with the land, and shall bind the parties hereto, their successors and assigns, and shall inure to the benefit of the parties hereto, their successors and assigns. Such covenants are not binding upon any party who no longer has a property interest in the Subject Site. The District shall have the right to enforce all covenants, conditions and restrictions contained herein.

13. Recordation. Developer shall record this Covenant, as fully executed by the parties hereto, among the Land Records of the District of Columbia, and shall file a certified copy of this Covenant with the Zoning Administrator and the Zoning Commission.

14. Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

15. Rescission/Alteration of Chapter 24 Covenant. The covenants hereby created may not be modified or extinguished without the prior approval of the Zoning Commission and the written consent of the District. In the event any amendment, modification, rescission or alteration of the Order is adopted or authorized by the Zoning Commission, or in the event of a lapse of said Order by its terms, the District shall, upon the request of Developer, execute an instrument, in recordable form, evidencing such action or lapse, which instrument shall amend, modify, rescind, nullify or alter this Covenant, as the case may be.

**[SIGNATURES FOLLOW]**

IN WITNESS WHEREOF, K STREET DEVELOPERS LLC, CASCO INC., THREE CEE INVESTORS, AND UNION NORTH CORPORATION, all District of Columbia corporations, have, as of the day and year first above written, caused this Covenant to be signed by K Street Manager, Inc., Ronald J. Cohen, President, and do hereby appoint the said Ronald J. Cohen to be their attorney-in-fact, for them and in their name to acknowledge and deliver this Covenant according to law.

K STREET DEVELOPERS LLC,
a District of Columbia limited liability company

CASCO, INCORPORATED,
a Maryland corporation

THREE CEE INVESTORS LLC,
a Maryland limited liability company

UNION NORTH CORPORATION,
a District of Columbia corporation

By: K Street Manager, Inc.
By: Ronald J. Cohen, President

Signed: _____
RONALD J. COHEN, PRESIDENT
K STREET MANAGER, INC.

_____, ss:

I, Kimberly n. Wood, a Notary Public in and for Prince George's county MD do hereby certify that Ronald J. Cohen, President of K Street LP, a District of Columbia limited partnership, party to the foregoing Covenant bearing date as of the 18th day of Oct. 2006, the said Ronald J. Cohen being named as attorney-in-fact for said limited partnership in the foregoing and annexed Covenant, personally appeared before me and, being

personally well known to me as such attorney-in-fact, acknowledged said Covenant to be the act and deed of said limited partnership and that he delivered the same as such.

GIVEN under my hand and seal this 18th day of Oct. 2006.

Notary Public

My Commission expires: 10/9/09

**[ADDITIONAL SIGNATURE PAGES FOLLOW]**

IN WITNESS WHEREOF, the Mayor of the DISTRICT OF COLUMBIA, having first considered and approved the foregoing Covenant, has directed the execution thereof in the name of said DISTRICT OF COLUMBIA, by the Secretary, D.C., who has hereunto set her hand and affixed the seal of the District of Columbia hereto under authority of the Act of Congress entitled "An Act to Relieve the Commissioners of the District of Columbia of Certain Ministerial Duties," approved February 11, 1932.

WITNESS:

Tabatha Braxton

DISTRICT OF COLUMBIA
a Municipal Corporation

By: _____
Secretary, D.C.

(Corporate Seal)

DISTRICT OF COLUMBIA, ss:

I, Tabatha Braxton, a Notary Public in and for the District of Columbia, do hereby certify that Dr. Stephanie Scott who is personally well known to me as the person named as Secretary of the DISTRICT OF COLUMBIA in the foregoing Covenant bearing date of the 26 day of January, 2007, and hereunto annexed, personally appeared before me in said District and, as Secretary of the DISTRICT OF COLUMBIA aforesaid, and by virtue of the authority in her vested, acknowledged the same to be the act and deed of the Mayor of the DISTRICT OF COLUMBIA.

GIVEN under my hand and seal this 26 day of January 2007.

Tabatha Braxton
Notary Public, D.C.

My commission expires: TABATHA BRAXTON
Notary Public District of Columbia
My Commission Expires April 14, 2007

APPROVED:

12.04.06

Zoning Division, Department of
Consumer and Regulatory Affairs

APPROVED FOR LEGAL SUFFICIENCY
ONLY AS TO THE ZONING COMMISSION REQUIREMENT
THAT THE COVENANT MUST BE IDENTICAL TO THE DRAFT COVENANT
PROVIDED AS ATTACHMENT 2 IN THE APPLICANT'S
POST-HEARING SUBMISSIONS, JANUARY 20, 2006:

Assistant Attorney General
for the District of Columbia

**EXHIBIT A**

## PROPERTY DESCRIPTION OF THE SUBJECT SITE

Lots numbered 2, 3, 28, 29, 32 through 42, 44 through 46, 57, 58, 59 and parts of Lots 4, 27, 47 and 56 and parts of Public Alleys in Square numbered 749 as per plat recorded in the Office of the Surveyor for the District of Columbia in Subdivision Book CHB at page 137 and Lots 64 and 65 in Square numbered 749 as per plat recorded in the Office of the Surveyor for the District of Columbia in Subdivision Book 122 at page 135; described by metes and bounds as follows:

Beginning at the southeast corner of Lot 65, Square 749, said point being the intersection of northerly line of K Street, N.E., and the westerly line of 3rd Street;

Thence running with said northerly line of K Street, N.E., West 149.50 feet to a point;

Thence running through Lot 4, a 10 foot Public Alley, Lot 47, a 15 foot Public Alley, Lot 56, a 10 foot Public Alley and Lot 27, North 323.83 feet to a point in the southerly line of L Street, N.E.

Thence running with said southerly line of L Street, N.E., East 49.50 feet to a point in a 10 foot Public Alley and being the northeast corner of Lot 29;

Thence running with the westerly line of said 10 foot Public Alley, South 55.73 feet to a point;

Thence running the 10 foot Public Alley and with the southerly line of Lot 31, East 100.00 feet to a point in the westerly line of 3rd Street, N.E.;

Thence running with said westerly line of 3rd Street, N.E., South 268.10 feet to the point of beginning, containing 42,840 square feet.

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

**ZONING COMMISSION CORRECTED[1] ORDER NO. 05-36**
**Z.C. Case No. 05-36**
**First Stage & Consolidated PUD & Related Map Amendment-200 K Street, N.E.**
**April 20, 2006**

Pursuant to notice, the Zoning Commission for the District of Columbia ("Zoning Commission" or "Commission") held a public hearing on January 5, 2006 to consider applications from 200 K Street, L.P., for (1) consolidated review and approval of a Planned Unit Development; (2) preliminary review of a Planned Unit Development; and (3) and a related map amendment to rezone all of Square 749 except Lots 804, 805, and 31 (the "PUD Site") from C-M-3 and C-2-B to C-3-C. The Commission considered the applications pursuant to Chapters 24 and 30 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the applications with conditions.

## FINDINGS OF FACT

### The Applications, Parties, and Hearing

1. On November 29, 2005, 200 K Street, L.P. filed applications with the Zoning Commission for preliminary and consolidated approval of a planned unit development ("PUD") and for a PUD related map amendment for property located in the Northeast quadrant of Washington, D.C. and generally bounded by 2nd Street to the west, L Street to the north, K Street to the south, and 3rd Street to the east. The PUD site is comprised all of Square 749 except Lots 804, 805, and 31. 200 K Street, L.P. also requested that the Commission approve a PUD-related map amendment rezoning the entire PUD site from C-M-3 and C-2-B to C-3-C. 200 K Street, L.P. sought consolidated PUD approval for the property shown to the right of the "Phase Line" on the Preliminary Subdivision Plan submitted as Exhibit C to the Application and Pre-Hearing Submission. 200 K Street, L.P. sought preliminary PUD approval for the property shown on the left of the "Phase Line" on the Preliminary Subdivision Plan submitted as Exhibit C to the Application and Pre-Hearing Submission.

[1] This is a corrected version of the Order previously published in the September 15, 2006, edition of the *D.C. Register*. This corrected version includes a discussion of NCPC's comments and corrects the statement of the zoning relief requested.

2. The Applicant, is a limited partnership organized and in good standing in the District of Columbia. It is one of several real estate investment entities operating under the umbrella of the Cohen Companies, under the control of Ronald J. Cohen. The term "Applicant" is used in this Order to refer to 200 K Street, L.P., to the other Cohen-controlled entities that are the recorded owners of various properties within the PUD Site, and to any successors in interest or title to 200 K Street, L.P. and its related entities. The recorded owners of the properties within the PUD site are K Street Developers LLC, Casco, Inc., Three Cee Investors LLC, and Union North Corporation.

3. These applications are related to an earlier Zoning Commission case. Z.C. Order No. 783, adopted September 11, 1995, approved a Consolidated PUD and PUD related map amendment for the PUD Site. Order No. 783 was subsequently extended by Z.C. Order No. 783-A, adopted April 13, 1998, and Z.C. Order No. 783-B, adopted December 13, 1999. The Applicant applied for a further modification and time extension of Order 783. The application was designated as Zoning Commission Case No. 01-28TE, and was revised by the Applicant's submission dated January 18, 2005. The Zoning Commission convened a hearing on Case No. 01-28TE on November 17, 2005. After reviewing evidence and written submissions from the Applicant and the Office of Planning on the time-extension issue, the Commission voted to deny the time-extension application. Denial of the time extension had the effect of terminating the PUD approved by Z.C. Order 783.

4. After voting to deny the time extension at the November 17, 2005 hearing, the Zoning Commission voted to set down the proposed modified project as a new case. The Commission also agreed to treat the Office of Planning reports submitted March 4, 2005, September 23, 2005, as its report for the new case, and the pre-hearing statements submitted by the Applicant on April 25, 2005 and September 29, 2005 as the pre-hearing statement for the new case. The Commission scheduled the new case for a hearing on December 15, 2005, conditioned upon the Applicant's expedited payment of the filing and hearing fees and filing new application documents.

5. Upon the advice of the Office of the Attorney General, the Commission subsequently rescheduled the hearing on Case No. 05-36 to January 5, 2006, in order to comply with § 492(b)(2), of the Home Rule Act, codified at D.C. Official Code, § 6-641.05(a), which requires a 30-day notice period for Commission hearings on proposed map amendments.

6. Advisory Neighborhood Commission ("ANC") 6C, which represents the area including the PUD Site, adopted a resolution in support of the applications by a vote of 7-1, with one member absent, at a regularly scheduled and publicly-noticed meeting on December 14, 2005. The ANC submitted a copy of the resolution into the record and appeared as a party at the hearing.

7. After proper notice, the Zoning Commission conducted a public hearing on the applications on January 5, 2006 The parties to the case were the Applicant and ANC 6C.

8. At its meeting held February 23, 2006, the Zoning Commission took proposed action by a vote of 4-0-1 to approve, with conditions, the applications and plans that were submitted into the record.

9. The Zoning Commission took final action to approve the PUD and related map amendment on April 20, 2006.

**The PUD Site and Surrounding Area**

10. The 2.3-acre PUD Site (101,082 sf) consists of all of Square 749 except Lots 804, 805, and 31 ("the outparcels"), in the Northeast quadrant of the District of Columbia, bounded by L Street on the north, 3rd Street on the east, K Street on the south, and 2nd Street on the west. The outparcels are located in the northeast corner of Square 749, at 3rd and L Streets, N.E. The neighborhood is known as Near Northeast in Ward 6, and the PUD Site is in ANC Single-Member-District 6C04.

11. The PUD Site was most recently occupied by vacant and boarded-up rowhouses along the 3rd Street side, small structures once used as a church and for some commercial purposes on the K Street side, and a small warehouse on the L Street side. The Applicant applied for and received permits from the Department of Consumer and Regulatory Affairs to raze all of the existing structures, except the warehouse which will be used for construction staging and storage.

12. To facilitate development, the Applicant has submitted an application to the Office of the D.C. Surveyor to close the public alleys within the PUD Site, except for the portion of the north-south alley adjacent to the rear of the outparcels.

13. The PUD Site is within a neighborhood where the traditional land uses have been residential rowhouses to the east and south and small industrial facilities to the north. To the west, 2nd Street is adjacent to the railroad tracks on top of a rock-walled embankment.

14. Within the past five years, the neighborhood has become a center of substantial office development and has emerged as a locus of mid- to high-rise residential developments – some under construction, some awaiting zoning approval, and some in preliminary planning stages. It is within one-half mile of two federal agency headquarters buildings: to the north, the Bureau of Alcohol, Tobacco, Firearms & Explosives will locate in a 350,000-square-foot structure under construction at New York and Florida Avenues, N.E.; to the south, the Securities & Exchange Commission and other office tenants located in the partially-completed 1.3 million-square-foot Station Place complex on 2nd Street from F to H Streets, N.E. Residential developments are under construction at the Capital Children's Museum site at 3rd and H Streets, N.E., and in various planning stages at 318 I Street, N.E.; 300 L Street, N.E.; and on the east side of 3rd Street between K and L Streets, N.E.

15. The PUD Site is fewer than two blocks south of the New York Avenue Metrorail Station and approximately five blocks north of Union Station. It lies within the NoMa (North of

Massachusetts Avenue) area designated as a Redevelopment Area for city planning and economic development purposes. It is three blocks north of the H Street Corridor, subject of REVIVAL: The H Street NE Strategic Development Plan, proposed by the Executive Branch and adopted by the D.C. Council as a Small Area Plan in February 2004.

**Existing and Proposed Zoning**

16. The underlying zone districts are C-2-B for the easternmost portion of the PUD Site – 26,805 square feet – between 3rd Street and the north-south public alley bisecting the property, and C-M-3 for the westernmost portion of the PUD Site – 74,277 square feet – between 2nd Street and the public alley.

17. The C-2-B zone district is designed to serve commercial and residential functions, with high-density residential and mixed uses. Developments as a matter of right may be 90 feet high with a maximum density of 3.5 FAR and a maximum lot occupancy of 80%.

18. The C-M zones are designated as a Commercial-Light Manufacturing Districts, in which new residential uses are not permitted. In the C-M-3 district, developments as a matter of right may be 90 feet high, with a maximum density of 6.0 FAR. There is no prescribed maximum lot occupancy.

19. The Applicant requested a map amendment to rezone the PUD site to C-3-C to allow residential use and to permit greater height and density than permitted in C-M-3 and C-2-B zone districts. In a C-3-C district, the matter- of right maximum height is 90 feet, the maximum density is 6.5 FAR, and the maximum lot occupancy is 100%. The PUD Standards of the Zoning Regulations, at 11 DCMR § 2405.1, allow a maximum height of 130 feet and maximum density of 8.0 FAR in a C-3-C district.

**The PUD Project**

20. The PUD is proposed as a residential development, with ground-level retail, to be named Union Place. The Applicant proposes construction in two phases, with the Consolidated PUD as Phase 1 and the Preliminary PUD as Phase 2.

21. Overall, the PUD will have a gross floor area of 849,338 square feet apportioned as 831,841 square feet of residential and 17,497 square feet devoted to retail use- and to a child development center. The child development center will contain 3,449 square feet. The lot occupancy will be approximately 68%. The PUD will provide underground parking for Union Place residents at a ratio of one parking space per unit.

22. The PUD will include a landscaped central plaza of approximately 27,984 square feet as an aesthetic feature and an amenity for passive recreational and social use by Union Place and neighborhood residents. The plaza will be open for public use between the hours of 11:00 a.m. and 7:00 p.m. daily.

23. Loading docks and berths and access points will be situated so as to route delivery truck traffic along L Street or 2nd Street, rather than along residentially-oriented K and 3rd Streets. Loading facilities will comply with the requirements of 11 DCMR § 2201.1.

The Consolidated PUD

24. The Consolidated PUD will consist of 236,905 square feet of gross floor area, with 233,206 square feet for residential use and 3,699 square feet for retail use. The structure will be located on the eastern, most portion of the PUD site, with a land area of 42,995 square feet. The location will be between K, 3rd and L Streets, N.E. The lot occupancy will be 64%.

25. The Consolidated PUD will have a maximum height of 90 feet and ten (10) stories, stepping down to 61 feet/6 inches and seven (7) stories at the northern end.

26. The Consolidated PUD will include 202 residential units, 28 of which will be set aside as affordable housing. The affordable units are located on floors one (1) through five (5) as identified on floor plans submitted by the Applicant on January 20, 2006.

27. The Consolidated PUD will have 177 underground parking spaces for residents.

28. The Consolidated PUD design features a façade primarily using three shades of brick and pre-cast concrete trim caps and cornices. The first through third floors will be red brick, capped with a cornice. The fourth through eighth floors will be set back four feet and will use tan brick capped with a cornice. The ninth and tenth floors will use a light beige brick, topped with a cornice. The building will have a two- to three-story base, emulating traditional Washington rowhouse design, with unit entrances fronting on K Street and 3rd Street and also accessible from the project interior. There will be balconies on the fourth through tenth floors.

The Preliminary PUD

29. The Preliminary PUD is proposed to consist of approximately 612,433 square feet of gross floor area, with approximately 598,635 square feet for residential use and approximately 13,798 square feet for retail use, including a daycare center of approximately 3,449 square feet. The structure will be located on the westernmost portion of the PUD Site, with a land area of 58,087 square feet. The location is between K, 2nd, and L Streets, N.E.

30. The Preliminary PUD will contain approximately 500 residential units. At least 10% of the residential square footage will be set aside as affordable housing, providing approximately 50 affordable units. The affordable units will be further defined by the Applicant in the second-stage PUD application.

31. The Preliminary PUD will have at least 525 underground parking spaces for residents, if 500 units are built. In any case, the number of spaces will be sufficient to assure a 1:1 parking ratio for residents of the Consolidated and Preliminary PUD.

**Development Incentives and Flexibility**

32. In addition to the map amendment, the Applicant requests the following areas of flexibility from the C-3-C requirements and PUD standards:

    a. An increase of five percent (5%) in the floor area, to density of 8.4 FAR, pursuant to 11 DCMR § 2405.3;

    b. A variance from the residential recreation space requirements of 11 DCMR § 773.3; and

    c. A special exception from the prohibition of multiple roof structures set forth at 11 DCMR § 411.3.

33. The 5% bonus FAR provides the necessary density to allow development of approximately 702 residential units (78 of which would be set aside as affordable housing) and a spacious interior plaza available for public recreation use.

34. The proposed PUD provides the equivalent of approximately four percent (4%) of residential gross floor area as residential recreation space in the form of the central plaza and the rooftop terrace on the Consolidated PUD, which is less than the 10% required by § 773.3. The Applicant stated that some additional residential recreation space may be made available in the second-stage PUD, but in the meantime requested a variance from the 10% requirement.

35. The Zoning flexibility to permit multiple roof structures is necessary to allow elevator penthouses and stair towers on both the seven-story and the ten-story portions of the Consolidated PUD.

**Public Benefits and Amenities**

36. The following benefits and amenities will be created as a result of the PUD project:

    a. *Affordable Housing* – The primary benefit is the creation of approximately 78 new residential units set aside as affordable for households at no more than 80% of the Area Median Income ("AMI"). The affordable units comprise 92,045 square feet, which is 11.07% of the total residential. In the Consolidated PUD, 28 of the 202 units will be designated as affordable units; this is 32,182 square feet (11.07% of the total Consolidated PUD residential area of 233,206 square feet). In the Preliminary PUD, 50 of approximately 500 units will be designated as affordable units; this is 59,863 square feet (10% of the approximate total Preliminary PUD residential area of 598,635 square feet). The Applicant will

reserve for-sale units as affordable for a period of ten (10) years and rental units as affordable for a period of twenty (20) years. The Consolidated PUD affordable units are identified on the Applicant's floor plans for floors one (1) through five (5). The Preliminary PUD affordable units will be identified during second-stage PUD review.

b. *Day Care Center* – The Preliminary PUD will include a licensed and professionally-operated child daycare center of approximately 3,449 square feet in size with convenient access to an outdoor play area. Based on per-child space requirements in the District Government's daycare center regulations, the facility may accommodate up to 75-80 children. Union Place residents will have first priority in applications for admission. Other available daycare slots will be open to applicants from the community at large. The city, and particularly Ward 6, has a substantial need for more daycare facilities. The Office of Early Childhood Development of the D.C. Department of Human Services has reported that, as of December 2004, there were 882 children on waiting lists for the 3,175 slots available in licensed childcare facilities in Ward 6.

c. *Green Roof* – The Consolidated PUD features an extensive green roof system, with 11,928 square feet of roof space designed for plantings, comprised of a variety of different sedums and other succulents hardy for the D.C. metropolitan region. On the seventh-floor step-down roof at the corner of 3rd and L Streets, N.E., the green roof system is designed as a recreation amenity for residents. For the Preliminary PUD, the Applicant has committed to address the use of a green roof system and to explore the feasibility of a green and/or low-impact surface or storm water management system for the surface of the courtyard, that also serves as the roof for the parking garage. The reduction of negative environmental impacts is perhaps the foremost public benefit the proposed roofing system provides. Stormwater run off will be reduced by temporarily storing some of the rainwater within the growing medium and then slowly discharging the excess water into the off site storm water collection system, thereby reducing the peak flows of a major storm. It is estimated that this roof will store approximately 1,074 cubic feet of water, of which as much as 70-80% will never discharge directly into the public collection system. In addition, the plantings will extract a significant amount of airborne pollutants falling on the site, including acid rain and unhealthy particulates such as solid metals, dust, pollen, etc. The plants will also help improve air quality by reducing the amount of ozone and carbon dioxide often associated with smog. Also, because of the extra thickness of the soil medium, studies have shown that there is a significant energy savings over time for all seasons because of the insulation value of the green roof.

d. *Double-Height Ground Floor Retail* – The Consolidated PUD features ground-floor retail space at a height of 18 feet, well above the requirements of the Zoning Regulations. This will provide flexibility for retail tenants to design unique and aesthetically-appealing showcases for consumer goods. The glass-walled double-

height storefronts will enhance interior natural light and present an inviting exterior face to passers-by.

e. *Landscaped Central Plaza for Use by Residents and the Community* – The Union Place plaza of approximately 27,984 square feet is designed for both public and private use for passive recreation and social interaction. The plaza will be open to the from 11:00 a.m. to 7:00 p.m. daily, accessible through a gated entrance that will be open during public hours and closed during non-public hours except to Union Place residents. The Applicant will provide and maintain plaza signage to announce the public hours and general rules of use. The plaza will be protected by security personnel.

f. *Streetscape Beautification* – PUD landscaping constitutes a public benefit through substantial enhancement of the aesthetic appeal of the neighborhood streetscape.

g. *Interim Surface Parking for Phase 1 Residents* – During the interim between occupancy of the Consolidated PUD structure and completion of construction of the Preliminary PUD structure, off-street surface parking will be provided on the PUD Site to assure a 1:1 residential parking ratio at all times. The interim arrangement is necessary because the Consolidated PUD, with 202 residential units, is designed to provide 177 underground parking spaces. The Applicant stated that geotechnical factors make it difficult to provide the full complement of spaces for Consolidated PUD residents within the Consolidated PUD garage. The underground garage in the Preliminary PUD will provide a sufficient number of spaces to accommodate its residents at a 1:1 ratio, plus the 25 additional spaces necessary for Consolidated PUD residents, to assure a 1:1 space-per-unit ratio overall. Pervious materials will be used for the interim surface parking area.

h. *First-Source Employment Agreement* – The Applicant entered into a First-Source Employment Agreement with the Department of Employment Services, effective September 13, 2005.

i. *LSDBE Contracting Commitment* – The Applicant entered into a Local, Small, and Disadvantaged Business Enterprise (LSDBE) Memorandum of Understanding with the Department of Small and Local Business Development, effective January 18, 2006.

37. The Commission finds that the project is acceptable in all proffered categories of public benefits and amenities, and is superior in public benefits and project amenities relating to housing and affordable housing, the daycare facility, use of green roof technology, and the double-height retail design.

**Office of Planning Report**

38. By report dated December 27, 2005 and through testimony at the January 5, 2006 hearing, the Office of Planning ("OP") recommended conditional approval of the PUD.

OP supported the applications and found that the proposed PUD is not inconsistent with the Comprehensive Plan and the PUD evaluation standards. OP testified that the PUD is consistent with neighborhood trends toward denser residential uses to replace derelict industrial and commercial uses, to replace in part by the completion of the New York Avenue Metrorail Station and the H Street Corridor Revitalization Plan of 2004 and the subsequent approval of the H Street N.E. Neighborhood Commercial Overlay Zone District.

39. OP recommended approval of the applications, subject to the Applicant's submission of additional requested information and the following conditions:

a. The Consolidated PUD shall be constructed according to the plans submitted on November 29, 2005 (i.e., September 13, 2005 plans as amended September 29, 2005).

b. The Preliminary PUD shall be restudied to address the height issue and the Applicant shall submit an alternative that maintains a 90-foot building height along K Street, with at least a 40-foot horizontal setback from the building line, as part of the second-stage PUD application.

c. The Applicant shall file for a building permit no later than 18 months from the effective date of the final order and commence construction no later than 30 months from the effective date of this order.

d. At least 13.8% of the Consolidated PUD's residential gross floor area shall be made available as for-sale units to households earning no more than 80% of the AMI. The units shall remain affordable for at least 10 years after their initial sale. The sale of a unit within this 10-year period shall initiate a new 10-year affordability period for the unit. The units shall be evenly distributed throughout the first five floors of the building. The location and square footages of the affordable units shall be agreed upon by the Applicant and the Zoning Commission prior to the signing of the PUD covenant.

e. At least 10% of the Preliminary PUD's residential gross floor area shall be made available as rental or for-sale units to households earning no more than 80% of the AMI. If the units are for-sale, the 10-year affordability period shall apply. If the units are rental, they shall remain affordable for no less than 25 years.

f. The Applicant shall construct an in-fill all-residential building in Square 749, Lot 805. The building shall be no higher than 50 feet. The occupancy permit for the Preliminary PUD shall not be issued until the occupancy permit has been issued for the residential structure at Square 749, Lot 805.

g. The Applicant shall provide for a rental car option similar to Flex Car or Zip Car when the Preliminary PUD's garage is completed.

h. The Applicant shall include a letter of intent, with general details on rental terms and similar matters for the operation of the daycare center when filing the second-stage PUD application.

i. The ground floor retail space in the second-stage PUD shall have an interior clear height of no less than 14 feet.

40. In response to OP's recommendations, the Commission finds as follows:

a. The Commission concurs with OP's recommendations regarding approval of the bonus density and finds that the Applicant has met the burden of proof required by § 2405.3. The Commission finds that the high level of proffered affordable housing is an essential element of the proposed PUD and that the Applicant has demonstrated that the bonus density is "essential to the successful functioning of the project" as proposed and "consistent with the purposes and evaluation standards of" Chapter 24. The Commission further finds that any requested reduction in the level of proffered benefits and amenities will cause the Commission to consider a commensurate reduction in the bonus FAR.

b. The Commission finds that the Applicant has submitted the additional information requested in the OP report.

c. The Commission generally concurs with the conditions recommended by OP, and has incorporated these conditions with minor changes in the Decision portion of this Order.

d. The Commission does not concur with the OP recommendation that the Applicant should be required to submit, in the second-stage PUD application, a 90-foot-height plan as an alternative to the requested maximum height of 130- feet for the Preliminary PUD structure. Instead, the Commission has required that the Applicant submit design studies of approaches that ameliorate the appearance of the 130-foot height when presenting the second stage application to the Commission.

e. The Commission does not concur with the OP recommendation that the Applicant shall construct an in-fill building, or to limit the in-fill building to Lot 805 and to a height of 50 feet and to link the occupancy permit for the Preliminary PUD to the occupancy permit for the in-fill building. The Commission finds that, because the out parcels are not part of the PUD, it is inappropriate to link the Preliminary PUD occupancy permit to an occupancy permit for the out parcels structure.

**Other Government Agency Reports**

41. By report dated September 30, 2005 in the predecessor Case No. 01-28TE, the District Department of Transportation ("DDOT") stated that it has no objection to the proposed PUD. DDOT projected only a slight increase in trip generation as a result of the PUD

development, with no adverse impact on the surrounding transportation system. DDOT found the PUD loading facilities and access and circulation system to be acceptable. Consistent with DDOT policy to promote car-sharing programs, DDOT encouraged the Applicant to consider setting aside approximately five percent (5%) of the proposed garage parking spaces for car-sharing vehicles.

42. Stanley Jackson, Deputy Mayor for Planning and Economic Development, submitted a letter dated September 29, 2005 in support of the identical project in the predecessor Case No. 01-28TE. Mr. Jackson stated that that Applicant's affordable housing proffer will contribute to the District's priority goal of developing an additional 6,000 affordable housing units.

43. Jalal Greene, Director of the D.C. Department of Housing and Community Development, submitted a letter dated September 29, 2005, in support of the identical project in the predecessor Case No. 01-28TE. Mr. Greene also stated that the Applicant's affordable housing proffer supports the city's goal of developing 6,000 more affordable units.

44. D.C. Council Chairman Linda Cropp and Council member Vincent B. Orange, Sr. submitted letters dated November 21, 2005, and November 17, 2005, respectively, in support of the identical project in the predecessor Case No. 01-28TE.

**The ANC Position**

45. Advisory Neighborhood Commission 6C adopted a resolution in support of the applications, with conditions, by a vote of 7-1, with one member absent, at a regularly scheduled and publicly noticed meeting on December 14, 2005. The ANC resolution included the following conditions:

    a. The Applicant shall file a Phase 1 (Consolidated PUD) building permit application within one (1) year following the effective date of a Zoning Commission approval order, and shall also begin Phase 1 construction within one (1) year subject to timely D.C. Government action on legislation to close alleys within the PUD Site. The Applicant will file quarterly reports to ANC 6C regarding the status of the building permit application and the construction start date.

    b. The Applicant will file a second-stage PUD application at the earliest opportunity in order to prevent delays in Phase 2 (Preliminary PUD) construction and will timely provide copies of the second-stage PUD plans and documents to members of ANC 6C and its Planning and Zoning Committee for their review and comment.

    c. The Applicant will provide the interim surface parking spaces as agreed upon with ANC 6C.

d. The Applicant will set aside approximately 78 units – more than 11% of the total – as affordable housing and will deliver all of the other public benefits and amenities as set forth in the applications.

46. ANC 6C Commissioner Daniel M. Pernell, who represents Single-Member-District 6C04, which includes the PUD site, presented the ANC report at the January 5, 2006 hearing. He was accompanied by ANC 6C Chair Mark Dixon.

47. The Commission generally concurs with the conditions recommended by ANC 6C and has incorporated these conditions with minor changes in the Decision portion of this Order.

**The Positions of Other Parties, Organizations, and Persons**

48. There are no parties to the case other than the Applicant and ANC 6C.

49. In support of the PUD, the Commission received testimony at the January 5, 2006 hearing from the following:

a. Loree Murray, who resides at 1134 Seventh Street N.E., and was among the original organizers of the Near Northeast Citizens' Against Crime and Drugs, testified that Union Place will be a beneficial addition to the neighborhood, particularly because it will include affordable housing, a daycare center, and public plaza.

b. Reverend William Bynum, president of the Public Citizen Civic Association, testified that Union Place is one of the few significant developments in the past 40 years that will bring tangible public benefits to the vicinity of the H Street N.E. Corridor.

c. William Howard, who represented PSI Services, a provider of daycare and other social services in the District, commended the inclusion of a daycare center in the PUD project to meet com nunity needs and said his firm will submit a proposal to the Applicant to operate the Union Place daycare center.

d. Anwar Saleem, chairman of H Street Main Street and the H Street Merchants and Professionals Association, testified that the Union Place development will be an asset to the community in continuing efforts to attract retailers to the H Street N.E. Corridor. He said the Applicant's package of public benefits and amenities responds to community needs.

50. In opposition to the PUD, the Commission received testimony at the January 5, 2006 hearing from Mozella Boyd Johnson, who stated that she owns the property located at 229 K Street, N.E. She spoke in opposition to the proposed 130-foot height of the Preliminary PUD structure and expressed the view that the project's height and mass would have an adverse effect on the neighborhood.

**NCPC Report**

51. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter.

52. NCPC, by action dated March 2, 2006, concluded: (1) the proposed consolidated PUD would not adversely affect the identified federal interests and would be consistent with the Comprehensive Plan for the National Capital; and (2) the proposed first stage PUD would adversely affect the federal interest and would be inconsistent with the Comprehensive Plan for the National Capital and the Height of Buildings Act of 1910. NCPC indicated that the two structures shared no meaningful communication and thus comprised two separate buildings, with two different fronts and therefore two distinct measuring points for height.[2] Yet, only the 3rd Street front was used to measure height. NCPC therefore concluded that the Commission should either require the Applicant to establish a "meaningful connection" between two structures, so as to permit the 3rd Street measuring point, or to lower the height of the building fronting 2nd and L Streets.

53. The Commission shared this same concern with the Applicant as part of the earlier PUD modification proceeding discussed in Find of Fact No. 3. The plans in that case did indeed show two separate structures with a single point of measurement. In response to the Commission's concerns, the Applicant submitted the revised drawings on September 29, 2006 that show a single building made of two parts connected by a twelve (12) story glass bridge. After the Commission denied the request for a time extension on November 17, 2005, thereby terminated the prior PUD, the Commission immediately set this case down for hearing based on the plans showing the connected structures.

54. Based upon statements in and attachments to the "staff recommendation" that accompanied NCPC action, it appears that NCPC may have been looking at the plans from the earlier case. In any event, the Commission believes that the glass bridge will establish communication between the two portions of the structure, thereby allowing the entire development to be considered a single building that fronts 3rd Street. The 3rd Street front was therefore properly used as the measuring point for height.

**Compliance with PUD Evaluation Standards**

55. Under the PUD regulations, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects." 11 DCMR § 2403.8. Given the level of project amenities and public benefits, particularly the significant amount of

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[2] The definition of building that appears at 11 DCMR § 119.1 provides that the "existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building." This statement has therefore been interpreted to mean that the "existence of communication" at or above the main floor allows the connected structures to be deemed a single building.

affordable housing, the Commission finds that the value of the project amenities and public benefits justifies the development incentives allowed by the PUD Standards.

56. Pursuant to 11 DCMR § 2403.3 of the PUD evaluation standards, the Commission finds that the impact of the project on the surrounding area and the operation of city services and facilities is acceptable.

57. The Commission finds that the project will have no detrimental impact on traffic and parking in the neighborhood.

**Compliance with the Comprehensive Plan**

58. The Commission finds that the proposed PUD is not inconsistent with the Comprehensive Plan.

59. The proposed PUD fosters the objectives of the Land Use Element to encourage substantial new housing primarily near Metrorail stations, to conserve and enhance the stability of residential neighborhoods and protect them from disruptive uses, and to promote retention and expansion of residential uses in mixed-use neighborhoods.

60. The proposed PUD fosters the objectives of the Housing Element, which calls for multi-unit housing development near Metrorail stations and on vacant, underutilized, or unused properties, with particular emphasis on meeting the housing needs of low- and moderate-income residents by means of zoning incentives such as permitting additional density.

61. The proposed PUD fosters the objectives of the Transportation Element, which supports higher-density residential and non-residential development near Metrorail stations.

62. The proposed PUD fosters the Ward 6 Objectives for Housing, which are "to maintain and strengthen the quality and construction of housing in the various neighborhoods throughout Ward 6; stimulate production in Ward 6 of new and rehabilitated housing; discourage encroachment of the non-residential uses in residential areas; and stimulate private investment in housing in Ward 6 and expand home ownership opportunities...."

63. The proposed PUD fosters the Ward 6 Objectives for Economic Development, which include "protect(ing) adjacent residential neighborhoods in Northeast against pressures for conversion to retail and office uses generated by Union Station development." By creating a new residential community in the buffer zone, the proposed PUD will shield the residential neighborhood from commercial redevelopment.

## CONCLUSIONS OF LAW

1. Pursuant to Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that

the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, welfare, and convenience." 11 DCMR § 2400.2.

2. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider these applications as a Consolidated and a Preliminary (first-stage) PUD, respectively. The Commission may impose development guidelines, conditions, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, and courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. The development of the PUD project will carry out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

4. The proposed PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

5. The PUD is within the applicable height, bulk, and density standards of the Zoning Regulations, and the height and density will not cause a significant adverse effect on any nearby properties. High-density residential and retail uses are appropriate for the site, which is located within the NoMa Redevelopment Area and in close proximity to mass transit. The impact of the project on the surrounding area is not unacceptable. The proposed project has been appropriately designed to complement and respect existing structures in the nearby neighborhood with respect to height and mass.

6. The PUD applications meet the contiguity requirements of § 2401.3 of the Zoning Regulations.

7. The PUD applications can be approved with conditions to ensure that any potential adverse effects on the area surrounding the development will be mitigated.

8. The project benefits and amenities, particularly the provision of housing, affordable housing, neighborhood-serving retail, the daycare center, the green roof system, and streetscape beautification, are reasonable for the development proposed on the site and responsive to the needs of the community and the city.

9. The Applicant seeks an increase in density as permitted by 11 DCMR § 2405.3. The Applicant has met the burden of proof required by 11 DCMR § 2405.3 for approval of 5% bonus density, because the increase is essential to the successful functioning of the project and consistent with the purpose and evaluation standards of Chapter 24 of the Zoning Regulations. The bonus density will allow the Applicant to include a greater affordable housing component than would otherwise be feasible. The large affordable housing component is one of the primary benefits of the project, and is essential to the

success of the project, and consistent with the standards of Chapter 24 of the Zoning Regulations.

10. Approval of the PUD is appropriate, because the proposed development is not inconsistent with the Comprehensive Plan or with other public policies related to the subject site.

11. Approval of the PUD is appropriate, because the proposed development is consistent with other city policies, particularly the policies to generate development of more affordable housing.

12. In accordance with D.C. Official Code § 1-309.10(d)(3)(A) (2001 ed.), the Commission is required to give "great weight" to the position of the affected ANC. As is reflected in the Findings of Fact contained herein, the Commission has carefully considered the testimony and evidence submitted by ANC 6C and has incorporated conditions in this Order which reflect the recommendations of ANC 6C.

13. The applications for a PUD and related map amendment will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.

14. The applications for a PUD and related map amendment are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

## DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia orders **APPROVAL**, consistent with this Order, of the applications for (1) consolidated review of a Planned Unit Development; (2) preliminary review of a Planned Unit Development; and (3) a Zoning Map amendment from C-M-3 and C-2-B to C-3-C for the PUD Site. The approval is subject to the following guidelines, conditions, and standards:

1. The consolidated approval of the PUD shall apply to the properties in Square 749 except Lots 804, 805, and 31 shown to the right of the "Phase Line" on the Applicant's *Preliminary Subdivision Plan*, dated September 7, 2005, and submitted as Exhibit C of the Applicant's *Application and Pre-Hearing Submission, ZC Case No. 05-36*, filed November 29, 2005.

2. The preliminary approval of the PUD shall apply to properties in Square 749 shown to the left of the "Phase Line" on the Applicant's *Preliminary Subdivision Plan*, dated September 7, 2005, and submitted as Exhibit C of the Applicant's *Application and Pre-Hearing Submission, ZC Case No. 05-36*, filed November 29, 2005.

3. A PUD-related map amendment shall rezone the PUD site, in its entirety, from C-M-3 and C-2-B to C-3-C.

4. With respect to the properties within the Consolidated PUD, the map amendment shall take effect at the time the Applicant records the covenants required by Conditions No. 6, No. 13, No. 14, and No. 17 below. With respect to the properties within the Preliminary PUD, the map amendment shall take effect upon final approval of the second-stage PUD application and the Applicant's recordation of the covenant as specified by the Commission in an Order approving the second-stage PUD.

5. The PUD shall have a maximum density of 8.4 FAR.

6. The Applicant shall designate 11.07% of the total residential gross floor area of the total project as affordable housing for eligible households with annual household incomes of no more than eighty percent (80%) of the Area Median Income, as determined and adjusted annually by the U.S. Department of Housing and Urban Development. The affordable-housing requirements shall be guaranteed by covenants that the Applicant shall execute and record in the land records of the District of Columbia. The affordable units shall be guaranteed by covenant to be set aside as affordable for ten (10) years in the case of for-sale units and twenty (20) years in the case of rental units, as defined with specificity in the covenants.

7. The Applicant shall apply green-roof technology in the development and construction of the Consolidated PUD and the Preliminary PUD. For the Consolidated PUD, the Applicant shall apply the green-roof plan as shown and described in Exhibit D, *Sheets L.9, L.9.1, L.9.2 and L.9.3*, of the Applicant's November 29, 2005 submission. For the Preliminary PUD, the Applicant shall develop and submit with the second-stage PUD application a similar green-roof plan for the maximum amount of roof space, minus the space needed for rooftop building systems such as elevator and mechanical penthouses.

8. The Applicant shall provide a central plaza of approximately 27,000 square feet in size. The central plaza shall be open to the public for passive recreational use between the hours of 11:00 a.m. and 7:00 p.m. daily, and shall be posted with appropriate signage to inform plaza users about permissible and prohibited plaza activities. The plaza shall be accessible to the public through a 2nd Street entrance that shall remain open during the hours of public access and shall be closed to all except building residents, employees, and any other authorized personnel between the hours of 7:00 p.m. and 11:00 a.m. In the second-stage PUD application, the Applicant shall provide data and drawings showing the design and placement of the 2nd Street entrance. The Applicant shall provide sufficient security personnel and procedures to ensure the safety of plaza users, including procedures defining the conditions requiring requests for Metropolitan Police Department assistance. Specific rules and operational details for the plaza shall be developed collectively by the Applicant, the condominium unit owner's association representing building residents in accordance with the provisions of D.C. Official Code § 42-1903.01 *et seq.*, and Advisory Neighborhood Commission 6C.

9. Ground floor retail space in the Consolidated PUD shall have an interior clear height of 18 feet. Ground floor retail space in the Preliminary PUD shall have an interior clear height of no less than 14 feet.

10. The Consolidated PUD shall be developed in accordance with the plans prepared by GTM Architects, dated September 13, 2005, including the revisions submitted September 29, 2005, and January 4, 2006 (the "Combined Plans"). The Consolidated PUD shall have a total of 236,905 gross square feet with 233,206 square feet for residential use and 3,699 square feet for retail use.

11. The Consolidated PUD shall be a residential development with ground-floor retail space, constructed to a maximum height of 90 feet above the measuring point, stepping down to a height of 61 feet/6 inches on the northeast end.

12. The Consolidated PUD shall contain 202 residential units, 28 of which shall be designated as affordable units for an affordability period of ten (10) years, if for-sale units, and twenty (20) years, if rental units, guaranteed by covenant between the Applicant and the District of Columbia and recorded in the land records of the District of Columbia.

13. The covenant required by Condition No. 6 shall be the Draft Covenant provided as Attachment 2 in the *Applicant's Post-Hearing Submissions, January 20, 2006,* revised only to provide the correct metes-and-bounds descriptions of the lots and parts of lots contained in the Consolidated PUD.

14. Except as otherwise provided below, the affordable housing units in the Consolidated PUD shall be the units designated by the Applicant in the floor plans for floors one (1) through five (5), submitted as Attachment 6 in the Applicant's Post-Hearing Submissions dated January 20, 2006 ("Affordable Unit Designation Plans").

15. The Applicant shall have flexibility with the design of the Consolidated PUD in the following areas:

    a. To replace some of the units designated as affordable on floors one (1) through five (5) with some units of comparable type and size on floor six (6), subject to the approval of the person or agency charged with implementing and enforcing the affordable-housing requirements;

    b. To increase or decrease the overall number of residential units by no more than five percent (5%), provided that the percentage of residential gross floor area designated for affordable units shall not be less than 13.8% of total residential gross floor in the Consolidated PUD;

    c. To rearrange the unit types and mix, provided that the number, type, size, and distribution of the affordable units shall remain consistent with the Affordable Unit Designation Plans;

    d. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms,

elevators, escalators, and toilet rooms, provided that the variations do not change the exterior appearance or configuration of the buildings;

e. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and

f. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings, and trim, or any other changes necessary to comply with the Construction Codes of the District of Columbia or that are otherwise necessary to obtain a building permit.

16. The landscaping, streetscape, and exterior lighting shall be as shown on the Consolidated Plans. Landscaping, streetscape, and lighting improvements to public space shall be in accordance with the Consolidated Plans and as approved by the Public Space Division of DDOT. The Applicant shall maintain all landscaping, streetscape, and lighting improvements in good condition.

17. No building permit shall be issued for the Consolidated PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia, satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA"). Such covenant shall bind the owners and all successors in title to construct on and use the property in accordance with this Order or amendment thereof by the Zoning Commission.

18. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed copies of the covenant with the records of the Zoning Commission.

19. The Consolidated PUD approved by the Zoning Commission shall be valid for a period of one (1) year from the effective date of this Order. Within such time, the first application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction on the Consolidated PUD shall begin within two (2) years of the effective date of this Order.

20. The Preliminary PUD shall be developed in accordance with the Combined Plans and the character, scale, mixture of uses, and design of the uses proposed.

21. The Preliminary PUD shall have a maximum height of 130 feet from the measuring point and a maximum of 14 stories, each of which shall have a minimum floor-to-ceiling height of 8 feet/6 inches, within the 130-foot height of the structure as measured for zoning purposes. The Preliminary PUD shall include approximately 500 dwelling units and 13,798 square feet for retail use, including the daycare center.

22. The Commission is concerned with the proposed maximum 130 foot height of the second stage proposal along K Street. The Commission expects the Applicant to develop

alternative design studies that ameliorate the appearance of the 130 Foot height in presenting the second stage application to the Commission.

23. The Preliminary PUD shall include an affordable-unit set-aside of no less than 10% of the total residential gross floor area of the Preliminary PUD. Affordability periods of ten (10) years for for-sale units and twenty (20) years for rental units shall be guaranteed by covenants agreed upon by the Applicant and the Commission and recorded in the land records of the District of Columbia. The affordable unit types and sizes shall be in reasonable proportion to the types and sizes of market-rate units and shall be evenly dispersed among the central and lower residential floors.

24. The Preliminary PUD shall include a daycare center of approximately 3,449 square feet in size. In the second-stage PUD application, the Applicant shall provide evidence of progress in identifying and securing an agreement with a suitable daycare provider to operate the facility.

25. In the second-stage PUD application, the Applicant shall address the District Department of Transportation and OP recommendations for the inclusion of garage parking spaces for car-sharing services.

26. In the second-stage PUD application, the Applicant shall have flexibility with respect to:

    a. Increasing or decreasing the overall number of residential units by no more than five percent (5%), provided that the percentage of residential gross floor area designated for affordable units shall not be less than 10.0% of total residential gross floor area in the structure; and

    b. The exterior façade design and materials, so long as the exterior appearance is compatible with the exterior of the Consolidated PUD structure and consistent in quality and character with the façade design and materials and overall exterior appearance of the Consolidated PUD.

27. In the second-stage PUD application, the Applicant shall include, as an element of the architectural materials, street-level renderings and a cross-section showing the Second Street public access point of entry to the plaza and 2nd Street elevations.

28. The second-stage PUD application shall be submitted within one year following the effective date of this Order.

29. The Applicant shall abide by the terms of the executed Memorandum of Understanding with the Department of Small and Local Business Development in order to achieve, at a minimum, the goal of thirty-five percent (35%) participation by local, small, and disadvantaged business enterprises in the contracted development costs associated with the design, development, construction, and security for the PUD project.

30. The Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services in order to achieve the goal of utilizing District of Columbia residents for at least fifty-one percent (51%) of the jobs created by the PUD project.

31. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 *et seq.* (the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial of or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

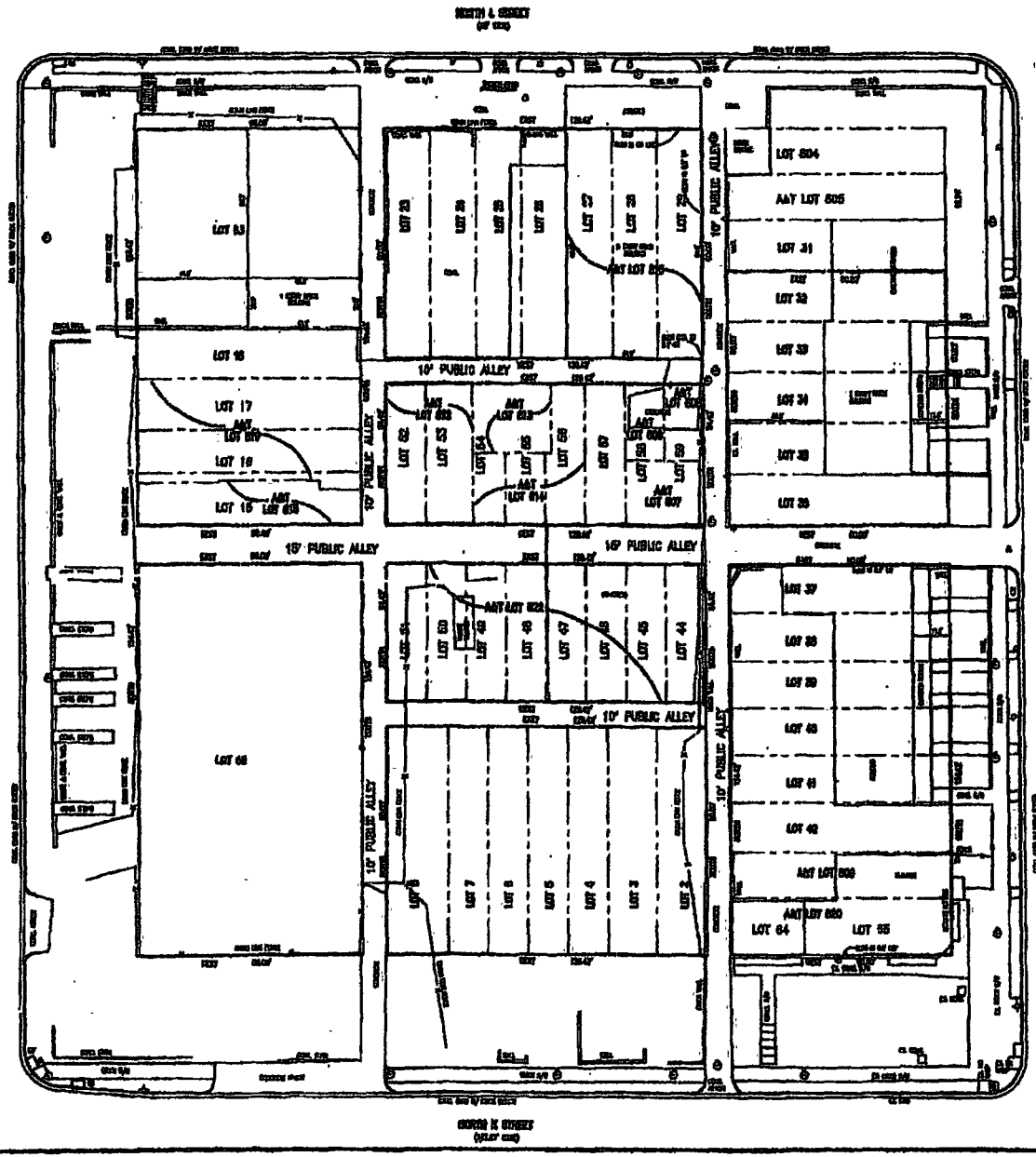
The Zoning Commission at its public meeting held on February 23, 2006 approved the application, subject to conditions, by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, Michael G. Turnbull in favor, John G. Parsons not participating, not voting).

The Order was adopted by the Zoning Commission at its public meeting on April 20, 2006 by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, and Michael G. Turnbull to adopt; Gregory N. Jeffries to adopt by absentee ballot; John G. Parsons not participating, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on OCT 13 2006.

**CAROL J. MITTEN**
**CHAIRMAN**
**ZONING COMMISSION**

**JERRILY R. KRESS, FAIA**
**DIRECTOR**
**OFFICE OF ZONING**




AREA TABULATION

SURVEYOR'S CERTIFICATE

NOTES

EXHIBIT B

ALTA/NSPS LAND TITLE SURVEY
LOTS 2 TO 4, LOT 15, LOTS 23 TO 26,
LOT 32 TO LOT 42, LOT 67, LOT 83 AND LOT 68
AAT LOTS 805 TO 808, AAT LOTS 812 TO 815
AAT LOTS 819 TO 820 & AAT LOT 822
SQUARE 749

Bowman CONSULTING

M.C. Case 05-31

Michael Hollander
Cohen Companies
2701 Tower Oaks Boulevard
Suite 200
Rockville, MD 20852

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THIS IS TO CERTIFY THAT THIS IS A TRUE COPY

Recorder of Deeds, D.C.

JAN 26 2007

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

**Z.C. CASE NO.: 05-36**

As Director of the Office of Zoning, I herby certify that OCT 10 2006 copies of this Z.C. Corrected Order No. 05-36 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. John Ray, Esq.
   Manatt, Phelps, & Phillips
   700 12th St NW # 1100, Washington, DC 20005
3. Mark Dixon, Chair
   ANC 6C
   P.O. Box 77876
   Washington, DC 20013
4. Commissioner Daniel Pernell, III
   ANC/SMD 6C04
   1116 3rd Street, NE
   Washington, DC 20002
5. Gottlieb Simon
   ANC
   1350 Pennsylvania Ave., N.W.
   Washington, D.C. 20004
6. Councilmember Sharon Ambrose
7. Office of Planning (Ellen McCarthy)
8. Ken Laden, DOT
9. Zoning Administrator
10. Office of the Attorney General
11. Jill Stern, Esq.
    General Counsel - DCRA
    941 North Capitol Street, N.E.
    Suite 9400
    Washington, D.C. 20002

**ATTESTED BY:** Sharon S. Schellin

**Sharon S. Schellin**
**Secretary to the Zoning Commission**
**Office of Zoning**

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