GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 14-12H
Z.C. Case No. 14-12H
EAJ 1309 5th Street, LLC
(Two-Year Time Extension for PUD @ Square 3591, Lots 801, 802, 7004, 7005, 7011, 7012, 7013, 7034, 7036, 7037, and 7038)
December 19, 2024

Pursuant to notice, at its December 19, 2024 public meeting, the Zoning Commission for the District of Columbia (the "Commission") considered the application (the "Application") of EAJ 1309 5th Street, LLC (the "Applicant") concerning Lots 801, 802, 7004, 7005, 7011, 7012, 7013, 7034, 7036, 7037, and 7038 in Square 3591 (the "Property") for (i) a waiver from the Commission's rules limiting the number and duration of time extensions, and (ii) a two-year time extension of the deadline to file a building permit application for the approved consolidated planned unit development ("PUD") approved by Z.C. Order No. 14-12 (the "Original Order"), as extended by Z.C. Order Nos. 14-12A, 14-12D, 14-12D(1),14-12D(2), and 14-12G, and as modified by Z.C. Order Nos. 14-12C and 14-12C(1). The Commission reviewed the Application pursuant to the Commission's Rules of Practice and Procedures, which are codified in Subtitle Z of Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, ["Zoning Regulations of 2016"], to which all subsequent regulatory citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

THE PROPERTY

1. The Property is located in Ward 5 in the Northeast quadrant of the District on a rectangular lot bounded by 6th Street, N.E. to the east, 5th Street, N.E. to the west, a surface parking lot to the south, and to the north, a newly delivered mixed-use building; is in the heart of the Union Market District; and contains the two-story market building (known as "The Market" or the "Existing South Building") that remains the center of retail activity in the Union Market District today.

PRIOR APPROVALS

2. Pursuant to the Original Order, effective May 8, 2015, the Commission approved (i) a consolidated PUD for the South Parcel, including the Existing South Building and a Future South Building("South Building PUD"), (ii) a first-stage PUD with respect to lots adjacent to the Property (the "North Parcel"), including the North Building, and (iii), together for the Property and the North Parcel, a related Zoning Map amendment rezoning both from

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the CM-1 (now PDR-1) to the C-3-C (now MU-9B) Zone District. The Original Order authorized:

- A Consolidated PUD both for the Existing South Building to allow ground floor retail/restaurant uses, an event space on the second level, and outdoor plazas; and for the Future South Building, a vertical expansion of the Existing South Building to a height of 120 feet and a gross floor area of approximately 216,400 for entertainment (movie theatre) and either office or residential uses above the theatre, at the Applicant's election; and
- A First-Stage PUD for the North Building to include ground floor/retail uses and upper story residential uses with a total height of 120 feet and a gross floor area of approximately 325,000 square feet. The North Building is now fully constructed and is currently occupied.

3. Condition No. D.3 of the Original Order approved the South Building PUD for two years of the Original Order effective date, during which time the Applicant was required to file a building permit application.

4. Pursuant to Z.C. Order No. 14-12A, filed on May 5, 2017, and effective November 9, 2018, the Commission approved a two-year time extension of the deadline to file a building permit application under the South Building PUD until May 9, 2019.

5. Pursuant to Z.C. Order No. 14-12D[1], filed on May 7, 2019, and effective January 24, 2020, the Commission approved a one-year time extension of the deadline to file a building permit application under the South Building PUD until May 8, 2020. Pursuant to Subtitle Z § 702.1[2] and 204.3, such deadline was automatically extended for a period of six (6) months; that is, until November 9, 2020.

6. Pursuant to Z.C. Order No. 14-12D(1),[3] filed on December 15, 2020 and effective January 1, 2021, the deadline to file a building permit application under the South Building PUD was administratively extended for one year pursuant to Subtitle Z § 705.9[4], until November 9, 2021.

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1 On June 26, 2017, the Applicant filed an application for a modification to the South Building PUD and a Second-Stage PUD for the North Parcel in Z.C. Case No. 14-12B. On August 23, 2018, the Applicant withdrew such application without the Commission having ever taken action with respect thereto. On April 10, 2019 the Applicant filed an application for a modification of consequence to the South Building PUD to permit interim improvements and uses in the Existing South Building on the Property in Z.C. Case No.14-12C, which modifications were approved in Z.C Order Nos. 14-12C and 14-12C(1), effective August 30, 2019.

2 Under Subtitle Z § 705.5, administrative extensions granted due to the Covid-19 pandemic per Subtitle Z § 702.1, do not count as an extension request under Subtitle Z § 705.5.

3 On November 6, 2020, prior to the expiration date established in Z.C. Order No. 14-12D, the Applicant filed a request for a further time extension of the South Building PUD under Z.C. Case No. 14-12F thereby tolling the expiration of the South Building PUD. On September 9, 2021, the Applicant withdrew the time extension request under Z.C. Case No. 14-12F because it was superseded by Z.C. Order No. 14-12D(1).

4 Under Subtitle Z § 705.5, administrative extensions granted due to the Covid-19 pandemic per Subtitle Z § 705.9, do not count as an extension request under Subtitle Z § 705.5.

7. Pursuant to Z.C. Order No. 14-12D(2),[5] filed on November 8, 2021 and effective November 26, 2021, the deadline to file a building permit application under the South Building PUD was administratively extended for one-year pursuant to Subtitle Z § 705.9,[6] until November 9, 2022.

8. Pursuant to Z.C. Order No. 14-12G, filed on November 4, 2022 and effective April 7, 2023, the Commission approved a two-year time extension of the deadline to file a building permit application under the South Building PUD until November 9, 2024; and a waiver from the Commission's rules, under Subtitle Z § 705.5, to allow a third time extension and a second extension for more than one year.

PARTIES AND NOTICE

9. In addition to the Applicant, the only party to Z.C. Case No. 14-12 was Advisory Neighborhood Commission ("ANC") 5D, the "affected" ANC pursuant to Subtitle Z § 101.8.

10. On November 8, 2024, the Applicant served the Application on ANC 5D, the Office of Planning ("OP"), and the District Department of Transportation ("DDOT"), as attested by the Certificate of Service submitted with the Application (Exhibit ["Ex."] 2 at 12).

II. THE APPLICATION

11. On November 8, 2024, the Applicant filed the Application requesting a two-year time extension until November 9, 2026, to file a building permit application under the Consolidated PUD for the Future South Building; and a waiver, pursuant to Subtitle Z § 101.9, from Subtitle Z § 705.5 to allow a fourth time extension and a third extension for more than one year. The Application stated that this extension request relates only to the Consolidated PUD and the Future South Building, as the Existing South Building and the interim improvements and uses inside are to remain intact during construction of the Future South Building, as approved under Z.C. Order Nos. 14-12C and 14-12C(1). The Application further stated that in the next two years the Applicant expects to either satisfy filing a building permit application or seek modification of the Consolidated PUD to make permanent the interim conditions at the Property. (Ex. 2)

12. The Applicant asserted it met the requirements of Subtitle X § 705.2 for the requested two-year time extension and the requirements of Subtitle X § 101.9 for a waiver from Subtitle Z § 705.5's maximum of two-time extensions and a maximum of one year for a second time extension because:
    - The time extension request was served on all parties and parties were allowed 30 days to respond;

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[5] On June 6, 2019, affiliates of the Applicant filed an application for a second-stage PUD for the North Parcel, which application was approved in Z.C. Order No. 14-12E, effective July 31, 2020.

[6] Under Subtitle Z § 705.5, administrative extensions granted due to the Covid-19 pandemic per Subtitle Z § 705.9, do not count as an extension request under Subtitle Z § 705.5.

- There has been no substantial change in any material facts upon which the Commission based its approval of the Original Order that would undermine the Commission's justification for that approval; and
- Good cause justifies the Commission granting the time extension and the waiver because the Applicant has faced extraordinary circumstances that have delayed commencement of construction of the Future South Building, including
  - Post-pandemic effects on the real estate market for office and movie theaters;
  - Financing difficulties exacerbated by high interest rates; and
  - Construction challenges unique to the structural design and increased construction costs; and
- The time extension request does not prejudice the rights of any party and is not prohibited by law as the only party to the Application, in this case ANC 5D, was served with the Application, the Applicant maintains a close working relationship with the ANC to ensure that its concerns are addressed, and no law prohibits this extension request.

(Ex. 2)

13. Despite these challenging circumstances, the Applicant notes the significant steps it has taken to deliver and enhance the benefits of the Consolidated PUD, including:
- The Applicant has advanced or completed nearly all of the Original Order's public benefits ahead of construction of the Future South Building (See Ex. 2A, Summary of Public Benefits);
- The Applicant has converted the top level of the Existing South Building into additional publicly accessible outdoor and recreational space, on an interim basis (as described and approved in Z.C. Order 14-12(C)) (*See* Ex. 2B, photos of the Union Market); and
- The Applicant has completed construction of the North Building (the First-Stage PUD per the Second-Stage PUD approved in Z.C. Order 14-12E) and the building is complete and currently occupied.

(Ex. 2)

III. RESPONSES TO THE APLICATION

OP

14. On December 2, 2024, OP filed a report (the "OP Report") supporting the Application and finding that it meets the requirements of Subtitle Z § 705.2 for the requested extension and the requirements of Subtitle Z § 101.9 for the requested waiver. OP concluded that there have been no substantial changes to the Comprehensive Plan Future Land Use Map or the Generalized Policy Map for the Florida Avenue Market Area (although there were changes in the 2021 Comprehensive Plan update with respect to the importance of PDR land), land designated for other uses such as this Property are anticipated to change use accordingly. OP stated that the Applicant demonstrated that the economics of the Future South Building are infeasible at this time due to post-pandemic challenges to the office market and difficulties in obtaining office financing and an equally challenging market for movie theatres as well as high construction costs. OP also noted that the Applicant has delivered many of the public benefits and amenities proffered through the Original Order. (Ex. 4)

ANC

15. ANC 5D did not file a response to the Application.

CONCLUSIONS OF LAW

1. Subtitle Z § 705.2 authorizes the Commission to extend the time period of an order upon determining that the time extension request demonstrated satisfaction of the requirements of Subtitle Z § 705.2 and compliance with the limitations of Subtitle Z § 705.3, 705.5, and 705.6.

2. Subtitle Z § 705.2(a) requires that an Applicant serve the extension request on all parties and that parties are allowed 30 days to respond.

3. The Commission concludes that the Applicant has satisfied Subtitle Z § 705.2(a) by demonstrating that it had served the Application on the only other party to the Application, ANC 5D, which was given 30 days to respond from the November 8, 2024, date of service.

4. Subtitle Z § 705.5 requires that "[a]n applicant with an approved PUD may request no more than two (2) extensions. . .[and a] second extension may be approved for no more than one (1) year."

5. Subtitle Z § 101.9 authorizes the Commission to waive any of the provisions of Subtitle Z if, in the judgment of the Commission, the Applicant demonstrates good cause for the waiver and the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

6. The Commission concludes that good cause exists for the Applicant's request for a waiver from the provisions of Subtitle Z § 705.5 to allow a fourth time extension and a third extension for more than one year because of the difficulties confronting the Applicant in constructing the building and mix of uses approved in the Future South Building due to economic and market challenges.

7. The Commission concludes that no party will be prejudiced by the granting of this waiver, as ANC 5D was served with the Application and did not file a response.

8. Subtitle Z § 705.2(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the PUD.

9. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) because there has been no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for that approval.

10. Subtitle Z § 705.2(c) requires that an application demonstrate with substantial evidence one or more of the following criteria:

1. *An inability to obtain sufficient project financing for the development, following an applicant's diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond the applicant's reasonable control;*
2. *An inability to secure all required governmental agency approvals for a development by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or*
3. *The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the order.*

11. The Commission concludes that the Application meets the standards of Subtitle Z § 705.2(c)(1) and (c)(3) because the Applicant has demonstrated that it has diligently pursued the financing to construct the Future South Building and has not been able to move forward due to significant economic and market challenges outside its reasonable control, including a depressed market for office and movie theatres exacerbated by the Covid-19 pandemic, and high interest rates and construction costs, which made obtaining financing for the Future South Building infeasible within the time limits of the Original Order.

"Great Weight" to the Recommendations of OP

12. The Commission must give "great weight" to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.9 (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016)).

13. The Commission finds persuasive OP's recommendation that the Commission approve the Application and therefore concurs in that judgment.

"Great Weight" to the Written Report of the ANC

14. The Commission must give "great weight" to the issues and concerns of the affected ANC expressed in a written report of an affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(2012 Repl.)) and Subtitle Z § 406.2. To satisfy this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978))

15. ANC 5D did not file a response to the Application; therefore, there is nothing to which the Commission can give great weight.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore

APPROVES the Application's request for a two-year time extension (with a waiver of Subtitle Z § 705.5 pursuant to Subtitle Z § 101.9) of Z.C. Order No. 14-12, as extended by Z.C. Order Nos. 14-12A, 14-12D, 14-12D(1), 14-12D(2), and 14-12G until November 9, 2026, within which time a building permit application must be filed under the Future South Building. The Conditions in Z.C. Order No. 14-12, remain unchanged and in effect as previously modified.

VOTE (December 19, 2024): 4-0-1 (Gwen Wright, Anthony J. Hood, Robert E. Miller, and Tammy Stidham to approve; Joseph S. Imamura, not present, not voting)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 14-12H shall become final and effective upon publication in the *District of Columbia Register*; that is, on March 7, 2025.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 14-12
Z.C. Case No. 14-12
EAJ 1309 5th Street, LLC
(First Stage and Consolidated PUD & Related Map Amendment
@ 1309-1329 5th Street N.E. (Lot 800, Square 3591))
March 30, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held public hearings on January 5, 2015 and February 11, 2015, to consider applications from EAJ 1309 5th Street, LLC ("Applicant") for review and approval of a consolidated and a first-stage planned unit development ("PUD") for Lot 800[1] in Square 3591 ("Property"), and a related Zoning Map amendment to rezone the PUD site from C-M-1 to C-3-C. The application proposes a mixed-use development incorporating retail and either office or residential uses ("Project"). The Commission considered the application pursuant to Chapters 24 and 30 and § 102 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application with conditions.

FINDINGS OF FACT

Procedural History

1. On July 10, 2014, the Applicant submitted an application to the Commission for the review and approval of a consolidated and first-stage PUD and a related Zoning Map Amendment to rezone the site from the C-M-1 Zone District to the C-3-C Zone District. The application proposes a mixed-use development incorporating retail, including a theater use, and either office or residential uses.

2. At a public meeting on July 28, 2014, the Commission voted to set the case down for a public hearing and requested the Applicant to provide additional information and drawings to address Commission concerns regarding:

   (a) The building design, including roof plans and sections and floor area ratio ("FAR") calculations of the Project components;

   (b) The benefits and amenities package offered by the Project;

[1] Lot 800 will be subdivided into a new record lot.

(c) The Project's vehicular and bicycle parking and loading;

(d) The LED screens proposed for the building;

(e) Deafspace design principles;

(f) The Project's event space;

(g) The relationship of retaining the existing façade while still allowing for tenant design flexibility; and

(h) The demolition plan for the Project.

3. On July 18, 2014, the Office of Planning ("OP") filed its setdown report. (Exhibit ["Ex."] 10.)

4. On August 7, 2014 and August 29, 2014, the Applicant filed Pre-Hearing Statements responding to the Commission's and OP's requests. (Ex. 12-12C, 13-13H.)

5. The Applicant filed an additional Pre-Hearing Submission containing its Transportation Impact Study on December 11, 2014 and an additional Pre-Hearing Submission on December 16, 2014, in response to Commission, OP, and District Department of Transportation ("DDOT") requests. (Ex. 18, 18A, 19-19H.)

6. After proper notice was provided, the Commission held a hearing on the application on January 5, 2015. The Applicant presented its project at such time and OP, DDOT, and the District Department of the Environment ("DDOE") provided their reports to the Commission. The Commission continued the case to allow for further resolution of the agency and Commission issues. The Commission held a second hearing on the application on February 11, 2015. The Applicant presented the updates to the project and detailed the resolution of issues raised by the Commission and agencies. Parties to the case included the Applicant and Advisory Neighborhood Commission ("ANC") 5D, the ANC within which the Property is located.

7. The witnesses appearing on behalf of the Applicant at the hearings were Jeff Kaufman and Geoff Sharpe; and the expert witnesses appearing on behalf of the Applicant at the hearing were: Robert Sponseller of Shalom Baranes Architects, the project architect; Dan Van Pelt of Gorove/Slade Associates, the project traffic consultant; Dan Duke of Bohler Engineering, Inc., the project civil engineer; and Mark Pelusi of Mahan Rykiel, the project landscape architect. The Applicant presented a sample materials board during the February 11, 2015 hearing, as requested by the Commission during the January 5, 2015 hearing.

8. At the conclusion of the hearing, the Commission requested that the Applicant file a post hearing submission containing information regarding the following: a list of events demonstrating the types of community events typically held at the Property, further studies of, and alternative location proposals for, the Union Market identifier ("Identifier") and justification as to the roof top location of such structure, the assumptions used to derive the valuation of the two affordable residential units reserved for residents earning 50% of the Area Median Income for the Washington, DC Metropolitan Statistical Area (adjusted for household size) ("AMI"), the reflectivity of the white façade of the project, and information regarding the project's sustainability (specifically, its LEED point generation).

9. On February 11, 2015, the Commission voted to take proposed action to approve the application.

10. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") as required by the District of Columbia Home Rule Act on February 12, 2015. (Ex. 29.) NCPC, by delegated action dated March 10, 2015 found that the proposed PUD would not adversely affect the federal establishment or other identified federal interests in the National Capital and would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital. (Ex. 54.)

11. On February 18, 2015, the Applicant submitted its list of final proffered public benefits of the PUD and draft conditions, pursuant to 11 DCMR § 2403.16 - 2403.18. (Ex. 50.)

12. On March 2, 2015, the Applicant submitted the post-hearing items requested by the Commission at the February 11, 2015 hearing. Among other items, this post-hearing submission included revised plans that removed the proposed Identifier from the South Building roof and proposed alternative locations for such marker, including the Applicant's recommended location atop the theater component along 5th Street, N.E. (Ex. 51B.)

13. On March 30, 2015, the Commission voted to take final action to approve the application subject to the conditions enumerated in this Order. The Commission indicated that the Identifier was to be located atop the theater component along 5th Street, N.E., as shown in Exhibit 51B and described as "Option 1" and that no additional Identifier signs were to be located within the project.

Description of Property and Surrounding Areas

14. The Property consists of approximately 85,820 square feet of land area and is currently improved with two structures – the artisanal market and event space known as The Market at Union Market ("The Market") in the existing south building and the warehouse and distribution facility in the existing north building. The Property is located within the

boundaries of ANC Single Member District 5D01. The Property is presently zoned C-M-1.

15. The Property is located in the Northeast quadrant of the District of Columbia bounded by a surface lot to the south, a vacant lot used for maintenance storage to the north, 6th Street, N.E. to the east, and 5th Street, N.E. to the west. Situated within the eastern portion of the Union Market district, the Property is less than one-third mile from the entrance to the NoMA-Gallaudet University Metrorail station. It is in the Ivy City neighborhood, with Trinidad to the east and Eckington to the west. The burgeoning "NoMA" neighborhood is located to the south, across Florida Avenue, N.E. The Gallaudet University campus is east of the Property.

16. The project is within the Florida Avenue Market, a warehouse district whose history has been to accommodate the city's food wholesalers. The Market has evolved significantly over the years and had many names over such time. The project marks an opportunity to capitalize upon the renovation and revitalization of the Florida Avenue Market. Today, The Market is a conglomeration of wholesalers and retailers of foodstuffs, dry goods, jewelry, tourist souvenir items, and general merchandise.

Underlying and Requested Zoning

17. The Property's underlying zoning is C-M-1 which permits "low bulk commercial and light manufacturing uses" with a maximum density of 3.0 FAR, maximum height of 40 feet, a maximum of three stories, and no lot occupancy limit. New residential uses are not permitted in such underlying zone district. (11 DCMR §§ 800.1, 800.4, 840.1, and 841.1.)

18. The entire Florida Avenue Market area is zoned C-M-1. Northwest of The Market, across New York Avenue, property from the railroad right of way north to Rhode Island Avenue and east to Brentwood Road is zoned in the M Zone District. Directly to the east of The Market, the Gallaudet campus and nearby residential properties are in the R-4 Zone District. South of The Market, properties south of Florida Avenue to H Street, from the railroad tracks on the west to about 3rd Street on the east, are zoned in a mixture of C-M-1, C-M-3, C-2-B, C-3-A, and C-3-B Zone Districts. From 3rd Street moving east, most properties are zoned in the R-4 and R-5 Zone Districts. The properties at 501 New York Avenue, N.E., and 340 Florida Avenue, N.E. were rezoned from the C-M-1 Zone District to the C-3-C Zone District by Z.C. Order No. 11-25 and Z.C. Order No. 06-40 (as modified), respectively.

19. The Applicant requests a PUD-related map amendment approval rezoning the Property to C-3-C. The C-3-C Zone District permits residential use in addition to retail uses. Pursuant to 11 DCMR §§ 2405.1, 2405.2, and 2405.6, the Applicant also requests application of the PUD standards for C-3-C which allow a maximum height of 130 feet,

rather than the C-3-C matter-of-right maximum of 90 feet, and a maximum density of 8.0 FAR, rather than the C-3-C matter-of-right maximum density of 6.5 FAR.

The Proposed Project

20. The proposed Project will contain a two building, two phase, mixed-use retail, theater, office and/or residential complex. The Project will have a gross floor area of up to approximately 541,400 gross square feet, or a density of up to approximately 6.3 FAR. The lot coverage will be less than the 100% permitted by C-3-C zoning with 84% lot coverage on the total site, and the maximum height of each building will be 120 feet. (Ex. 2-2H, 19-19H, 35-35H, and Applicant's presentation at the January 5, 2015 and February 11, 2015 hearings (collectively, "Applicant's Presentation").)

South Building

21. The Applicant is requesting consolidated PUD approval for the building located on the south portion of the property ("South Building"), which will be the first phase of the project. The South Building will be constructed above The Market, an existing two-story structure while still keeping the vibrant, approximately 55,600 gross square foot Market building operational throughout construction. The total retail area will be approximately 62,400 gross square feet. An approximately 42,000 gross square foot theater will be constructed over, and stretch across The Market structure. An approximately 112,000 gross square foot, four-story office or residential component will be constructed on top of the theater. The South Building will have a total square footage of approximately 216,400 gross square feet (or a density of approximately 2.52 FAR). The South Building will not provide parking. (Ex. 2-2H, 19-19H, 35-35H, and Applicant's Presentation.)

22. The three distinct programs of the South Building are emphasized by "sliding" the stacked volumes within which each is contained. Each component of the South Building, including the existing Market building, utilizes a different façade texture to differentiate its use. (Ex. 2-2H, 19-19H, 35-35H, and Applicant's Presentation.)

North Building

23. The Applicant is requesting first-stage PUD approval for the building located on the north portion of the Property ("North Building"), which will be the second phase of the Project. One level of approximately 35,000 gross square feet of retail will be constructed on the first floor of the North Building. A residential or office component of either nine or 10 stories and approximately 290,000 gross square feet will be constructed over the retail level of the North Building. Below grade parking consisting of approximately 300 to 475 spaces will be constructed below the ground-floor retail in the North Building. The North Building will have a total gross square footage of approximately 325,000 gross square feet (or density of approximately 3.78 FAR). (Ex. 2-2H, 19-19H, 35-35H, and Applicant's Presentation.)

Additional Design Considerations

24. In order to maximize the pedestrian experience and create a vibrant street level experience, loading and parking access is proposed to occur from 6th Street, which will minimize impacts on 5th Street sidewalks and lessen pedestrian-vehicular conflicts.

25. The parking for the South Building will be provided in the following manner:

    (a) Upon the completion of construction of the South Building, the Applicant will utilize up to 225 parking spaces on the lot to the south of the Property at least through the Applicant's existing lease for such property (expiring no earlier than October 2016) with the intention to extend such use with the owner of such parking lot property;

    (b) Upon the completion of construction of the South Building and until the beginning of construction of the North Building, if the lot described above is no longer available to the Applicant, the Applicant will utilize temporary parking at the north of the Property along with nearby street parking for the South Building;

    (c) If the construction of the North Building begins and the parking lot to the south of the Property is no longer available to the Applicant, the Applicant will utilize alternative parking lots in the Union Market district, which may include the "Penn and 4th Street," 1270 4th Street, or Gateway Market parking lots identified on Page 31 of Exhibit 44 in the record along with nearby-street parking for the South Building; and

    (d) Upon completion of the North Building, the Applicant will utilize parking in the North Building garage for the South Building.

26. The Project will provide one 30-foot loading berth and one 100-square-foot loading platform for the retail use, one 30-foot berth for office/residential and one 100-square-foot loading platform for the South Building. Such loading facilities will allow space for the types of trucks, delivery vans, and service vehicles anticipated to service the South Building from the interior plaza. Further loading facilities will be included in the North Building during its Phase 2 review before the Commission.

27. Bicycle parking will be provided as follows: approximately 54 "temporary" bicycle parking spaces will be provided outdoors adjacent to the South Building, approximately three "permanent" bicycle parking storage spaces will be provided on the lowest level of the office component (or lower) in the South Building or approximately 39-42 "permanent" bicycle parking storage spaces will be provided on the lowest level of the residential component (or lower) in the South Building, approximately 17-27 "temporary" bicycle parking spaces will be provided outdoors adjacent to the North Building (subject to the public space permitting process), and approximately 11-119

"permanent" bicycle parking storage spaces will be provided within the North Building for such building's uses.

28. The Project includes a substantial amount of enhanced open spaces available to the public space located on the Property. The Project will provide the approximately 12,500 square feet of land area of the "Union Market Plaza" at the central portion of the Property. The Project will provide the approximately 7,000 square feet of land area of the "Union Market Park" along the southern portion of the Property. Such spaces allow Union Market residents, users and visitors to enjoy outdoor gathering areas and program such spaces for a wide variety of social and civic uses. Such open spaces are in alignment with the Florida Avenue Market Small Area Plan's goals to provide parks and open space.

29. The Union Market Plaza will be designed and improved in two stages. The first stage will be the interim condition for the time period between the completion of the South Building and the beginning of construction of the North Building. During this time, the Plaza will exist as an improved area but without the final finishes and furnishings. During the construction of the North Building, the Plaza will not be available for the public except to the extent that such space is necessary to enter into the adjacent retail and event spaces and to perform loading or similar operations for the South Building. The second and final stage of the Plaza will be improved during the construction of the North Building and become available upon the completion of the North Building. This will be the fully finished and improved public plaza.

30. The Union Market Park may be combined with a portion of the adjacent parcel to the south of the Property to create an even larger plaza/open space for the community as recommended by the Small Area Plan. The Applicant will provide a 10-foot-wide unobstructed clear path for the east/west dimension of the Union Market Park for the duration of the project. Such unobstructed area may be combined with property of the property owner to the south to comprise such 10-foot-wide clear path dimension.

31. The North and South Buildings will be constructed on theoretical lots drawn to be in accordance with § 2517 of the Zoning Regulations. As such, the North Building and the South Building will utilize their measuring points for height from the top of the sidewalks adjacent to each such component facing the plaza internal to the site. Such height measurement is in accordance with § 2517.4 which notes that the height of a building is to "be measured from the finished grade at the middle of the front of the building." The North and South Buildings will each comply with, and be less than, the density limitation of 8.0 FAR for each theoretical lot and each will utilize half of the width of 6th Street for their rear yards. (Ex. 2-2H, 19-19H, 35-35H, and Applicant's Presentation.)

32. The Transportation Impact Study ("Study"), included in Tab A of the Applicant's December 11, 2015 submission, concluded "that the PUD will not have a detrimental impact to the surrounding transportation network." It also confirmed that the project's

access plan, with its primary use of 6th Street, N.E. for passenger vehicles and primary loading egress will be suitable. The Study made suggestions for minor public space and traffic pattern modifications to mitigate traffic impacts in the area. (Ex. 18A.)

33. The Applicant will design the South Building to achieve no less than 50 LEED (Leadership in Energy and Environmental Design) points, or the LEED Silver level under LEED v. 2009 and will obtain certification of such level for the building from the United States Green Building Council. **The North Building will be designed to achieve at least a LEED Silver, 2009 level.** The Applicant provided justification regarding why the Project would not be able to achieve a LEED Gold level, including the existence of The Market structure and the construction of three use components in the same building, among other items. (Ex. 35-35H, 44A1-44A7, and 51-51B.)

34. The Commission finds that the project's design features are superior to what would be provided in a matter-of-right development at the PUD site. The Property is an important site for promoting further development within the Union Market district. Through the PUD process, the Project will create an exemplary mixed-use development on the site. This Project will implement the Small Area Plan. The PUD process will capture the benefits and amenities that will enhance the surrounding community inclusive of the remaining area of the Union Market district.

35. The Applicant requests a five year term of validity for the Stage 1 approval of the North Building from the effective date of this Order. Within such time period, the Applicant will be required to file an application with the Commission for a Stage 2 PUD approval for the North Building. (Ex 2.)

Development Incentives and Flexibility

36. The Applicant requests the approval of flexibility for the use of the floors above the South Building's theater component with either office or residential uses. Similarly, the Applicant requests the approval for the use of the floors above the North Building's retail component with either office or residential uses.

37. In addition to the rezoning of the Property from C-M-1 to C-3-C and the application of the PUD standards in Chapter 24 of the Zoning Regulations, the Applicant requests the flexibility from the strict application of the relevant provisions of the Zoning Regulations as follows:

    (a) Loading – Flexibility is requested from the loading requirements of § 2201.1 to allow for the inclusion of less loading than would be required by the proposed use mix of the South Building.[2] Specifically, as shown on Page Z1 of the Plans, the

[2] Note: The Applicant will likely include a request for additional loading flexibility for its North Building as part of its Phase 2 PUD application.

following loading facilities would be required for the uses located in the South Building: one 55-foot loading berth, four 30-foot loading berths, three 20-foot loading spaces, one loading platform of 200-square-feet, and four loading platforms of 100-square-feet. The Applicant proposes the following loading for the South Building: two 30-foot loading berths and two loading platforms of 100-square-feet. Therefore, such loading facilities will be not include the following required loading facilities: one 55-foot loading berth, one 30-foot loading berth, three 20-foot loading spaces, one loading platform of 200-square-feet, and one loading platform of 100-square-feet. The proposed loading will provide sufficient operational support for the proposed uses of the South Building. The Applicant will implement the Loading Management Plan submitted as Exhibit 19D to optimize the use of such loading facilities;

(b) Roof structures – Flexibility is requested from the requirements of § 411.5 that roof structures shall be of uniform height. In order to reduce the height of portions of the roof structure on the South Building, the Applicant proposes to lower portions of the roof structure's height such that there are three heights of the South Building's roof structure – 10 feet, 14 feet, and 17 feet. The roof structure of the North Building is proposed to be constructed with heights of 14 feet and 18 feet, six inches;

(c) Courts – Flexibility is requested from the requirements of § 776[3] as detailed on page Z3 and Z4 of Exhibit 44A6-44A7 in the record;

(d) Parking – A temporary waiver is requested from the requirements of § 2101.1 for the South Building prior to completion of construction of the North Building. As shown on page Z1 of the Plans, the South Building's uses generate a parking requirement of approximately 139-208 parking spaces. The South Building will not contain parking spaces. All parking spaces for the Project will be located within the North Building's subgrade garage after the North Building's completion; and

(e) Bicycle parking – A temporary waiver is requested from the requirements of § 2119.3 to locate required bicycle parking spaces for the South Building's new retail and theater uses in the North Building upon the North Building's completion. In addition, a waiver is requested from the requirements of § 2119.3 to allow for the location of required bicycle parking spaces for the South Building's residential or office component above the first floor of the South Building.

[3] The commercial or residential use options for the North and South Buildings affect the calculations for court widths only on their respective theoretical lots in compliance with § 2517, but not the other building's theoretical lot. The court requirements for each theoretical lot are analyzed and calculated separately.

Public Benefits and Project Amenities

38. In addition to the sustainability features discussed above, the following benefits and amenities will be created as a result of the PUD project:

(a) *Affordable Housing (§ 2403.9(f))* – The Applicant will set aside eight percent (approximately 8,860 gross square feet) of the residential units as affordable housing for the life of the Project, if the upper four floors of the South Building are constructed for residential use. Two of these units comprised of not less than 20% of the affordable gross floor area set aside (or the equivalent of approximately 1,772 gross square feet, comprised of any unit type) will be set aside for residents earning no more than 50% of AMI. The remainder of the Project's affordable units will be set aside for households earning no more than 80% of AMI. Because the map amendment rezones the property from the CM-1 Zone District where new housing is prohibited to the C-3-C Zone District where such housing is allowed any amount of affordable housing exceeds the amount of affordable residential space that would have been required under the existing mater-of-right condition. In addition, the level of affordability is deeper than required under Inclusionary Zoning. The Commission finds that the provision of affordable housing is a valuable community benefit of the PUD that should be recognized;

(b) *Urban design, architecture and landscaping (§ 2403.9(a))* - The project exhibits the characteristics of exemplary urban design, architecture, and landscaping. The Project provides a superior design that fully responds to the site location and history while efficiently integrating a unique assemblage of uses directly benefitting the community. The Project design utilizes the existing structure on the Property in order to infuse the industrial/commercial aesthetic into the building, particularly along the ground floor. Guided by the Small Area Plan's goal to incorporate existing buildings into redevelopments within Union Market, the Project utilizes and celebrates the building on the Property to give the first floor its authenticity and character at great cost to the Applicant. The Applicant believes that the retention of the structure significantly contributes to the place-making desired by the Small Area Plan and assists in Union Market becoming a destination. The use components are located one atop the other and create a sense of vertical movement delineating each such use. The open space between the buildings also allows for a variation to the massing along 5th Street and creates an interesting, framed vista from Union Market into the Gallaudet campus and from the campus into the district. Further, the components of the Project employ unique textures to further identify each unique use. The design is also responsive to the environment of the Florida Avenue Market, since it preserves the original building, uses the clean, unadorned architectural language of industrial design,

and incorporates the appropriate size, shape, and appearance of masonry on certain components;

(c) *Open Spaces to be Accessed by the Public (§ 2403.9(i) and (j))* – The Project includes a substantial amount of enhanced open spaces available to the public located on the Property – both in the approximately 12,500 square feet of land area of the "Union Market Plaza" at the central portion of the Property and the approximately 7,000 square feet of land area of the "Union Market Park" along the southern portion of the Property. This public space is cultivated and reclaimed for use by pedestrians, whether for walking or other activated street life. The Applicant will maintain the Union Market Park and Union Market Plaza areas for the life of the Project and may actively program them with events. Such spaces allow Union Market residents, users, and visitors to enjoy outdoor gathering areas and program such spaces for a wide variety of social and civic uses. Such open spaces are in alignment with the Florida Avenue Market Small Area Plan's goals to provide parks and open space;

(d) *Environmental benefits (§ 2403.9(h))* – The South Building will be designed to achieve the equivalent of a LEED Silver (v. 2009) rating and will be certified to such level. The North Building will be designed to achieve at least a LEED Silver, 2009 level. The Applicant will address the LEED Certification level of the North Building in its second-stage PUD application for that building. In addition, the Project incorporates extensive sustainable features including features to maximize water efficiency and measures both to mitigate the building's impact on the environment and to create a healthier interior environment;

(e) *Site planning, and efficient and economical land utilization (§ 2403.9(b))* – The Project design reflects creativity and engineering to synthesize the highly-beneficial retail, theater, and office and/or residential uses at the Property, with loading facilities and approximately 300 to 475 underground parking spaces in the North Building. The Project successfully provides loading facilities, underground parking, drive aisles, and ramps without compromising the essential and sizable retail spaces and open spaces at the Property. The Project introduces a significant amount of community-serving or community-anchoring retail space in an area that is currently underserved, along with retaining the now-essential Market structure. Importantly, the Project retains and enhances open space both in the central portion of the Property running from 5th Street to 6th Street and along the south portion of the Property. Such space allows for thriving uses to be located adjacent to civic spaces activated by the customers and community fostered by The Market. The Project also achieves the principles of transit-oriented development, as it strikes a careful balance between increasing density and sensitive placement of massing and use on the Property;

(f) *Neighborhood serving retail (§ 2403.9(i))* – The Applicant will provide approximately 62,423 gross square feet of engaging retail, including "The Market" at Union Market, along with the approximately 42,000 gross square foot theater, and another approximately 35,000 gross square feet of retail use in the North Building. This retail will help enliven the street and continue to attract people and investment to the neighborhood and create employment opportunities in Ward 5;

(g) *Effective and safe vehicular and pedestrian access, transportation management measures, connections to public transit service, and other measures to mitigate adverse traffic impacts (§ 2403.9(c))* – The Applicant shall implement measures to promote the use of public transit and bicycle transportation, and discourage the use of motor vehicles, as set forth in the Applicant's Transportation Demand Management Plan described on pages 15-16 of Exhibit 35, page 47 of Exhibit 44A4, and pages 9-12 of Exhibit 50. The Project shall provide loading consistent with the Plans and shall abide by the Loading Management Plan submitted as Exhibit 19D, provided that the Applicant shall have flexibility to modify such plans if directed to do so by DDOT in response to the public space permitting process. In addition, the Applicant will introduce traffic infrastructure upgrades adjacent to the Property described in the Applicant's Transportation Demand Management Plan;

(h) *Retention of The Market structure and continuous operation of The Market throughout construction (§ 2403.9(i) and (j))* – The Applicant shall construct the South Building to span over the entire structure with separate foundation, structural, and building systems to allow for the retention of The Market structure to help maintain the neighborhood's authentic character. In addition, the Applicant shall maintain The Market in operation throughout construction through special construction accommodation allowing tenants and customers to access "The Market" building during such time;

(i) *Enhanced security commitment (§ 2403.9(i))* – The Applicant shall provide additional private security patrols on the public streets within the Union Market district as described on pages 6 and 7 of Exhibit 35 for the areas shown on pages 1 and 2 of Exhibit 35E up to an amount of $400,000/year for a period of five years after the issuance of the first Certificate of Occupancy for the new component(s) of the South Building;

(j) *Educational Programs (§ 2403.9(i))* – The Applicant shall provide employee time and company resources to arrange and maintain programming related to the use of the Market associated with local schools and students to create educational programs as described on page 40 of Exhibit 44A4 for the life of The Market. The three components of the educational programs are:

(1) Educational programs or tours with local school students – The Applicant will provide individuals and the expertise to develop a curriculum, provide materials, and implement and teach participating local school students approximately monthly. These programs and tours will comprise varying subject matter each month relating to the use of The Market (of the Applicant's or affiliated school's choosing), typically last approximately two to three hours, and consist of approximately ten to thirty students, depending on the interest levels in the relevant subjects;

(2) High school internship program – The Applicant will arrange for an internship for an area high school student to work a limited number of hours at The Market during the school year and summer break to gain work experience, including experiencing first-hand the business operations and providing early job and entrepreneurship skills; and

(3) Individual educational sessions – The Applicant will provide no less than five educational sessions per year with students from local schools or other interested participants on an individual basis regarding subjects relating to The Market such as healthy eating and budgeting;

(k) *5th Street NE Interim Condition Parking and Loading Management (§ 2403.9(i))* – The Applicant shall design and installation of an interim parking management program for 5th Street, NE from Morse to Penn Street, N.E., including the design and installation of striping and signage, subject to DDOT approvals during the public space permitting process;

(l) *Donation of Event Space to Community (§ 2403.9(i))* – The Applicant shall provide discounted or free event space or related services in the project or, if available and applicable, adjacent outdoor space to the community, non-profits or similar institutions in the DC metropolitan area at a value of $30,000 per year. The benefited community, non-profits, or similar groups will include organizations that have utilized the event space in the past, as summarized on Exhibit 51A;

(m) *Community events (§ 2403.9(i))* – The Applicant shall host no less than 10 community events for five years in accordance with the description on pages 8-9 in Exhibit 35. The events will include, or be similar to, community events that have been held at the Property, as summarized on Exhibit 51A;

(n) *Neal Place and 5th Street Sidewalk Upgrades (§ 2403.9(i))* – The Applicant shall upgrade the southern Neal Place sidewalk between 4th and 5th Streets, N.E. and the western 5th Street sidewalk between Neal Place and Penn Street, N.E. to DDOT-compliant standards, as necessary, subject to DDOT approval and the issuance of public space permits and further subject to limited deviations from

DDOT standards as required by the current location of infrastructure adjacent to such sidewalks. The final plan for the sidewalk on the south side of Neal Place between 4th and 5th Streets will include:

(1) A six foot wide clear path to meet ADA and DDOT standards with the exception of pinch points due to existing infrastructure that may remain;
(2) Replacement of curb ramps to meet ADA and DDOT standards;
(3) Moving light pole(s), if necessary; and
(4) Striping in parallel parking;

The final plan for the sidewalk on the west side of 5th Street between Neal Place and Penn Street will ensure that the required DDOT standard sidewalk clear-path is in place;

(o) *Streetscape Design Guidelines (§ 2403.9(i))* – The Applicant will commission and receive the streetscape design guidelines for the Union Market district, in accordance with pages 3-4 of Exhibit 35 and Exhibit 35D, subject to DDOT approval. The Applicant may design and construct the public space adjacent to the project in accordance with the recommendations of the streetscape design guidelines, subject to DDOT approvals during the public space permitting process;

(p) *Adopt-A-Block (§ 2403.9(i))* – The Applicant will participate in the District's Adopt-a-Block program or a similar program (or become part of a business improvement district which shall assume responsibility for similar duties). In so doing, the Applicant will regularly clean up trash and remove graffiti along 5th and 6th Streets, N.E. between Florida Avenue and Penn Street, N.E.;

(q) *Way-Finding Signage (§ 2403.9(i))* – The Applicant will install way-finding signage to access the Union Market district from New York Avenue, NE utilizing Brentwood Avenue, NE subject to DDOT (and, if necessary, Federal) approvals during the public space permitting process; and

(r) *First-Source Employment Agreement (§ 2403.9(e))* – The Applicant will enter into a First-Source Employment Agreement with the Department of Employment Services ("DOES") in the form submitted in to the record as Exhibit 35G to achieve the goal of utilizing District of Columbia residents for at least 51% of the new jobs created by the PUD project.

39. The Commission finds that the Applicant's public benefits and project amenities provide value to the District and the community surrounding the Property and are sufficient to justify the relief requested.

Compliance with the Comprehensive Plan

40. The Commission finds that the proposed modification to the approved PUD is not inconsistent with the Comprehensive Plan (10 DCMR) and promotes the policies of its Land Use, Transportation, Housing, and Urban Design Citywide Elements and its Upper Northeast Area Element.

41. The Project implements Land Use Element policies that designate the area around the New York Avenue-Florida Avenue-Gallaudet University Metrorail station for future growth and encourage infill development and development near Metrorail stations. The PUD and map amendment bring growth and revitalization to the Union Market district. Further, it brings a theater to a location where such destination and entertainment use does not currently exist.

42. The Project implements Transportation Element policies that promote transit-oriented development and urban design improvements. The PUD brings new housing or office use and retail uses within walking distance of the Metrorail station and, through its Transportation Management Plan, provides effective incentives to discourage motor vehicle use.

43. The Project implements Housing Element policies that encourage expansion of the city's supply of high-quality market-rate and affordable housing, if the Project will construct its residential component(s). The South Building would bring approximately 100 to 115 new residential units to an underserved neighborhood, with eight percent of the total, or approximately 8,860 gross square feet, set aside as affordable units and approximately 20% of such affordable gross floor area, or the equivalent of 1,772 gross square feet of the South Building's potential of approximately 112,000 gross square feet of residential use, set aside for households earning 50% of AMI or less. In accordance with standard practice, the affordable units shall not be required on the top two floors of the residential component.

44. The Project implements Urban Design Element policies that call for enhancing the aesthetic appeal and visual character of areas around major thoroughfares. The PUD significantly improves the appearance a key site in the Florida Avenue and will catalyze additional investments in the neighborhood.

45. The Project implements Upper Northeast Area Element policies stating that the Capital City Market area should be a regional destination that could include housing and retail uses. In addition, the introduction of the theater creates a destination for the Union Market district and deepens its amenity base.

Government Reports

46. OP filed a report on December 29, 2014. (Ex. 20.) The report noted that OP was "excited by this proposal and continues to support" the project, but was not able to make a recommendation at the time of submission due to open items. At the first hearing, OP detailed its report and indicated open items relating to the Project. The OP report included a DDOE report dated October 27, 2014.

47. OP filed a supplemental report on February 9, 2015. (Ex. 39.) The report noted that OP "recommends approval" of the project, subject to the removal of the roof top sign from the rooftop and the expression of the two affordable housing units reserved for residents earning 50% of AMI as a square foot area. At the second hearing, OP detailed its report and indicated its recommendation of approval of the project, subject to these conditions.

48. DDOT submitted a report into the record on January 5, 2015. (Ex. 25.) The report noted that DDOT had been having regular meetings with the Applicant and that it had "no objection" to the approval of the project, subject to conditions relating to upgrading one side of the Neal Place sidewalks between 4th and 5th Streets, N.E. and one side of the 5th Street, N.E. sidewalks between Neal Place and Penn Street, N.E. to DDOT standards, enhancing the Transportation Demand Management measures of the project, creating the streetscape design guidelines scope of work in coordination with DDOT, installation of DDOT-approved signage and striping to allow for optimal routing of vehicles to the Union Market district, and providing a 10 foot unobstructed direct path of travel along the south side of the site. At the first hearing, DDOT detailed its report and indicated open items relating to the Project.

49. DDOT filed a supplemental report on February 6, 2015. (Ex. 36.) The report noted that DDOT and the Applicant had "coordinated closely" to address the issues in DDOT's January 5, 2015 report and made "substantial progress" at weekly meetings. The DDOT report indicated agreement on most open items, indicated additional discussion on the financial incentives of the Transportation Demand Management measures was necessary, and noted the ability to further discuss and approve items during the typical public space permitting process. At the second hearing, DDOT detailed its report and indicated its support of the project. DDOT stated that it was working with the Applicant to address its concerns and would continue to do so.

50. DDOE filed a report on December 29, 2014 (attached to the OP filing of the same date). (Ex. 20.) DDOE included discussion of topics relating to the Project's sustainable design, including green building, stormwater management, green area ratio, water quality and use, waste, and air quality.

51. DDOE filed a supplemental report on February 9, 2015. (Ex. 40.) This report recommended approval of the application with conditions. DDOE requested that the Project generate at least one percent of the building's energy use on site, be certified

LEED Gold, and continue adherence to the District stormwater and tree pit design standards and regulations.

52. A letter in support from Councilmember Kenyan McDuffie was received into the record. (Ex. 42.) In this letter, Councilmember McDuffie expressed his support due to the project's achievement of the Small Area Plan's goals and benefits to the community. The letter also noted that the project institutes many of the Ward 5 Industrial Land Transformation Study's recommendations and enjoys broad community support.

Advisory Neighborhood Commission Reports

53. ANC 5D submitted a letter in support of the project noting that, "On December 9, 2014, at the duly-noticed, regularly-scheduled monthly meeting of Advisory Neighborhood Commission 5D, with a quorum of commissioners (6 out of 6) and the public present", ANC 5D voted "unanimously to support this application." (Ex. 21.) At the hearing, the Commission noted that the ANC letter had been received and would be given great weight.

54. The Single Member District representative for ANC 5D01 – the Single Member District where the Property is located – submitted a letter in support of the application dated December 4, 2014, noting that the project will greatly benefit the community and District and achieves the goals of the Small Area Plan. (Ex. 26.)

55. The Single Member District representative for ANC 5D07 submitted a letter in support of the application dated December 25, 2014 noting that he "strongly recommended" the approval of the application and that the Applicant had engaged in extensive communication with the community regarding the Project. (Ex. 23.)

Parties in Support or Opposition

56. No parties appeared in support or opposition to the application.

Persons in Support or Opposition

57. A letter in support from Akosoa McFadgion was received into the record as Exhibit 32.

58. A letter in support from David Franco was received into the record as Exhibit 37.

59. A letter in support from Sang Oh Choi was received into the record as Exhibit 38.

60. A letter in support from Martin Kaufman, the owner of Harvey's Market at the Property, was received into the record as Exhibit 41.

61. A letter in support from Harmar Thompson was received into the record as Exhibit 43.

62. Several individuals appeared at the hearing in support of the application including: Tina Laskaris, Nathaniel Adams, Dan Steinhilber, Abed Almaala, Rokas Reipa, Yvonne Buggs, Troy Prestwood, and Wahid Osman.

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 Commission has the authority to consider these applications as a consolidated PUD. The Commission may impose development guidelines, conditions, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts.

3. The Property meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

4. The PUD complies with the applicable height, bulk, and density standards of the Zoning Regulations and will not cause a significant adverse effect on any nearby properties. The retail and theater uses and the residential and/or office uses for this project are appropriate for the Property. The impact of the Project on the surrounding area is acceptable given the quality of the public benefits of the Project, and the application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

5. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the Project's public benefits and amenities strike a reasonable balance with the requested development flexibility.

6. Approval of this PUD and related map amendment is appropriate because the proposed development is consistent with the desired future character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the Project 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.

7. The PUD-related rezoning of the PUD Site to C-3-C is consistent with the purposes and objectives of zoning as set forth in the Zoning Act of 1938, approved June 20, 1938.

8. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to the recommendations of OP in all zoning cases. The Commission carefully considered the OP reports and found OP's reasoning persuasive in recommending approval of the application.

9. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give "great weight" to the issues and concerns raised in the written report of the affected ANC. The Commission carefully considered the ANC 5D position supporting approval of the application and concurred in its recommendation of approval.

10. The Commission provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to the ANC, OP, and to owners of property within 200 feet of the site in accordance with the Zoning Regulations and applicable case law.

11. Based upon the record before the Commission, having given great weight to the views of the ANC and having considered the reports and testimony of OP and DDOT provided in this case, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under Chapter 24. The Commission finds that the Project fully satisfies the goals and objectives of the PUD Regulations of Chapter 24 to encourage the development of well-planned developments which will offer a project with more attractive and efficient overall planning and design, not achievable under matter-of-right development. The Commission also approves the Applicant's requests for flexibility from specific areas of the Zoning Regulations including the loading requirements of § 2201.1, the roof structure requirements of § 411.5, the court requirements of § 776, the parking requirements of § 2101.1 (until the North Building is constructed, unless additional or modified flexibility is otherwise requested), and the bicycle parking requirements of § 2119.3. In addition, the Commission approves the flexibility for the use of the upper four floors of the South Building with either office or residential uses and the use of the upper eight or nine floors of the North Building with either office or residential uses.

12. The Commission finds that the Applicant's proposed TDM measures are adequate to mitigate any potential adverse effects on the surrounding area from the development that relate to traffic, and that these measures have been incorporated into the conditions of this Order.

13. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for the review and approval of a consolidated and first stage Planned Unit Development and a related Zoning Map amendment from C-M-1 to C-3-C for the Property subject to the following conditions:

A. PROJECT DEVELOPMENT

1. The PUD shall be developed in accordance with the architectural drawings prepared by Shalom Baranes Architects, Bohler Engineering, and Mahan Rykiel, submitted into the record on July 10, 2014 as Exhibit 2A1-2A6, as modified by the architectural drawings and pages submitted on August 29, 2014 as Exhibit 13-13H in the record, as modified by the architectural drawings and pages submitted on December 16, 2014 as Exhibit 19-19H in the record, as modified by the architectural drawings and pages submitted on February 2, 2015 as Exhibit 35A-35A7B in the record, as modified by the architectural drawings and pages submitted on February 11, 2015, as Exhibit 44A1-44A7 in the record, and as modified by the architectural drawings and pages submitted on March 2, 2015 as Exhibit 51-51B in the record, and as modified by the guidelines, conditions, and standards herein (collectively, the "Plans").

2. The Identifier shall be located only as shown as “Option 1” of Exhibit 51B and there shall be no more than one such Identifier.

3. The PUD shall include a mixed-use building at the south of the Property, which was approved by the Zoning Commission as a consolidated PUD, containing approximately 62,423 gross square feet of retail use, approximately 42,000 gross square feet of theater use, and approximately 112,000 gross square feet of residential or office use. The maximum density of the South Building shall be 2.52 FAR. The PUD shall include a mixed-use building at the north of the Property, which was approved by the Zoning Commission as a Phase 1 PUD, containing approximately 35,000 gross square feet of retail use and approximately 42,000 gross square feet of theater use, and approximately 290,000 gross square feet of residential or office use gross. The maximum density of the North Building shall be 3.78 FAR. The total maximum density of the project shall be 6.3 FAR.

4. The maximum height of the buildings shall be 120 feet as shown on the Plans.

5. The project shall provide no parking in the South Building. The project shall include a minimum of 300-475 vehicle parking spaces in the below-grade parking garage beneath the North Building. The project shall provide one 30-foot loading

berth and one 100 square foot loading platform in the South Building, as shown on the Plans. Loading for the North Building will be approved as part of its Phase 2 approval.

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

(a) To provide a range in the number of residential units in the South Building of 10% from the number depicted on the plans;

(b) To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;

(c) 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 to make minor refinements to exterior details, dimensions and locations, including curtainwall mullions and spandrels, window frames and mullions, glass types, belt courses, sills, bases, cornices, balconies, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or to address the structural, mechanical, design, or operational needs of the building uses or systems;

(d) To vary the final design of retail frontages, including locations of doors, design of show windows and size of retail units and signage, to accommodate the needs of specific retail tenants;

(e) To remove the Identifier from the Project;

(f) To vary the selection of plantings in the landscape plan depending on seasonal availability within a range and quality as proposed in the plans;

(g) To make minor refinements to the floor-to-floor heights, so long as the maximum height and total number of stories as shown on the Plans do not change; and

(h) To revise the design of the public space surrounding the Property and the exterior design of the project to the extent necessary to obtain approvals from District agencies and/or service to the Property from utilities or as would otherwise be in accordance with the Streetscape Design Guidelines.

B. PUBLIC BENEFITS

1. **Prior to issuance of the first Certificate of Occupancy for the new component(s) of the South Building**, if the uppermost component of the South Building is constructed for residential use, as required by Chapter 26 of the Zoning Regulations, the Applicant shall demonstrate that it has set aside at least eight percent of the gross floor area of the residential component of the South Building as inclusionary units. The Applicant shall set aside in the South Building two inclusionary zoning units, containing approximately 1,722 of gross square feet, for households with an annual income of no more than 50% of AMI. The remaining inclusionary units shall be for households with incomes not exceeding 80% of AMI in accordance with the Inclusionary Zoning requirements. The inclusionary units shall be maintained for the life of the project.

2. **Prior to issuance of the first Certificate of Occupancy for the new component(s) of the South Building**, the Applicant shall provide evidence that the building has been designed to achieve a LEED Silver, 2009 level and will obtain certification of such level for the building from the United States Green Building Council. **The Applicant shall address the LEED Certification level of the North Building in its second-stage PUD application for that building, and the North Building shall be designed to achieve at least a LEED Silver, 2009 level.**

3. The Applicant shall provide at its cost, the "Union Market Park" and "Union Market Plaza" areas shown in the Plans and as described in Exhibits 19H and 35B in the record. The Union Market Park shall be comprised of approximately 7,000 square feet of land area. The Union Market Plaza shall be comprised of approximately 12,500 square feet of land area. The Applicant will maintain the Union Market Park and Union Market Plaza areas for the life of the Project and may actively program them with events. The Applicant will provide a 10 foot wide unobstructed clear path for the east/west dimension of the Union Market Park for the duration of the project. Such unobstructed area may be combined with property of the property owner to the south to comprise such 10 foot wide clear path dimension.

4. **The Applicant shall provide the Union Market Park prior to the issuance of the Certificate of Occupancy for the new component(s) of the South Building**. The Union Market Plaza will be designed and improved in two stages. The first stage will be the interim condition for the time period between the completion of the South Building and the beginning of construction of the North Building. During this time, the Plaza will exist as an improved area but without the final finishes and furnishings. The interim improvements will be completed prior to the issuance of the Certificate of Occupancy for the new component(s) of the South Building. During the construction of the North Building, the Plaza will not

be available for the public except to the extent that such space is necessary to enter into the adjacent retail and event spaces and to perform loading or similar operations for the South Building. The second and final stage of the Plaza will be improved during the construction of the North Building and become available upon the completion of the North Building. This will be the fully finished and improved public plaza. **The final improvements will be completed prior to the issuance of the Certificate of Occupancy for the North Building**.

5. The Applicant will preserve and retain the existing structure currently housing "The Market" as shown on the Plans.

6. The Applicant will maintain The Market as open and operational throughout construction of the remainder of the project adjacent to and above The Market structure.

7. **Upon issuance of the first Certificate of Occupancy for the new component(s) of the South Building and until five years after such date**, the Applicant shall provide security patrols as described on Pages 6 and 7 of Exhibit 35 for the areas shown on pages 1 and 2 of Exhibit 35E up to an amount of $400,000/year.

8. **Prior to the issuance of the first Certificate of Occupancy for the new component(s) of the South Building**, the Applicant shall create educational programs as described on page 40 of Exhibit 44A4 for the life of The Market. The three components of the educational programs are:

   (a) Educational programs or tours with local school students – The Applicant will provide individuals and the expertise to develop a curriculum, provide materials, and implement and teach participating local school students approximately monthly. These programs and tours will comprise varying subject matter each month relating to the use of The Market (of the Applicant's or affiliated school's choosing), typically last approximately two to three hours, and consist of approximately 10 to 30 students, depending on the interest levels in the relevant subjects;

   (b) High school internship program – The Applicant will arrange for an internship for an area high school student to work a limited number of hours at The Market during the school year and summer break to gain work experience, including experiencing first-hand the business operations and providing early job and entrepreneurship skills; AND

   (c) Individual educational sessions – The Applicant will provide no less than five educational sessions per year with students from local schools or other interested participants on an individual basis regarding subjects relating to The Market such as healthy eating and budgeting

9. **Prior to the issuance of the first Certificate of Occupancy for the new component(s) of the South Building**, the Applicant will design and install an interim parking management program for 5th Street, N.E., including the design and installation of striping and signage, subject to DDOT approvals during the public space permitting process. The Applicant shall have flexibility to revise the design of the public space surrounding the property as needed, based upon the continued coordination with DDOT.

10. **Beginning upon the recordation of the first PUD Covenant for the project and until five years after such date**, the Applicant shall provide discounted or free event space or related services in the project or, if available and applicable, adjacent outdoor space to the community, non-profits or similar institutions in the DC metropolitan area at a value of $30,000 per year. The benefited community, non-profits, or similar groups will include organizations that have utilized the event space in the past, as summarized on Exhibit 51A or similar community groups or organizations.

11. **Beginning upon the recordation of the first PUD Covenant for the project and until five years after such date**, the Applicant shall host no less than 10 community events for five years in accordance with the description on pages 8-9 in Exhibit 35. The events will include, or be similar to, community events that have been held at the Property, as summarized on Exhibit 51.

12. **Prior to the issuance of the first Certificate of Occupancy for the new component(s) of the South Building**, the Applicant will upgrade the southern Neal Place sidewalk between 4th and 5th Streets, N.E. and the western 5th Street sidewalk between Neal Place and Penn Street, N.E. to DDOT-compliant standards, as necessary, subject to DDOT approval and the issuance of public space permits and further subject to limited deviations from DDOT standards as required by the current location of infrastructure adjacent to such sidewalks.

    The final plan for the sidewalk on the south side of Neal Place between 4th and 5th Streets will include:

    (a) A six-foot-wide clear path to meet ADA and DDOT standards with the exception of pinch points due to existing infrastructure that may remain;

    (b) Replacement of curb ramps to meet ADA and DDOT standards;

    (c) Moving light pole(s), if necessary; and

    (d) Striping in parallel parking.

The final plan for the sidewalk on the west side of 5th Street between Neal Place and Penn Street will ensure that a DDOT standard sidewalk is in place.

13. **Prior to the issuance of the first Certificate of Occupancy for the new component(s) of the South Building**, the Applicant will commission and receive the streetscape design guidelines for the Union Market district, in accordance with page 3-4 of Exhibit 35 and Exhibit 35D, subject to DDOT approval. The Applicant may design and construct the public space adjacent to the project in accordance with the recommendations of the streetscape design guidelines, subject to DDOT approvals during the public space permitting process.

14. **Prior to the issuance of the first Certificate of Occupancy for the new component(s) of the South Building and for the life of the Project**, the Applicant will participate in the District's Adopt-a-Block program or a similar program (or become part of a business improvement district which shall assume responsibility for similar duties). In so doing, the Applicant will regularly clean up trash and remove graffiti along 5th and 6th Streets, N.E. between Florida Avenue and Penn Street, N.E.

15. **Prior to the issuance of the first Certificate of Occupancy for the new component(s) of the South Building**, the Applicant will install way-finding signage to access the Union Market district from New York Avenue, N.E. utilizing Brentwood Avenue, N.E. subject to DDOT (and, if necessary, Federal) approvals during the public space permitting process.

16. **Prior to the issuance of the first Certificate of Occupancy for the new component(s) of the South Building**, the Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services in the form submitted into the record as Exhibit 35G to achieve the goal of utilizing District of Columbia residents for at least 51% of the new construction jobs created by the Project.

C. MITIGATION MEASURES

1. The Applicant shall implement measures to promote the use of public transit and bicycle transportation, and discourage the use of motor vehicles, as set forth in the Applicant's Transportation Demand Management ("TDM") Plan described on page 7 of Exhibit 18A, (the Applicant's Transportation Impact Study), pages 16-17 of Exhibit 35, and the supplemental and additional elements described by Applicant on page 47 of Exhibit 44A4. Such Plan elements are as follows:

   (a) The Applicant shall designate a TDM coordinator, who is responsible for organizing and marketing the TDM plan and who will act as a point of contact with DDOT;

(b) All parking on site will be priced at market rates at minimum, defined as the average cost for parking in a 0.25 mile radius from the site. All residential parking will be unbundled from the costs of leasing apartments or purchasing condos;

(c) The Applicant shall reserve at least two parking spaces for a car-sharing service in the North Building's underground parking garage, provided that the space is desired by a car-sharing service (and if it is not, then it shall revert to the Applicant's general use);

(d) The Applicant shall provide two electronic message screens displaying real-time transportation information in the building – one on the first floor of the South Building and one on the lowest floor of the residential or office component;

(e) The Applicant shall provide following bicycle parking:

(1) Prior to the issuance of the Certificate of Occupancy for South Building:

(A) Permanent bicycle storage space containing bicycle facilities will be on the lowest residential or office floor (or lower) for the residential or office use in the South Building as required by DC Municipal Regulations for that use; and

(B) Temporary bicycle storage space for approximately 54 short term bicycle parking will be located outside and around the South Building;

(2) Prior to the issuance of the Certificate of Occupancy for the North Building:

(A) The number of permanent bicycle parking facilities for the theater and new retail uses in the South Building (eight spaces) will be located on the first floor or first subgrade level of the parking garage in the North Building; and

(B) Bicycle storage space containing permanent bicycle storage facilities for all retail and residential or office uses will be located in the North Building;

(3) Short term bicycle parking spaces will be located outside of the North Building.

(f) **Prior to the issuance of the Certificate of Occupancy for the North Building**, the Applicant shall provide the following financial incentives to its tenants or residents in the South Building, as applicable:

(1) Office: each office worker will be provided with access to a corporate bike share membership up to the maximum value of $15,000 cumulatively for the Project; and

(2) Residential: all new tenants will be provided with a car share or bike share membership up to the maximum value of $14,000 cumulative for the Project; and

(g) The Applicant shall provide information and website links to commuterconnections.com, goDCgo.com, and other transportation services on developer and property management websites.

2. The Project shall provide loading consistent with the Plans and shall abide by the Loading Management Plan submitted as Exhibit 19D, provided that the Applicant shall have flexibility to modify such plans to the extent necessary to comply with requirements imposed in the public space permitting process.

D. MISCELLANEOUS

1. No building permit shall be issued for this project until the Applicant has recorded a covenant among the land records of the District of Columbia between the owner and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct on or use the Property in accordance with this Order and any amendment thereof by the Zoning Commission.

2. The consolidated PUD approval for the South Building hereunder shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for the building permit for the South Building as specified in 11 DCMR § 2409.1. Construction shall begin within three years after the effective date of this Order. The first-stage PUD approval for the North Building hereunder shall be valid for a period of five years from the effective date of this Order. Within such time period, the Applicant must file an application with the Commission for a second-stage PUD approval for the North Building.

3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01, et seq. ("Act") and this Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, sexual orientation, gender identity or

> expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

For this reason stated above, the Commission concludes that the Applicant has met its burden, and it is hereby **ORDERED** that the applications be **GRANTED.**

On February 11, 2015, upon the motion of Chairman Hood, as seconded by Commissioner Miller, the Zoning Commission took proposed action to **APPROVE** the application at the conclusion of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On March 30, 2015, upon the motion of Commissioner Miller as seconded by Vice Chairperson Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of § 3028.8 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register* on May 8, 2015.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING