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Jessica R. Bloomfield
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October 7, 2015

VIA HAND DELIVERY

Zoning Commission
of the District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

Re. **Zoning Commission Case No. 14-14**
Certified PUD Covenant

Dear Members of the Commission

On behalf of the Applicant in the above-referenced case, enclosed please find a copy of the certified PUD Covenant that was recorded with the Recorder of Deeds on October 6, 2015, as Instrument Number 2015101809. The filing of a certified copy of the PUD Covenant is required by Paragraph No. 6 in the PUD Covenant and by Decision No. D.1 of Zoning Commission Order No. 14-14. By copy of this letter, a certified copy of the PUD Covenant is also being sent to the Zoning Administrator, as required.

Should you have any questions or need additional information, please do not hesitate to have staff call me.

Sincerely,



Jessica R. Bloomfield

Enclosure

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2015101809-38

**PLANNED UNIT DEVELOPMENT COVENANT
(Jemal's CDC, LLC – Zoning Commission Order No. 14-14)**

THIS PLANNED UNIT DEVELOPMENT COVENANT (this “Covenant”), is made as of this 28 day of September, 2015, by and between **JEMAL’S CDC L.L.C.** a District of Columbia limited liability company (“Owner”), and the **DISTRICT OF COLUMBIA**, a municipal corporation (the “District”)

WITNESSETH:

WHEREAS, Owner owns in fee simple the property currently known as Lot 47 in Square 833, premises address 501 H Street, NE, Washington, DC (the “PUD Site”) as is more particularly described in Zoning Commission Case No 14-14 and in Exhibit A attached hereto and incorporated herein,

WHEREAS, pursuant to Chapter 24 of the Zoning Regulations of the District of Columbia (the “Zoning Regulations”), the Zoning Commission for the District of Columbia (the “Zoning Commission”) approved an application for a planned unit development (the “PUD”) and related Zoning Map amendment for the PUD Site by Zoning Commission Order No 14-14, dated June 29, 2015, which became final and effective on July 31, 2015 (the “Order”), and

WHEREAS, Chapter 24 further requires that Owner enter into this Covenant with the District of Columbia assuring Owner’s (and its successors in title) development and use of the PUD Site as approved by the Zoning Commission in the Order and all modifications, alterations or amendments thereto

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

gb

1 Approved Plans, Terms and Conditions The terms and conditions of the Zoning Commission's approval of the PUD and related Zoning Map amendment for the PUD Site in the Order (as the same may be amended and/or modified from time to time), are incorporated herein by reference and made a part hereof as Exhibit B and shall be considered a part of this Covenant. The PUD Site shall be developed and used in accordance with the plans approved by the Order and in accordance with the conditions and restrictions contained in the Order, subject to such changes thereto as the Zoning Commission and/or the Zoning Administrator of the District of Columbia may authorize pursuant to 11 DCMR §§ 2409.6 and 2409.9, respectively. Owner covenants that it shall use the PUD Site only in accordance with the terms of the Order, as the same may be further amended and/or modified from time to time, subject to the terms and conditions contained herein and the provisions of Chapter 24 of the Zoning Regulations.

2 Additional Time to Construct PUD If Owner should fail to file for a building permit for and/or to commence construction of the approved PUD within the time specified in 11 DCMR §§ 2408.8 and 2408.9 and the Order, the Zoning Commission may duly consider an application for an extension of time for good cause in accordance with 11 DCMR § 2408.10.

3 Default In the event that Owner fails to file for a building permit for and/or to commence construction of the approved PUD within the time specified in 11 DCMR §§ 2408.8 and 2408.9 and in the Order, or within any extension of time granted by the Zoning Commission for good cause shown pursuant to 11 DCMR § 2408.10, the benefits granted by the Order shall terminate pursuant to 11 DCMR § 2408.14 and this Covenant shall be deemed null and void.

4 Future Conveyance Owner covenants that if any conveyance of all or any part of the PUD Site takes place, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns, to develop and use the PUD Site in accordance with the terms and

conditions of this Covenant and the grantee, its successors and assigns shall be considered a declarant to this covenant

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

6 Recordation Owner shall record this Covenant, as fully executed by the parties hereto, among the land records of the District of Columbia (the "Land Records"), and shall file a certified copy of this Covenant with the Zoning Administrator and the Zoning Commission.

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

8 Rescission/Alteration of Chapter 24 Covenant If the Order is modified or amended by the Zoning Commission, no formal amendment of this Covenant shall be required, provided that Owner, or its successors or assigns, records a notice of modification in the Land Records together with a copy of the written order authorizing the modification or amendment. No other amendment of the obligations created by this Covenant is permitted without the written consent of the District and, if determined by the Office of the Attorney General to be necessary, without the prior approval of the Zoning Commission.

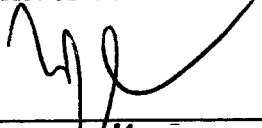
[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Jemal's CDC L L C has caused this Covenant to be executed and delivered under seal as of the date first written above by NORMAN JEMAL its duly authorized Managing Member.

OWNER:

JEMAL'S CDC L.L.C.,
a District of Columbia limited liability company

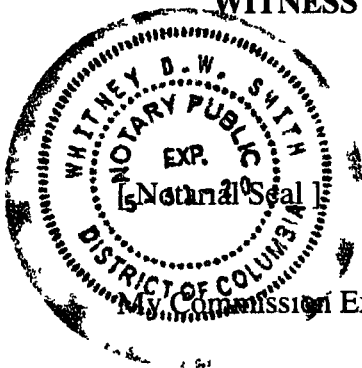
By

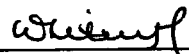

Name NORMAN JEMAL
Managing Member

DISTRICT OF COLUMBIA, to wit

This Covenant was acknowledged before me on the 1 day of September, 2015, by NORMAN JEMAL, the duly appointed Managing Member of Jemal's CDC L.L.C.

WITNESS my hand and official seal this 1 day of September, 2015



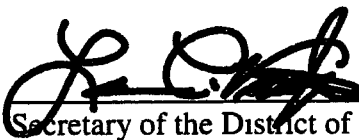

Notary Public

WHITNEY D.W. SMITH
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires May 31, 2020

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

DISTRICT:

DISTRICT OF COLUMBIA,
a municipal corporation

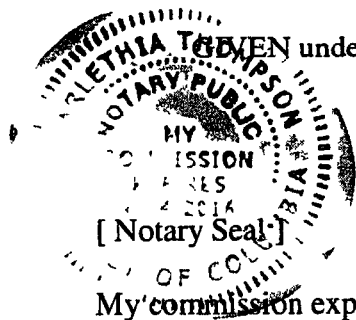
By 
Secretary of the District of Columbia

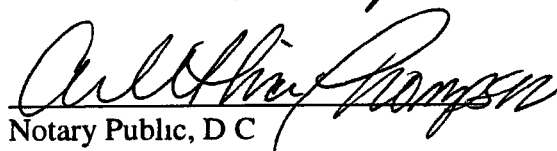
[CORPORATE SEAL]

DISTRICT OF COLUMBIA, ss

I, Arlethia Thompson, a Notary Public in and for the District of Columbia, do hereby certify that Lauren Vaughn, who is personally well known to me as the person named as Secretary of the DISTRICT OF COLUMBIA in the foregoing Covenant, and hereunto annexed, personally appeared before me in said District and, as Secretary of the DISTRICT OF COLUMBIA aforesaid, and by virtue of the authority in her vested, acknowledged the same to be the act and deed of the Mayor of the DISTRICT OF COLUMBIA.

GIVEN under my hand and seal this 28 day of Sept, 2015




Notary Public, D C

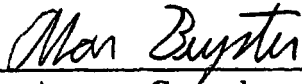
My commission expires 09/14/2016

APPROVED

Matthew F. Holt 9-28-15

Zoning Division, Department of
Consumer and Regulatory Affairs

APPROVED AS TO LEGAL SUFFICIENCY

A handwritten signature in cursive script, appearing to read "Man Byster", is written over a horizontal line.

Assistant Attorney General
Office of the Attorney General
for the District of Columbia

EXHIBIT A

LEGAL DESCRIPTION OF THE PUD SITE

All that certain lot or parcel of land situated, lying and being in the District of Columbia, and being more particularly described as follows

Lot numbered Forty-Seven (47) in Square numbered Eight Hundred Three-three (833) in in a subdivision made by the D C Redevelopment Land Agency as per plat recorded in Book 175 at Page 60 in the Office of the Surveyor for the District of Columbia

EXHIBIT B

ZONING COMMISSION ORDER NO. 14-14

[appended]

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 14-14

Z.C. Case No. 14-14

Jemal's CDC, LLC

(Consolidated PUD and Related Map Amendment @

Square 833, Lot 47)

June 29, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on May 14, 2015, to consider applications for a consolidated planned unit development ("PUD") and related zoning map amendment filed by Jemal's CDC, LLC ("Applicant"). The Commission considered the applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the applications.

FINDINGS OF FACT

The Applications, Parties, Hearings, and Post-Hearing Filings

- 1 On August 6, 2014, the Applicant filed applications with the Commission for consolidated review of a PUD and related zoning map amendment from the HS-H/C-2-A Zone District to the HS-H/C-2-B District, for property located at 501 H Street, N.E. (Square 833, Lot 47) ("Subject Property").
- 2 The Subject Property is located on the southeast corner of 5th and H Streets, N.E. in Ward 6, and has a land area of approximately 9,813 square feet. The Subject Property is currently improved with a single-story, 5,777 square foot building, most recently occupied by the H Street Community Development Corporation ("CDC"). This building will be razed in connection with the redevelopment of the Subject Property.
- 3 The Applicant proposes to redevelop the Subject Property with a six-story, mixed-use, multiple-dwelling building with approximately 47,971 square feet of gross floor area (4.89 floor area ratio ("FAR")). Approximately 15,411 square feet of gross floor area (1.57 FAR) and approximately 8,538 square feet of cellar floor area will be devoted to retail use on the cellar, first, and second levels. Approximately 32,560 square feet of gross floor area (3.32 FAR) and approximately 1,199 square feet of cellar floor area will be devoted to residential use in the cellar, fourth, fifth, and sixth levels, comprised of 28

residential units (plus or minus three units) The building will be constructed to a maximum height of 77'-5" to the top of the roof slab, and 83'-5" to the top of the six-foot parapet

- 4 By report dated September 19, 2015 (Exhibit ["Ex "] 12), the District of Columbia Office of Planning ("OP") recommended that the applications be set down for a public hearing. At its public meeting held on September 29, 2014, the Commission voted to schedule a public hearing on the applications.
- 5 The Applicant submitted a prehearing statement for the PUD on February 27, 2015 and a hearing was timely scheduled (Ex 15-15I). A description of the proposed development and the notice of the public hearing in this matter were published in the *D C Register* on March 20, 2015. The notice of public hearing was mailed to all owners of property located within 200 feet of the PUD Site and to ANC 6C on March 13, 2015.
- 6 At its regularly scheduled public meeting on April 8, 2015, for which notice was properly given and a quorum was present, ANC 6C voted 6-0-0 to support the applications (Ex 25).
- 7 On April 24, 2015, the Applicant submitted a supplemental prehearing statement in response to comments raised by the Commission at its public meeting on September 29, 2014, and by OP and ANC 6C since filing the application (Ex. 26-26C). The supplemental prehearing submission included the following materials: (i) updated architectural plans and elevations; (ii) information on the revised program for on-site parking and loading; (iii) an updated and expanded affordable housing proffer; (iv) a list of agreed-to transportation demand management ("TDM") measures and a copy of the Applicant's final transportation impact study prepared by Gorove/Slade Associates, Inc., the Applicant's transportation consultant; (v) an enhanced list of public benefits and project amenities based on negotiations with ANC 6C; and (vi) an update on the Applicant's community outreach efforts.
- 8 On May 4, 2015, OP submitted its final report recommending approval of the applications and the requested areas of zoning flexibility (Ex 27). On May 4, 2015, the District Department of Transportation ("DDOT") also submitted a report finding no objection to the applications, subject to the condition that the Applicant adopt its proposed TDM measures and provide at least six new short-term bicycle parking spaces on H and 5th Streets, NE combined, in addition to the four existing on-street bicycle spaces in front of the Subject Property (Ex 28).
- 9 On May 14, the Applicant submitted its PowerPoint presentation (Ex 32), revised architectural plans and elevations (Ex 33) (the "Plans"), and a photograph of its materials.

board (Ex 34), all of which the Applicant presented to the Commission at the public hearing that evening

- 10 The parties to the case were the Applicant and ANC 6C
- 11 The Commission convened a public hearing on May 14, 2015, which was concluded that same evening. At the hearing, the Applicant presented four witnesses in support of its applications: Paul Millstein and Andrea Gourdine of Jemal's CDC, LLC, Kevin Sperry of Antunovich Associates, the project architect; and Erwin Andres of Gorove/Slade Associates, Inc., the project transportation consultant. Based upon their professional qualifications, the Commission qualified Mr. Sperry as an expert in architecture and Mr. Andres as an expert in transportation. At the hearing, the Applicant also submitted copies of its PowerPoint presentation, revised architectural drawings, and a photograph of its materials board (Ex 32-34).
- 12 At the public hearing, Karen Thomas, Development Review Specialist with OP, testified in support of the applications. Ryan Westrom, Transportation Planner with DDOT, also testified in support of the applications.
- 13 At the public hearing, Commissioner Christopher Miller of ANC 6C testified in support of the applications.
- 14 The record was closed at the conclusion of the hearing, except to receive additional submissions from the Applicant, as requested by the Commission. After closing the record, the Commission took proposed action to approve the applications, and requested proposed findings of fact and conclusions of law from the Applicant.
15. The Applicant submitted its draft list of proffers and proposed conditions required by 11 DCMR § 2403.16 on May 21, 2015.
- 16 On June 4, 2015, the Applicant submitted the following post-hearing items, as requested by the Commission: (i) a plan of the alley showing where the Applicant would restore the brick, (ii) a signed Memorandum of Understanding ("MOU") with ANC 6C, and (iii) draft findings of fact and conclusions of law. The Applicant also submitted its final list of proffers and proposed conditions required by 11 DCMR § 2403.20.
- 17 The proposed action was referred to the National Capital Planning Commission ("NCPC") on May 18, 2015, pursuant to § 492 of the Home Rule Act.
- 18 The Executive Director of NCPC by delegated action dated May 29, 2015, found that the proposed PUD and related map amendment would not be inconsistent with the

Comprehensive Plan for the National Capitol, nor would it adversely affect any other identified federal interests

- 19 The Commission took final action to approve the PUD on June 29, 2015

The Subject Property and Surrounding Area

- 20 The Subject Property is located at 501 H Street, N E , more specifically described as Lot 47 in Square 833 Square 833 is located in the northeast quadrant of the District and is bounded by H Street to the north, 6th Street to the east, G Street to the south, and 5th Street to the west The Subject Property is located on the southeast corner of the intersection of 5th and H Streets, N E , and is bounded by H Street to the north, private property to the east, a public alley to the south, and 5th Street to the west The Subject Property contains approximately 9,813 square feet of land area and is rectangular in shape, with approximately 122.7 feet of linear frontage on H Street, N E , and approximately 80 feet of linear frontage on 5th Street
- 21 Square 833 includes a public alley system with varying widths and access points The alley located at the rear of the Subject Property runs east-west between 5th and 6th Streets, has a width of approximately 12.17 feet behind the Subject Property, and narrows to a width of eight feet as it moves eastward through the square
- 22 The Subject Property is situated along the thriving H Street, N E commercial corridor, and is surrounded by residential, retail, service, office, and institutional uses The Subject Property is located a half-mile from Union Station, which provides local, regional, and interstate access via Metrorail, Metrobus, the D C. Circulator, Amtrak, and numerous regional intercity busses The Subject Property is also located in close proximity to multiple Metrobus lines, Capital Bikeshare stations, and permanent car-share parking spaces
- 23 The Subject Property is located in the housing sub-district of the H Street Overlay, and the PUD complies with all of the Overlay's provisions, except §§ 1321.2 and 1326.2, as discussed in Findings of Fact Nos. 44-47 of this Order
- 24 The Subject Property is designated in the mixed-use Moderate-Density Commercial and Medium-Density Residential land use categories on the District of Columbia Comprehensive Plan Future Land Use Map, and is designated in a Main Street Mixed-Use Corridor on the District of Columbia Comprehensive Plan Generalized Policy Map Rezoning the Subject Property to the HS-H/C-2-B Zone District is not inconsistent with those designations

The PUD Project

- 25 The Applicant proposes to construct a six-story, mixed-use, multiple-dwelling building with approximately 47,971 square feet of gross floor area (4.89 FAR). Approximately 15,411 square feet of gross floor area (1.57 FAR) and approximately 8,538 square feet of cellar floor area will be devoted to retail use on the cellar, first, and second levels. Approximately 32,560 square feet of gross floor area (3.32 FAR) and approximately 1,199 square feet of cellar floor area will be devoted to residential use in the cellar, fourth, fifth, and sixth levels, comprised of 28 residential units (plus or minus three units). The building will be constructed to a maximum height of 77'-5" to the top of the roof slab, and 83'-5" to the top of the six-foot parapet.
- 26 The primary residential entrance will be on the east side of the building along H Street, with retail entrances on H Street and at the corner of the building at the intersection of H and 5th Streets. Building materials will include cast stone with aluminum storefront windows on the first and second levels (retail use) and red brick with metal coping and a black metal cornice on the third through sixth levels (residential use). The architectural plans and elevations, dated May 14, 2015, show an option, shown as option 2, to construct portions of the south and east elevations with a cementitious material (Ex 33, p 22). The Applicant withdrew this request at the hearing.
- 27 The project will include five on-site parking spaces located at the rear of the Subject Property and accessed from the public alley. Of those, four spaces are compact in size and one space is handicap-accessible in compliance with the Building Code. One of the compact spaces will be dedicated to a car-share company and accessible 24 hours a day to registered car-share members. The four remaining spaces will be secured by a roll-up garage door and reserved for residential tenants.
- 28 Residential loading facilities will include one 24-foot loading berth and one 100-square-foot loading platform, located on the southeast corner of the Subject Property. Residential loading will be accessed from the public alley and available to trucks up to 24 feet in length only. A residential trash room will be located adjacent to the residential loading facilities on the east side of the site. Retail loading will occur in the existing loading zone on 5th Street. Retail trash will be stored in a separate loading/trash room located in the southwest corner of the building, with a door leading directly to 5th Street so that loading and trash activities will not come through the alley.
- 29 The building will achieve a sustainability rating in accordance with the newly adopted D.C. Green Building Code, one of the most progressive green codes in the nation. As shown on Sheet 6 of the Architectural Drawings, the PUD will achieve a LEED-Gold-equivalent rating. The project will also comply with the green area ratio ("GAR") requirements set forth in Chapter 34 of the Zoning Regulations by providing

approximately 1,044 square feet of bioretention facilities and an approximately 3,813 square foot green roof

- 30 The Applicant will set aside no less than eight percent of the building's residential gross floor area for affordable dwelling units devoted to households earning up to 50% of the area median income ("AMI") (approximately three units). This subsidy level is steeper than the subsidy required by the Inclusionary Zoning ("IZ") regulations for the C-2-B Zone District, which require 100% of the IZ units to be set aside for households earning up to 80% of the AMI. The percentage of units in the project offered at the steeper subsidy level is also greater than is required in the existing C-2-A Zone District, which requires that half of the gross floor area devoted to IZ units be set aside for households earning up to 50% of the AMI, and half of the gross floor area devoted to IZ units be set aside for households earning up to 80% of the AMI. The three IZ units will include one studio at 618 square feet, one 1-bedroom unit at 757 square feet, and one 2-bedroom unit at 921 square feet. The 2-bedroom unit is shown on the Plans as a 1-bedroom plus den unit, but will be converted to a 2-bedroom unit by interior redesign such that each bedroom has its own window. There is an error in the calculation data shown on pages 4 and 17 of the Plans (Ex 33). As noted in this Order, the project includes 32,560 square feet of residential gross floor area, and thus the eight percent of required IZ space totals 2,296 of gross floor area. The calculation data at some places on pages 4 and 17 incorrectly states that the project contains only 24,704 square feet of gross floor area, and is therefore required to provide only 1,976 square feet of gross floor area of IZ space.

Existing and Proposed Zoning

- 31 The PUD Site is located in the HS-H/C-2-A Zone District. The C-2 Zone Districts are divided into C-2-A, C-2-B, and C-2-C Zone Districts (11 DCMR § 720.1). The C-2-A Zone Districts are designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside the central core (11 DCMR § 720.2). The C-2-A Zone Districts are located in low- and medium-density residential areas with access to main highways or rapid transit stops, and include office employment centers, shopping centers, and medium-bulk mixed-use centers (11 DCMR § 720.3). The C-2-A Zone District includes the following development requirements:
- a A maximum matter-of-right height of 50 feet with no limit on the number of stories (11 DCMR § 770.1), and a maximum height of 65 feet as a PUD (11 DCMR § 2405.1),
 - b A maximum matter-of-right density of 2.5 FAR and 3.0 FAR utilizing the IZ bonus, all of which may be devoted to residential use, but not more than 1.5 FAR of which may be devoted to non-residential uses (11 DCMR § 771.2), a maximum

density of 3.0 FAR under the PUD requirements, all of which may be devoted to residential use, but not more than 2.0 FAR of which may be devoted to non-residential uses (11 DCMR § 2405.2), and a maximum non-residential density of 0.5 FAR pursuant to the H Street Overlay regulations (11 DCMR § 1321.2),

- c A maximum lot occupancy for a building or portion of building devoted to residential use of 60% and 75% for a project subject to IZ (11 DCMR §§ 772.1 and 2604.2),
- d A minimum rear yard depth of 15 feet (11 DCMR § 774.1),
- e If provided, a side yard width of at least two inches per foot of building height, but not less than six feet (11 DCMR § 775.5),
- f If provided for a building or portion of building devoted to residential uses, at any elevation in the court, a minimum court width of four inches per foot of height, measured from the lowest level of the court to that elevation, but not less than 15 feet (11 DCMR § 776.3), and in the case of a closed court, a minimum area of at least twice the square of the width of the court based upon the height of the court, but not less than 350 square feet (11 DCMR § 776.4),
- g If provided for a building or portion of building devoted to non-residential uses, at any elevation in the court, a minimum court width of three inches per foot of height, measured from the lowest level of the court to that elevation, but not less than 12 feet, and in the case of a closed court, a minimum area of at least twice the square of the width of the court based upon the height of the court, but not less than 250 square feet (11 DCMR § 776),
- h For an apartment house, one off-street parking space for each two dwelling units, and for a retail establishment in excess of 3,000 square feet, one parking space for each additional 300 square feet of gross floor area and cellar floor area (11 DCMR § 2101.1), and
- i For an apartment house or multiple dwelling with 50 or more dwelling units, one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep, and for a retail establishment with 5,000 to 20,000 square feet of gross floor area and cellar floor area, one loading berth at 30 feet deep and one loading platform at 100 square feet (11 DCMR § 2201.1)

- 32 The Subject Property is located within the Residential Sub-area of the H Street Overlay, which includes the following applicable design requirements

- a Buildings shall be designed and built so that not less than 75% of the streetwall(s) to a height of not less than 25 feet shall be constructed to the property line abutting the street right-of-way. Buildings on corner lots shall be constructed to both property lines abutting public streets (11 DCMR § 1324 2),
- b In C-2 Zone Districts within the HS Overlay District, a 70% residential lot occupancy shall be permitted (11 DCMR § 1324 4),
- c Each commercial use with frontage on H Street, N E , Florida Avenue, N E , Maryland Avenue, N E , 13th Street, N E , 14th Street, N E , or 15th Street, N E shall devote not less than 50% of the surface area of the streetwall(s) at the ground level of each building to display windows having clear or clear/low-emissivity glass, except for decorative or architectural accent, and to entrances to commercial uses or to the building (11 DCMR § 1324 8),
- d Security grilles shall have no less than 70% transparency (11 DCMR § 1324 9),
- e Each commercial use with frontage on H Street, N E shall have an individual public entrance directly accessible from the public sidewalk. Multiple-dwellings shall have at least one primary entrance on H Street directly accessible from the sidewalk (11 DCMR § 1324 10),
- f Buildings shall be designed so as not to preclude an entrance every 40 feet on average, for the linear frontage of the building, excluding vehicular entrances, but including entrances to ground floor uses and the main lobby (11 DCMR § 1324 11),
- g The ground-floor level of each new building or building addition that fronts on H Street shall have a uniform minimum clear floor-to-ceiling height of 14 feet (11 DCMR § 1324 12),
- h Buildings subject to § 1324 12 shall be permitted an additional five feet of building height over that permitted in the underlying zone (11 DCMR § 1324 13),
- i Projection signs shall have a minimum clearance of eight feet above a sidewalk and 14 feet above a driveway, project no more than three feet, six inches from the face of the building, and end a minimum of one foot behind the curbline or extension of the curbline (11 DCMR § 1324 14),
- j Façade panel signs shall not be placed so as to interrupt windows or doors and shall project no more than 12 inches from the face of the building (11 DCMR § 1324 15), and

- k Roof signs are prohibited (11 DCMR § 1324 16)
- 33 For PUDs in the H Street Overlay, the minimum area included within the proposed PUD, including the area of public streets or alleys proposed to be closed, shall be 10,000 square feet (11 DCMR § 1326 2)
- 34 The Applicant is requesting a map amendment to rezone the Subject Property from the HS-H/C-2-A Zone District to the HS-H/C-2-B Zone District The C-2-B Zone District includes the following development requirements
 - a A maximum matter-of-right height of 65 feet with no limit on the number of stories (11 DCMR § 770.1), and a maximum height of 90 feet as a PUD (11 DCMR § 2405 1),
 - b A maximum matter-of-right density of 3 5 FAR and 4 2 FAR utilizing the IZ bonus, all of which may be devoted to residential use, but not more than 1 5 FAR of which may be devoted to non-residential uses (11 DCMR § 771 2), a maximum density of 6 0 FAR under the PUD requirements, all of which may be devoted to residential use, but not more than 2 0 FAR of which may be devoted to non-residential uses (11 DCMR § 2405 2), and a maximum non-residential density of 0 5 FAR pursuant to the H Street Overlay regulations (11 DCMR §1321.2),
 - c. A maximum lot occupancy for a building or portion of building devoted to residential use of 80% and 80% for a project subject to IZ (11 DCMR §§ 772 1 and 2604 2),
 - d A minimum rear yard depth of 15 feet (11 DCMR § 774 1),
 - e If provided, a side yard width of at least two inches wide per foot of building height, but not less than six feet (11 DCMR § 775 5),
 - f If provided for a building or portion of building devoted to residential uses, at any elevation in the court, a minimum court width of four inches per foot of height, measured from the lowest level of the court to that elevation, but not less than 15 feet (11 DCMR § 776.3), and in the case of a closed court a minimum area of at least twice the square of the width of court based upon the height of court, but not less than 350 square feet (11 DCMR § 776 4),
 - g If provided for a building or portion of building devoted to non-residential uses, at any elevation in the court, a minimum court width of three inches per foot of height, measured from the lowest level of the court to that elevation, but not less than 12 feet, and in the case of a closed court, a minimum area of at least twice

the square of the width of court based upon the height of court. but not less than 250 square feet (11 DCMR § 776),

- h For an apartment house, one off-street parking space for each three dwelling units, for a retail establishment in excess of 3,000 square feet, one parking space for each additional 750 square feet of gross floor area (11 DCMR § 2101 1), and
 - i For an apartment house or multiple dwelling with 50 or more dwelling units, one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep, for a retail establishment with 5,000 to 20,000 square feet of gross floor area and cellar floor area, one loading berth at 30 feet deep and one loading platform at 100 square feet (11 DCMR § 2201 1)
- 35 Consistent with the HS-H/C-2-B development parameters, the Applicant will develop the Subject Property with a mix of residential and retail uses. A tabulation of the PUD's development data is included on page 4 of the Plans (Ex 33)¹

Development Incentives and Zoning Flexibility

36. The Applicant requested flexibility from the Zoning Regulations as discussed in the paragraphs that follow
- 37 ***Flexibility from the Parking Space Number and Size Requirements*** Subsection 2101 1 of the Zoning Regulations requires one parking space for each three dwelling units (residential requirement), and one parking space for each 750 square feet of retail gross floor area in excess of 3,000 square feet of retail gross floor area (retail requirement) Subsection 2115 2 of the Zoning Regulations permits parking garages containing 25 or more required parking spaces to designate up to 40% of those parking spaces for compact cars
- 38 The project will include 28 dwelling units (plus or minus three units) and approximately 15,411 square feet of retail gross floor area, and is therefore required to provide 26 parking spaces (nine spaces for residential use and 17 spaces for retail use), all of which must be standard-sized spaces. However, as shown on the Plans, the Applicant is seeking flexibility to provide five parking spaces at the rear of the Subject Property, four of which will be compact in size, and one of which will be handicap-accessible in compliance with

¹ As noted above, there is an error in the calculation data shown on pages 4 and 17 of Exhibit 33. As noted in this Order, the project includes 32,560 square feet of residential gross floor area and thus the eight percent of required IZ space totals 2,296 of gross floor area. The calculation data at some places on pages 4 and 17 incorrectly states that the project contains only 24,704 square feet of gross floor area, and is therefore is required to provide only 1,976 square feet of gross floor area of IZ space.

the size requirements of the Building Code. The 25-parking space threshold established by § 2115.2 to provide compact parking spaces is also not met, thus requiring flexibility.

- 39 As indicated in the Applicant's transportation report, prepared by Gorove/Slade Associates, and as confirmed by DDOT in its report, the proposed number and size of parking spaces is sufficient to meet the anticipated vehicle parking demand for the building, given the Subject Property's convenient access to multiple alternative transportation options and its location in a walkable, mixed-use neighborhood (Ex 26C, 28). The Subject Property is located approximately 0.7 miles (a 14-minute walk) from Union Station, which provides local, regional, and interstate access via Metrorail, Metrobus, the D.C. Circulator Bus, Amtrak, intracity buses, and Capital Bikeshare. The Subject Property is located within 0.2 miles of nine Metrobus lines, within 0.3 miles of three Capital Bikeshare stations and eight permanent car-share spaces, and is deemed "Very Walkable" by walkscore.com, due to its flat topography and close proximity to nearby grocery stores, restaurants and bars, coffee shops, parks, and entertainment venues. Moreover, the public good will be served by a high-quality infill development project in the H Street neighborhood, which the District is seeking to revitalize and reintegrate through public and private investment.
- 40 The PUD is also consistent with the Comprehensive Plan's goals of investing in transit-oriented development, improving pedestrian facilities, and transforming key District arterials into multi-modal corridors that incorporate and balance a variety of mode choices, including bus or streetcar, bicycle, pedestrian, and automobile. The project will provide on-site bicycle parking and provide a number of transportation demand management ("TDM") measures, as listed in Decision Condition No. C.2 of this Order. Together, these measures and the ample alternative transportation options in the neighborhood will help further the Comprehensive Plan's goals of connecting District neighborhoods by creating more direct connections between the various transit modes and managing the automobile capacity of principal arterials.
- 41 ***Flexibility from the Rear Yard Requirements*** Pursuant to § 774.1 of the Zoning Regulations, the Applicant is required to provide a 15-foot rear yard. However, the Applicant is seeking flexibility to provide a rear yard that is approximately six feet wide for the first 20 feet of building height, measured to the center of the 12.17-foot-wide public alley, as permitted by § 774.7. For the building's height between 20 feet and 35 feet, three inches, there is no rear yard. For the building height above 35 feet, three inches, the Subject Property has a 13-foot, 10-inch-deep rear yard.
- 42 The Applicant cannot provide a 15-foot rear yard because doing so would eliminate the southern portion of the building dedicated to parking, loading, and trash facilities, or else push this area into the main footprint of the building and eliminate retail space. There will be sufficient open space between the rear of the proposed building and the property

to the south of the Subject Property, due to the existence of the 12-foot-wide public alley and the proposed building's setback on the upper floors. Moreover, even though the project does not include a compliant rear yard depth, the volume of open space provided over the parking and loading facilities and within the property line is significant, such that adequate light and air will be provided to building residents.

43. ***Flexibility from the Loading Requirements.*** Subsection 2201.1 requires that the PUD include one 30-foot loading berth and one 100-square-foot loading platform for the proposed retail uses. Residential loading is not required for an apartment house with fewer than 50 units. The Applicant proposes to provide one 24-foot loading berth for residential uses at the rear of the Subject Property (plus the required 100 square foot loading platform), and to provide all retail loading from 5th Street in the existing loading zone that can accommodate two 24-foot trucks. Residential loading will be limited to 24-foot long trucks, which can access the on-site loading facilities through front-in and front-out maneuvers. Retail deliveries will be loaded into the building through a door on the west façade that leads directly into the retail loading/trash room. This proposed loading configuration will adequately meet residential and retail loading demands for the site and will not cause any adverse impacts on the surrounding streets or pedestrian network.
44. ***Flexibility from § 1321.2 of the H Street Overlay District.*** Subsection 1321.2 of the Zoning Regulations provides that the density for new construction in the HS-H sub-district may not exceed 0.5 FAR for non-residential uses. In this case, the Applicant proposes to provide 1.57 FAR of non-residential uses. Pursuant to § 1304.1, exceptions from the requirements of the Neighborhood Commercial Overlay Districts ("NC Overlay"), including the HS-H Overlay, may be approved by the Board of Zoning Adjustment ("BZA") subject to the requirements listed in § 1304.1. Pursuant to §§ 2405.7 and 2405.8, the Commission may approve any use that is permitted as a special exception and that would otherwise require approval of the BZA.
45. The project complies with the § 1304.1 standards as follows: (i) the project will substantially advance the purposes of the NC Overlay and the HS-H Overlay and will not adversely affect neighboring property or be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity, since the building will establish ground floor retail and residential uses that will increase pedestrian safety and enliven the street, (ii) exceptional circumstances exist that justify the waiver because the PUD will remove the existing one-story office building that detracts from the District's intent to promote new retail and residential uses in this area and because a strong retail base will further the resurgence on this portion of H Street, and (iii) vehicular access and egress are located and designed to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions, since the proposed parking spaces will adequately accommodate parking.

demand and all loading is designed to minimize conflict and function effectively and efficiently for both residential and retail purposes

- 46 ***Flexibility from § 1326.2 of the H Street Overlay District.*** Subsection 1326.2 of the Zoning Regulations provides that the minimum area included within a PUD shall be 10,000 square feet. In this case, the Subject Property has a land area of approximately 9,813 square feet, and thus requires flexibility for approximately 187 square feet. Flexibility is appropriate because the Subject Property is located in the H Street Northeast Overlay Housing Sub-District, which has a stated purpose of encouraging housing (See 11 DCMR §§ 1320.1 and 1321.1). Presently, 100% of the existing building on the Subject Property is devoted to commercial office use, with no housing or ground floor retail. In order to redevelop the Subject Property with a mix of desired uses, including significant new housing, including affordable housing, flexibility is needed. Moreover, the requested relief in this case is de minimis (less than two percent).
- 47 At the public hearing, the Applicant also requested flexibility to reduce the height of the building by up to three feet, since the Applicant had not yet determined the exact floor-to-ceiling heights in the three retail levels.

Development Flexibility

- 48 The Applicant requests development flexibility in the following additional areas:
- a To be able to provide a range in the number of residential units of plus or minus three units from the 28 units depicted in the Plans,
 - b To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structure,
 - c To vary the final selection of the exterior materials within the color ranges and material types as proposed, as shown on pages 20, 21, 23, and 24 of the Plans, based on availability at the time of construction without reducing the quality of the materials, and to make minor refinements to exterior details, locations, and dimensions, including curtainwall mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, and trim; and any other changes to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit,
 - d To vary the sustainable design features of the building, provided the total number of LEED points achievable for the project does not decrease below the LEED-

Gold equivalent rating under the LEED-2009 for New Construction and Major Renovations rating standards;

- e For the retail area at grade level, the flexibility to vary the location and design of the ground floor components of the building in order to comply with any applicable District of Columbia laws and regulations or needs of a proposed retail tenant, and
- f To vary the final selection of all exterior signage on the building

Project Benefits and Amenities

49 Urban Design, Architecture, and Open Space (11 DCMR § 2403 9(a))

- a The project implements a number of urban design and architectural best practices that will assist in the further development of H Street, N E into a major mixed-use corridor with high-quality architecture, affordable residential units for a diverse population, and neighborhood-serving retail and service establishments. The project incorporates high-quality architecture and visually interesting and articulated building façades that will improve the visual nature of the surrounding block. The building also features high-quality materials, including cast stone with aluminum storefront windows on the first and second levels (retail use) and red brick with metal coping and a black metal cornice on the third through sixth levels (residential use). As requested by ANC 6C, the building includes at-risk windows on the east façade; and
- b The project includes streetscape improvements, including short-term bicycle racks for a minimum of 12 bicycles, benches, and street trees, that will enhance the pedestrian-friendly nature of the site's H Street location. Large street-facing windows on the building's north and west facades will enhance the urban retail presence and help create a safe, vibrant, and multi-modal neighborhood. Furthermore, the Applicant will restore the public alley to the rear (south) of the Subject Property, for a length of 157'-10" and a width of 12 feet.

50 Housing and Affordable Housing (11 DCMR § 2403 9(f))

- a In addition to furthering the general housing objectives and policies of the Zoning Regulations and the Comprehensive Plan, the project will help satisfy the growing demand for housing in this rapidly changing neighborhood. The project will replace the Subject Property's existing non-residential uses with a new building that will contain approximately 28 residential units, amounting to approximately 32,560 square feet of gross floor area devoted to residential use. Significantly, the

Applicant will set aside no less than eight percent of the building's residential gross floor area for affordable dwelling units devoted to households earning up to 50% of the area median income ("AMI") Based on the expected size and mix of the units in the project, eight percent will result in approximately three IZ units, or approximately 2,296 square feet of gross floor area, and

- b The proposed subsidy level is steeper than the subsidy required by the IZ regulations for the C-2-B Zone District, which require 100% of the IZ units to be set aside for households earning up to 80% of the AMI In the existing C-2-A Zone District, the IZ regulations require that half of the gross floor area devoted to IZ units be set aside for households earning up to 50% of the AMI, and half of the gross floor area devoted to IZ units be set aside for households earning up to 80% of the AMI.

51 Environmental Benefits (11 DCMR § 2403 9(h))

- a The Applicant will provide a high-quality new development in the District of Columbia that is sensitive to the natural environment The Applicant will implement a number of strategies to enhance the inherently sustainable nature of the Subject Property's location and to promote a healthy, desirable, and comfortable lifestyle that will benefit the project's residents and minimize the building's impact on the environment The proposed development includes landscaping, a green roof, energy efficient appliances, methods to reduce stormwater runoff, and green engineering practices, and
- b Although the Applicant is not seeking LEED-certification for the building, the project will meet a LEED-Gold equivalent rating and will be designed to meet rigorous energy and environmental design standards using the LEED-2009 for New Construction and Major Renovations rating system as a guide and performance metric

52 First Source Employment Agreement (11 DCMR § 2403 9(i))

Expanding employment opportunities for residents and local businesses is a priority of the Applicant Therefore, the Applicant will enter into a First Source Employment Agreement with the Department of Employment Services ("DOES") whereby the Applicant will use DOES as its first source for recruitment, referral, and placement of new hires for construction employees whose jobs are created by the PUD

53 *Uses of Special Value to the Neighborhood and the District of Columbia as a Whole (11 DCMR § 2403 9(I))*

The Applicant will donate \$30,000 to Ludlow-Taylor Elementary School for the purchase of new playground equipment. The Applicant will also donate an additional \$75,000 to Ludlow-Taylor Elementary School to be used to enliven the Rosa Simon Multipurpose Room by (i) purchasing new curtains, stage and utility lighting, sound system equipment, storage cabinets, folding chairs, and a room divider; (ii) purchasing and installing a new cafeteria floor, and (iii) painting the interior of the cafeteria. (See Ex 40, 40C)

- 54 The Commission finds that the benefits and amenities package is commensurate with the level of flexibility requested

Comprehensive Plan

- 55 The Commission finds that the PUD advances the purposes of the Comprehensive Plan, is consistent with the Future Land Use Map and Generalized Policy Map, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan. The PUD significantly advances these purposes by promoting the social, physical and economic development of the city through the provision of a high-quality, environmentally-friendly, mixed-use development project that will add approximately 28 new residential units to the District and approximately 23,949 square feet of gross and cellar floor area devoted to new retail uses, without generating any adverse impacts.
- 56 The Future Land Use Map of the Comprehensive Plan designates the Subject Property for mixed-use Medium-Density Residential and Moderate-Density Commercial uses. The Medium-Density Residential designation is used to define neighborhoods or areas where mid-rise (four to seven stories) apartment buildings are the predominant use. Pockets of low- and moderate-density housing may exist within these areas. The Medium-Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. The R-5-B and R-5-C Zone Districts are generally consistent with the Medium-Density designation, although other zones may apply in some locations. (10A DCMR § 225.5)
- 57 The Moderate-Density Commercial designation is used to define shopping and service areas that are somewhat more intense in scale and character than the low-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts that draw from a broader market area. Buildings are larger and/or taller than those in low-density commercial areas.

but generally do not exceed five stories in height. The corresponding zone districts are generally C-2-A, C-2-B, and C-3-A, although other districts may apply.

- 58 The proposed rezoning of the Subject Property from the HS-H/C-2-A Zone District to the HS-H/C-2-B Zone District is fully consistent with the Comprehensive Plan designations. The proposed C-2-B zoning classification is specifically identified as a Moderate-Density Commercial zone district. One of the primary purposes of the C-2-B Zone District is to provide commercial and residential functions within a single building, which is also consistent with the stated principle of the Subject Property's mixed-use designation. The Subject Property is also located along a major transportation corridor and is in close proximity to Union Station. Given the District's stated policy of channeling new residential growth into areas near transit stations and along bus routes, the proposed project and map amendment are consistent with the Comprehensive Plan's designation.
- 59 The District of Columbia Comprehensive Plan Generalized Policy Map designates the Subject Property as a Main Street Mixed-Use Corridor. Main Street Mixed-Use Corridors are traditional commercial business corridors with a concentration of older storefronts along the street. The service area for Main Streets can vary from one neighborhood (e.g., 14th Street Heights or Barracks Row) to multiple neighborhoods (e.g., Dupont Circle, H Street, or Adams Morgan). Their common feature is that they have a pedestrian-oriented environment with traditional storefronts. Many have upper story residential or office uses. Conservation and enhancement of these corridors is desired to foster economic and housing opportunities and serve neighborhood needs. Any development or redevelopment that occurs should support transit use and enhance the pedestrian environment. (10A DCMR § 223.14.) Consistent with the purposes of the Main Street Mixed-Use Corridor designation, the project includes both residential and retail uses, which will help to further economic and housing opportunities and serve neighborhood needs. The existing one-story commercial office development is not consistent with these objectives.
- 60 The PUD is also consistent with The Comprehensive Plan's guiding principle of managing growth and change since the Applicant will redevelop the Subject Property into a vibrant mixed-use development with approximately 28 residential units and approximately 23,949 square feet of gross and cellar floor area devoted to new retail uses, which will further the revitalization of the neighborhood. The proposed retail uses will create new neighborhood-serving jobs for District residents, provide opportunities for less-affluent households to increase their income, and help to reinvigorate the existing neighborhood fabric. The Applicant's proposal to develop a significant amount of residential and retail use is consistent with the Comprehensive Plan's acknowledgement that the growth of both residential and non-residential uses is critical. The project will also help connect the Subject Property to the rest of the neighborhood and the overall urban fabric by developing a vibrant mixed-use development on H Street, NE that will

draw people from the surrounding community. Furthermore, the project will help attract a diverse population with the inclusion of a mix of residential unit sizes for households of different incomes (10A DCMR §§ 217.2 and 217.3.)

- 61 The PUD also furthers the objectives and policies of many of the Comprehensive Plan's major elements, as set forth in the Applicant's Statement in Support and in the OP reports (Ex. 4, 12, 27.)

Office of Planning Report

- 62 On September 19, 2014, OP submitted a report recommending set down of the applications (Ex. 12.) The OP report stated that OP supports the applications, that the project is not inconsistent with the Future Land Use and Generalized Policy Maps, and that the project would further objectives of the Land Use, Transportation, Housing, Economic Development, Urban Design and Capitol Hill elements and their related policies. In its report, OP requested the following information from the Applicant: (i) additional architectural detail and perspectives of the project's relationship with existing development including street level views, (ii) discussion of the parking, its impacts on the surrounding neighborhood and the building's inclusion/exclusion in DDOT's RPP program, and (iii) a refined amenities package commensurate with the requested flexibility. The Applicant subsequently provided this information to OP's satisfaction.
- 63 On May 4, 2015, OP submitted a second report recommending approval of the applications (Ex. 27.) This report restated that the PUD is not inconsistent with the Comprehensive Plan's Future Land Use or Generalized Policy Maps, and asserted that the benefits and amenities are commensurate with the level of relief requested.

DDOT Report

- 64 On May 4, 2015, DDOT submitted a report indicating that it has no objection to the PUD, provided that (i) the Applicant adhere to the commitments for a TDM plan as proposed in the Applicant's supplemental filing and as stated on page 8 of the DDOT Report, and (ii) provide at least six additional short-term bicycle parking spaces on H or 5th Streets. (Ex. 28.) The agreed-to TDM measures are set forth in Decision No. C 2 of this Order.

ANC 6C Report

- 65 By letter dated April 15, 2015, ANC 6C indicated that at its duly noticed, regularly scheduled public meeting on April 8, 2015, at which a quorum was present, ANC 6C voted unanimously to support the project (Ex. 25.) The letter stated that the ANC supported the project's proposed benefits and amenities to re-brick the alley behind the south elevation of the building, and make a donation to the Ludlow Taylor Elementary school to be used

for the playground. The letter also stated that the ANC supported use of an alternative building material in exchange for a greater community amenity subsidy from the Applicant. By letter dated May 13, 2015, ANC 6C noted that at its duly noticed, regularly scheduled public meeting on May 13, 2015, ANC 6C voted unanimously to designate Commissioner Christopher Miller as the representative of ANC 6C on all matters pertaining to Z C Case No 14-14 (Ex 30)

- 66 At the hearing, the Applicant withdrew its request to use the alternative building material, and in a post-hearing filing, the Applicant proffered the full amount of the greater community subsidy referenced by the ANC in its report

Post-Hearing Submission

- 67 On June 4, 2015, the Applicant filed a post-hearing submission (Ex 40.) The post-hearing submission included (i) a drawing showing where the public alley at the rear of the Subject Property would be restored, (ii) an executed MOU with ANC 6C, (iii) a letter from the Ludlow-Taylor Elementary School indicating the specific items that will be purchased with the Applicant's financial contribution, (iv) the Applicant draft findings of fact and conclusions of law, and (v) the Applicant's final list of proffers and draft conditions required by 11 DCMR § 2403 20

CONCLUSIONS OF LAW

- 1 Pursuant to the 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, safety, welfare, and convenience " (11 DCMR § 2400.2)
- 2 Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
- 3 Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

- 4 The PUD does not meet the minimum area requirements of §§ 1326.2 or 2401.1 of the Zoning Regulations, but the Commission grants the flexibility requested from these subsections
- 5 The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The mixed uses for this project are appropriate for the Subject Property. The impact of the project on the surrounding area is not unacceptable. Accordingly, the project should be approved.
- 6 The applications can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
- 7 The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project's benefits and amenities are reasonable tradeoffs for the requested development flexibility.
- 8 Approval of the PUD is appropriate because the proposed development is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the PUD Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
- 9 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 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP report and, as explained in this decision, finds its recommendation to grant the applications persuasive.
- 10 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 ANC 6C's recommendation for approval and concurs in its recommendation. With respect to the issue regarding the ANC's support of using an alternative building material in exchange for a greater community amenity subsidy from the Applicant, the Commission finds that the issue is moot because the Applicant withdrew its request to use the alternative building material, and enhanced its amenities proffer to include the additional support.
- 11 The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38, D.C. Official Code § 2-1401 et seq. (2007 Repl.))

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 applications for consolidated review of a PUD and related zoning map amendment from the HS-H/C-2-A Zone District to the HS-H/C-2-B Zone District, for property located at 501 H Street, N E (Square 833, Lot 47) The approval of this PUD is subject to the guidelines, conditions, and standards set forth below

A. Project Development

1. The PUD shall be developed in accordance with the architectural plans and elevations (the "Plans"), dated May 14, 2015 (Exhibit 33) and June 4, 2015 (Exhibit 40A), and as modified by the guidelines, conditions, and standards of this Order. The Plans show an option, shown as option 2 on page 22 of Exhibit 33, to construct portions of the south and east elevations with a cementitious material. The Applicant withdrew this request at the hearing, and it is not approved by this Order.
2. In accordance with the Plans, the PUD shall be a six-story, mixed-use, multiple-dwelling building with approximately 47,971 square feet of gross floor area and 4.89 FAR. Approximately 15,411 square feet of gross floor area (1.57 FAR) and approximately 8,538 square feet of cellar floor area shall be devoted to retail use on the cellar, first, and second levels. Approximately 32,560 square feet of gross floor area (3.32 FAR) and approximately 1,199 square feet of cellar floor area shall be devoted to residential use in the cellar, fourth, fifth, and sixth levels, comprised of 28 residential units (plus or minus three units). The building shall be constructed to a maximum height of 77'-5" to the top of the roof slab, and 83'-5" to the top of the six-foot parapet.
3. The Applicant is granted flexibility from the parking space number and size requirements (§§ 2101.1 and 2115.2), the rear yard requirements (§ 774.1), the loading requirements (§ 2201.1), the maximum non-residential density requirements of the H Street Overlay (§ 1321.2), and the minimum PUD lot area requirements of the H Street Overlay (§ 1326.2) consistent with the Plans and as discussed in the Development Incentives and Flexibility section of this Order (Ex 33).
4. The Applicant shall also have flexibility with the design of the PUD in the following areas:

- a To be able to reduce the height of the building by up to three feet,
- b To be able to provide a range in the number of residential units of plus or minus three units from the 28 units depicted in the Plans,
- c To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structure,
- d To vary the final selection of the exterior materials within the color ranges and material types as proposed, as shown on pages 20, 21, 23, and 24 of the Plans (Ex. 33)², based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including curtainwall mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, and trim, and any other changes to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit,
- e To vary the sustainable design features of the building, provided the total number of LEED points achievable for the project does not decrease below the LEED-Gold equivalent rating under the LEED-2009 for New Construction and Major Renovations rating standards,
- f. For the retail area at grade level, the flexibility to vary the location and design of the ground floor components of the building in order to comply with any applicable District of Columbia laws and regulations or needs of a proposed retail tenant, and
- g To vary the final selection of all exterior signage on the building

B Public Benefits

1 Urban Design Architecture, and Open Space (11 DCMR § 2403 9(a))

- a In accordance with the Plans, the building shall incorporate cast stone with aluminum storefront windows on the first and second levels, and red brick with metal coping and a black metal cornice on the third through sixth

² This flexibility does not include the flexibility to use the cementitious material shown as option 2 on page 22 of Exhibit 33

- levels As shown on the Plans, the building shall include at-risk windows on the east façade,
- b In accordance with the Plans, the project shall include short-term bicycle racks for a minimum of 12 bicycles, benches, and planters in the public space in front of the building; and
 - c In accordance with the alley plan, and **prior to the issuance of a certificate of occupancy for the building**, the Applicant shall restore the public alley to the rear (south) of the Subject Property, for a length of 157'-10" and a width of 12 feet (Ex 40A)
- 2 **Housing and Affordable Housing (11 DCMR § 2403 9(f)) – For the life of the project**, a minimum of eight percent of the total residential gross floor area shall be dedicated as affordable housing consistent with Chapter 26 of the Zoning Regulations, except that all Inclusionary Units shall be reserved for households with incomes not exceeding 50% of the AMI The IZ units will include one studio at 618 square feet, one 1-bedroom unit at 757 square feet, and one 2-bedroom unit at 921 square feet. The 2-bedroom unit is shown on the Plans as a 1-bedroom plus den unit, but will be converted to a 2-bedroom unit by interior redesign such that each bedroom has its own window All of the IZ units shall be devoted to households earning up to 50% of the AMI The Inclusionary Zoning Covenant for the project shall include a provision requiring that the Inclusionary Units shall be reserved for households with incomes not exceeding 50% of the AMI
- 3 **Environmental Benefits (11 DCMR § 2403 9(h))** – The building shall be designed to include no fewer than the minimum number of points necessary to be the equivalent of a LEED-Gold designation, as shown on the theoretical LEED score sheet submitted with the Plans dated May 14, 2014
- 4 **First Source Employment Agreement (11 DCMR § 2403 9(i)) – Prior to the issuance of a building permit**, the Applicant shall enter into a First Source Employment Agreement with the DOES, whereby the Applicant shall use DOES as its first source for recruitment, referral, and placement of new hires for construction employees whose jobs are created by the PUD
- 5 **Uses of Special Value to the Neighborhood and the District of Columbia as a Whole (11 DCMR § 2403 9(l))**
- a **Prior to the issuance of a Certificate of Occupancy for the building**, the Applicant shall donate \$30,000 to Ludlow-Taylor Elementary School for the purchase of new playground equipment, and

- b Prior to the issuance of a Certificate of Occupancy for the building, the Applicant shall donate \$75,000 to Ludlow-Taylor Elementary School to enliven the Rosa Simon Multipurpose Room by (i) purchasing new curtains, stage and utility lighting, sound system equipment, storage cabinets, folding chairs, and a room divider, (ii) purchasing and installing a new cafeteria floor, and (iii) painting the interior of the cafeteria

C. Transportation Mitigation Measures

- 1 Prior to the issuance of a certificate of occupancy for the building, the Applicant shall reserve one of the secure on-site vehicle parking spaces to a car-share company, and shall make that space accessible 24-hours a day to registered car-share members
- 2 For the life of the project, the Applicant shall implement the following TDM measures
 - a Resident Transportation Coordinator ("RTC") Prior to the issuance of a certificate of occupancy for the building, the Applicant shall designate one employee as the RTC. Among this person's duties will be to provide information to residents, particularly incoming residents, regarding transit opportunities and schedules, as well as the location of Capital Bikeshare stations within the area and bicycle parking within the building,
 - b Digital Multimedia Display Prior to the issuance of a certificate of occupancy for the building, the Applicant shall install a digital multimodal display known as a "TransitScreen" in the residential lobby that provides schedule information of Metrobus, Metrorail, and locations of Capital Bikeshare stations and car-share locations, among other transportation-related information,
 - c Bicycle Usage Program Prior to the issuance of a certificate of occupancy for the building, the Applicant shall provide a bicycle storage room in a secure, convenient location that will be accessible to residents at all times and can accommodate up to 24 bicycle parking spaces. At the time of initial move-in, the Applicant shall provide a one-time Capital Bikeshare annual membership fee for each initial residential tenant of the building,

- d. Car Sharing At the time of initial move-in, the Applicant shall provide a one-time car sharing membership (totaling \$85 00) to each initial residential tenant of the building,
- e. Transit Subsidy At the time of initial move-in, the Applicant shall provide a one-time \$100 00 SmarTrip card to each initial residential tenant of the building;
- f. Residential Parking Permit ("RPP") Program Exclusion Prior to the issuance of a certificate of occupancy for the building, the Applicant shall prevent residential tenants of the building from obtaining RPPs by:
 - (i) placing a clause in emphasized type in all residential leases that prohibits residents from applying for or obtaining RPPs upon pain of mandatory lease termination to the full extent permitted by law,
 - (ii) ensuring that DDOT removes the Subject Property from the list of properties eligible for RPP, or if it is not on the list, classifying it as ineligible for RPP, (iii) should the Applicant offer any units for sale, adding a covenant that runs with the land prohibiting residents from applying for or obtaining RPPs; and (iv) executing a covenant that runs with the land that generally embodies the aforementioned RPP restrictions; and
- g. Unlawful Parking/Stopping. Prior to signing a lease for the commercial space in the building, the Applicant shall place a provision in the leases for all commercial tenants requiring them to actively discourage visitors to their establishment from unlawfully stopping or parking automobiles in front of the Subject Property or elsewhere in the neighborhood in connection with visits to the establishment

D. Miscellaneous

- 1 No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the PUD Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
- 2 The PUD shall be valid for a period of two years from the effective date of Z C Order No 14-14. Within such time, an application must be filed for a building permit for the construction of the project as specified in 11 DCMR § 2409.1

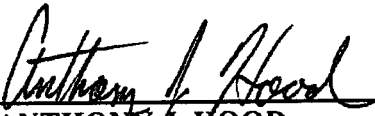
Construction of the project must commence within three years of the effective date of this Order

- 3 The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D C Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C Human Rights Act of 1977, as amended, D C. Official Code § 2-1401.01 et seq , ("Act") the District of Columbia does not discriminate on the basis of actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender 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 that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.
- 4 Each Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning

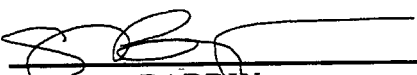
On May 14, 2015, upon the motion of Vice Chairperson Cohen as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the applications at the conclusion of its public hearing by a vote of **4-0-1** (Anthony J Hood, Marcie I Cohen, Robert E Miller, and Michael G Turnbull to approve, Peter G May, not present, not voting)

On June 29, 2015, upon the motion of Commissioner Turnbull, as seconded by Commissioner Miller, 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 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D C Register*, that is, on July 31, 2015



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

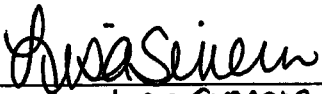


SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

Appendix A-1
TRUSTEE'S JOINDER, CONSENT AND SUBORDINATION
TO PLANNED UNIT DEVELOPMENT COVENANT

On this 25th day of September 2015, Lisa Sincere or Marc Wertheimer, Trustees, either of whom may act as Trustee under that certain Deed of Trust and Security Agreement, District of Columbia Commercial Loan from Jemal's CDC L.L.C., a District of Columbia limited liability company, dated the 25th day of October 2013, recorded October 28, 2013, among the Land Records of the District of Columbia as Document Number 2013122187, securing Lafayette Federal Credit Union ("Lender"), encumbering the land, including the improvements thereon and the appurtenances thereto, and more particularly described as the PUD Site in the Planned Unit Development Covenant (the "Covenant"), dated as of _____, 2015, to which this Trustee's Joinder, Consent and Subordination is appended, with full authority from the beneficiary secured under said Deed of Trust as reflected in Appendix A-2 attached hereto, does hereby consent to the terms and conditions of the foregoing Covenant, and covenants and agrees that the lien, effect and operation of said Deed of Trust be subject and subordinate to the effect and operation of said Covenant, said Deed of Trust otherwise to remain unmodified and in full force and effect

25th IN WITNESS WHEREOF, the undersigned has hereto set her hand and seal on this day of September 2015

By 
Name Lisa Sincere
Trustee

State of Maryland)
County of Montgomery) ss

I, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Lisa Sincere, the Trustee in the foregoing and annexed Trustee's Joinder, Consent and Subordination, personally appeared before me in said jurisdiction, and, as Trustee, acknowledged the instrument to be her act and deed and that he delivered the same as such

IN WITNESS WHEREOF, I set my hand and notarial seal this 25th day of September 2015


Notary Public
[NOTARIAL SEAL]

My Commission Expires

Jill G. Lappat
Notary Public
State of Maryland
My Commission Expires October 10, 2018

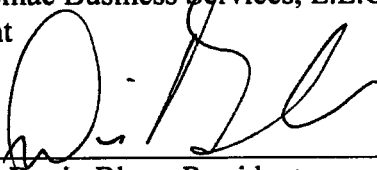
APPENDIX A-2
BENEFICIARY'S AUTHORIZATION TO TRUSTEES

Lafayette Federal Credit Union ("Lender"), payee under and holder of that certain Promissory Note (the "Promissory Note"), dated October 25, 2013, in the amount of \$3,106,000, which Promissory Note is secured by that certain Deed of Trust and Security Agreement, District of Columbia Commercial Loan (the "Deed of Trust") from Jemal's CDC L L C., a District of Columbia limited liability company, dated the 25th day of October 2013, recorded October 28, 2013, among the Land Records of the District of Columbia as Document Number 2013122187, securing Lender, hereby authorizes and directs Lisa Sincere or Marc Wertheimer, either of whom may act as Trustee under the Deed of Trust, to execute the annexed Trustee's Joinder, Consent and Subordination for the purposes set forth therein

IN WITNESS WHEREOF, Lafayette Federal Credit Union has caused this Instrument to be signed in its name by Devin Blum, the President of Potomac Business Services, L L C , its authorized agent, and does hereby appoint Devin Blum as its attorney-in-fact for purposes of executing, acknowledging and delivering this Instrument, as the act and deed of said Lafayette Federal Credit Union, all as of the day and year hereinbefore written

LAFAYETTE FEDERAL CREDIT UNION

By Potomac Business Services, L.L.C., its authorized agent

By 
Devin Blum, President

_____))
_____)) SS
_____)

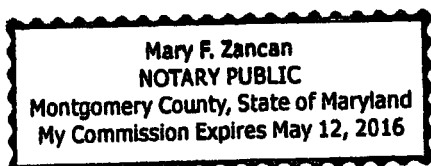
MONTGOMERY COUNTY, MD

I, MARY ZACCAN, a Notary Public in and for the ~~District of Columbia~~, DO
HEREBY CERTIFY that Devin Blum, the President of Potomac Business Services, L.L.C., the
authorized agent and attorney-in-fact of Lafayette Federal Credit Union, personally known to me
as the person who executed this Beneficiary's Authorization to Trustee, personally appeared
before me in said District of Columbia and acknowledged said Beneficiary's Authorization to
Trustee to be his/her act and deed, and that s/he executed said instrument for the purposes therein
contained on behalf of Lafayette Federal Credit Union

WITNESS my hand and official seal this 29 day of September 2015


Mary F. Zaccan
Notary Public
[NOTARIAL SEAL]

My Commission Expires



Doc # 2015101809 Fees \$31 50
10/06/2015 09 43 AM Pages 38
Filed and Recorded in Official Records of
WASH DC RECORDER OF DEEDS IDA WILLIAMS

RECORDING FEES \$25 00
SURCHARGE \$6 50

IDA WILLIAMS
THIS IS TO CERTIFY THAT THIS IS A TRUE COPY

Ida Williams
Recorder of Deeds, D.C.

OCT 06 2015