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GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-01
Z.C. Case No. 15-01
Level 2 Development
(Consolidated PUD and Related Map Amendment @ Square 3587, Lot 4)
July 13, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on June 4, 2015, to consider applications for a consolidated planned unit development (“PUD”) and related zoning map amendment filed by Level 2 Development (“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, and Hearings

1. On January 28, 2015, the Applicant filed an application with the Commission for consolidated review of a PUD and related map amendment to rezone Lot 4 in Square 3587 (“Property”) from the C-M-1 Zone District to the C-3-C Zone District.
2. The proposed project contemplates the development of a mixed-use building composed of retail and residential uses (“Project”). The building will have a density of 8.0 floor area ratio (“FAR”) and will include approximately 227,089 square feet of gross floor area. Approximately 217,243 square feet of gross floor area will be devoted to residential use, and approximately 9,880 square feet of gross floor area will be devoted to ground-floor retail use. The building will include 313 residential units (plus or minus 10%) and 143 off-street parking spaces located in a below-grade parking garage. The building will be constructed to a maximum height of 120 feet at its highest point.
3. By report dated March 9, 2015, the District of Columbia’s Office of Planning (“OP”) recommended that the application be set down for a hearing. At its public meeting held on March 9, 2015, the Commission voted to schedule a public hearing on the application.
4. The Applicant submitted a prehearing statement for the Project on April 3, 2015 (Exhibit [“Ex.”] 16-16G), and a hearing was timely scheduled for the matter. A description of the proposed development and the notice of public hearing in this matter were published in the *D.C. Register* on April 24, 2015. The notice of the public hearing was mailed or emailed to all property owners within 200 feet of the Property, Advisory Neighborhood Commission (“ANC”) 5D (the ANC in which the Property is located), and ANC 6C (the ANC located directly across the street from the Property) on April 13, 2015.
5. The parties to the case were the Applicant, ANC 5D, and ANC 6C.

6. The Commission convened a hearing on June 4, 2015, which was concluded that same evening. At the hearing, the Applicant presented the following witnesses in support of its applications: Jeffrey Blum and Jonathan Kardon on behalf of the Applicant; Susanne Slater of Habitat for Humanity of Washington, DC (“DC Habitat”); Eric Colbert of Eric Colbert & Associates; Jeff Lee of Lee and Associates; and Erwin Andres of Gorove/Slade Associates, Inc. The Commission noted that it has previously accepted each of the Applicant’s witnesses as experts in their respective fields.
7. Megan Rappolt and Joel Lawson of OP; Jonathan Rodgers of the District Department of Transportation (“DDOT”); and Jay Wilson of the District Department of the Environment (“DDOE”) testified in support of the application with certain comments and conditions.
8. By letter dated January 21, 2015, ANC 5D submitted a letter to the record in support of the application, and by letter dated January 20, 2015, ANC 6C submitted a letter in support of the application into the record. (Ex. 3F, 3G.) The Commission also received letters of support from Councilmember Kenyan McDuffie (Ex. 12, 32); the NoMA BID (Ex. 23); 55 residents of the District of Columbia (Ex. 30, 36); Trinity Baptist Church (Ex. 31); Union Market Stakeholders Group (Ex. 38, 43); Asheel Shah of Kettler (Ex, 34); Richard Perlmutter of Foulger-Pratt Companies (Ex. 35); and Doug Winshall of ClearRock Properties (Ex. 39).
9. At the public hearing, Cheryl Cort of the Coalition for Smarter Growth testified in support of the application.
10. The record was closed at the conclusion of the hearing, except to receive additional submissions from the Applicant, as requested by the Commission, and responses thereto from the parties. The Commission also requested proposed findings of fact and conclusions of law from the Applicant.
11. At its public hearing held on June 4, 2015, the Commission took proposed action to approve with conditions the PUD and related map amendment.
12. On June 22, 2015, the Applicant submitted a post-hearing filing in response to comments from the Commission made at the public hearing. (Ex. 51-52.) The post-hearing filing included revised architectural drawing sheets; a letter from MAC Realty regarding the Applicant’s proposed affordable housing proffer; a map showing Ward 5, ANC 5D, and the Census Tract within which the Property is located; a chart indicating compliance/non-compliance with each section of the Inclusionary Zoning (“IZ”) regulations; and a letter from Interface Engineering indicating that the roof plan accurately represents the building’s mechanical requirements.

13. The application was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District of Columbia Home Rule Act. Through a delegated action taken on July 2, 2015, the Executive Director of the NCPC found that the PUD would not be inconsistent with the Comprehensive Plan for the National Capital nor other federal interests.
14. The Commission took final action to approve the PUD on July 13, 2015.

The Property and Surrounding Area

15. The Property has a land area of approximately 28,394 square feet. The Property is an irregularly shaped rectangular lot with approximately 246 linear feet of frontage on Florida Avenue, N.E. to the southwest, and otherwise bounded by private property to the north, east, and west. Square 3587 is bounded by New York Avenue, N.E. to the north, private property and 4th Street, N.E. to the east, Florida Avenue, N.E. to the southwest, and the Amtrak and WMATA rail lines to the west.
16. The Property is presently improved with a one-story concrete building operated as a Burger King and several asphalt parking lots and driveways. The Applicant proposes to raze the existing building in connection with redevelopment of the Property. The Property is surrounded by a variety of uses, including warehouses and commercial uses to the north, residential and commercial uses to the east and south, and major mixed-use residential and commercial uses to the west.

Existing and Proposed Zoning

17. The Property is presently zoned C-M-1. The C-M Zone Districts are "intended to provide sites for heavy commercial and light manufacturing activities employing large numbers of people and requiring some heavy machinery under controls that minimize any adverse effect on other nearby, more restrictive districts." (11 DCMR § 800.1.) The Zoning Regulations note that "heavy truck traffic and loading and unloading operations are expected to be characteristic of C-M Districts." (11 DCMR § 800.2.) The C-M-1 Zone District prohibits residential development except as otherwise specifically provided. (11 DCMR § 800.4.) As a matter-of-right, property in the C-M-1 Zone District can be developed with a maximum density of 3.0 FAR. (11 DCMR § 841.1.) The maximum permitted building height in the C-M-1 Zone District is 40 feet and three stories. (11 DCMR § 840.1.)
18. The Applicant proposes to rezone the Property to the C-3-C Zone District in connection with this application. The C-3-C Zone District permits medium-high-density development, including office, retail, housing, and mixed-use development. (11 DCMR § 740.8.) The C-3-C Zone District permits, as a matter-of-right, a maximum building height of 90 feet with no limit on the number of stories, and a maximum density of 6.5 FAR for any permitted use, and a maximum density of 7.8 FAR for projects subject to the

IZ regulations. (11 DCMR §§ 770.1, 771.2, and 2604.1.) The maximum percentage of lot occupancy in the C-3-C Zone District for all uses is 100%. (11 DCMR § 772.1.) Rear yards in the C-3-C Zone District must have a minimum depth of two and one-half inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 12 feet. (11 DCMR § 774.1.) A side yard is generally not required in the C-3-C Zone District; however, when a side yard is provided, it must have a minimum width of two inches per foot of height of building, but not less than six feet. (11 DCMR § 775.5.)

19. Parking and loading requirements are based upon the proposed use of a property. An apartment house or multiple dwelling in the C-3-C Zone District requires one parking space for each four dwelling units. (11 DCMR § 2101.1.) Retail or service establishments in excess of 3,000 square feet in the C-3-C Zone District require one parking space for each additional 750 square feet of gross floor area. (*Id.*) An apartment house or multiple dwelling with 50 or more units in all zone districts is required to provide one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep. (11 DCMR §2201.1.) A retail or service establishment with 8,000 to 20,000 square feet of gross floor area must provide one loading berth at 30 feet deep, one loading platform at 100 square feet, and one service/delivery space at 20 feet deep. (*Id.*)

Description of the PUD Project

20. The Applicant proposes to construct a mixed-use residential and retail building in accordance with the architectural plans and elevations dated May 15, 2015 (Ex. 24A1-24A3), as modified by the supplemental plans dated June 4, 2015 (Ex. 40), and the additional supplemental sheets dated June 22, 2015 (Ex. 51A) (together, the “Plans”). The Project is located in a context that varies in use and scale, including Uline Arena to the southwest, recent large-scale NoMa developments and residential uses to the southwest, and Union Market and Gallaudet University to the north and east.
21. The Project is sensitive to its varied context and responds in size, form, and use of materials. The program consists of approximately 313 market-rate and affordable dwelling units, a ground level that is programmed with retail and residential uses that activate the street, and two levels of below-grade parking. The Project is located one block away from the NoMa-Gallaudet Metro Station and provides residents with ample secure bicycle parking on the building’s ground floor. Parking and loading facilities are accessed from an existing curb cut at the intersection of Florida Avenue and 3rd Street, N.E.
22. The building’s design includes modern-industrial architecture as an interpretation of the historical and current warehouse, manufacturing, railroad, and commercial uses of the surrounding neighborhood. The building’s form was derived from an abstraction of steel

shipping containers stacked on top of each other. The structure is a series of industrial-framed cubes with a warehouse style grid in a random “in/out” pattern on the Florida Avenue façade. On the west façade the cubes take on a new pattern that incorporates metal-paneled boxes with industrial-style balconies reminiscent of rail cars. The combination of the warehouse-style grids with the varying cubes brings together the rail uses to the west and the warehouse uses to the north. The cube modules float on a recessed base on the third floor as a transition to the brick and glass ground- and second-floor façade. To articulate the set-back on the third floor, the design includes steel columns that echo the riveted steel supports that hold up the railroad underpass nearby. Rough industrial brick is used for the masonry base. On the eastern portion of the ground level, the residential entrance is demarked with a suspended canopy. On the north façade, which faces into Union Market, brick elements of the south base are used to visually connect to the market, which incorporates similar materials. In the upper portion of the north façade, modules of the framed warehouse grid are incorporated to stitch together the various elements of the entire building. Industrial-style sash windows are utilized throughout. Accent balconies are detailed with an expression reminiscent of fire escapes, and composite metal panels are used at non-window façade locations.

23. The organization of the ground-floor program provides neighborhood activity and security at the street. The residential entrance is located along Florida Avenue near the eastern-most portion of the Property. This location will provide a street presence with eyes on Florida Avenue 24-hours a day. Neighborhood retail storefronts are also situated along Florida Avenue to enliven the streetscape and promote pedestrian activity. The Project envisions neighborhood-serving uses to occupy the retail spaces. The overall streetscape will be an accessible amenity shared and enjoyed by the entire neighborhood.
24. A significant component of the Project’s public benefits is the creation of a public green space on District-owned land to the west of the Property, with provisions for a potential pedestrian connection to Morse Street into Union Market. The Applicant will build a landscaped public amenity on land that is currently overgrown with neglected trees and shrubbery and is littered with trash and debris. The park will include community gardens, trees and planting areas, new light fixtures, lawns, seating areas, a public plaza, a widened sidewalk, and an ADA-accessible pedestrian path from Florida Avenue up to the abutting property line to the north for future connection to Morse Street. The District’s Florida Market Small Area Plan (“FAMS”), dated March, 2009, envisions a pedestrian connection from Florida Avenue into Union Market in the 300 block of Florida Avenue, N.E. The development of the Property and improvements to the adjacent District-owned land will be the first link in creating the connection to the market.
25. The building will be designed to integrate a host of sustainable features equivalent to LEED-Silver, including a green roof, bio retention facility, water-efficient landscaping, construction waste management techniques, recycled and sustainable materials, bicycle

parking, energy-efficient building design and systems, and high-density development at a transit-rich location.

Zoning Flexibility Requested

26. The Applicant requested flexibility from the rear yard requirements of 11 DCMR § 774.1, which requires a minimum rear yard depth of two and one-half inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 12 feet, or in this case, 22.88 feet. However, the Applicant is providing a rear yard depth of 11 feet, two inches. Although this depth does not strictly comply with 11 DCMR § 774.1, the total area of open space on the Property (approximately 7,472 square feet) exceeds the area of open space that would be provided with a compliant rear yard (approximately 5,918 square feet). In addition, the majority of the rear face of the building is set back 36 feet, seven inches from the rear property line. As a result, the design provides adequate open space at the rear of the site. Furthermore, a compliant rear yard would require setting back a large portion of the building on the second floor and above, thus significantly compromising the size and layout of the residential units on each floor. The flexibility requested on the rear yard is essential to achieve the exceptional architectural design intent. Consequently, the Commission finds this minor deviation from the setback requirements to be appropriate.
27. The Applicant requested flexibility from the open court width and court niche requirements of 11 DCMR §§ 776.3 and 776.7, which require that courts have a minimum width of four inches per foot of height but not less than 15 feet, and in this case, 35 feet, eight inches. The Project includes three open courts with non-compliant widths of 25 feet, five inches; 12 feet, eight inches; and 20 feet, 10 inches. The courts break up the building's massing; provide façade articulation; activate the rear of the building; introduce light, air, and ventilation to the building; and provide space for additional landscaping and green space. The Applicant cannot increase the width of the courts to meet the requirements because doing so would result in a significant number of impractical design changes to the building's interior configuration that would make it infeasible to achieve the desired residential unit program and exceptional design intent, including, for example, a significant and adverse impact on the locations of the internal stair towers, the location of the elevator core, and the size and layout of at least 12 units per floor (132 units). Thus, the Commission finds the court widths to be appropriate for the Project.
28. The Applicant seeks flexibility from the court niche requirements, since the triangular court niches on the west side of the building do not comply with the 2:1 width-to-depth ratio in some locations. Providing non-compliant court niches will not result in an adverse impact because they are adjacent to the proposed park that will be located to the west of the building and will provide additional light and air to the units on the west

façade. Therefore, the Commission finds that the court niches as proposed are acceptable.

29. The Applicant also requested flexibility from the compact parking space requirements of 11 DCMR § 2115.2, which requires that any accessory parking area or garage containing 25 or more required parking spaces may designate a maximum of up to 40% of the parking spaces for compact cars. In this case, the Project includes 143 total parking spaces, 90 of which (63%) will be compact in size. Providing the compact spaces is necessary to maximize the efficiency of the garage, provide as many parking spaces as possible, maintain a drive aisle width of 20 feet, and accommodate a greater amount of compact, fuel-efficient vehicles that have a lower carbon footprint than full-size vehicles. The Commission finds that approval of this requested flexibility will not have any adverse effects, and will allow the Applicant to adequately accommodate parking for the building's residential and retail users.
30. The Applicant also requested flexibility from the loading requirements of 11 DCMR § 2201.1, which require one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep (residential requirement); and one loading berth at 30 feet deep and one loading platform at 100 square feet (retail requirement). Due to the anticipated needs of the residents and retail tenants, the Project includes one loading berth at 30 feet deep, one service/delivery space at 20 feet deep, and one loading platform at 200 square feet. The requested flexibility is directly in accordance with the Comprehensive Plan's recommendations to consolidate loading areas within new developments, minimize curb cuts, and provide shared loading spaces in mixed-use buildings. Given the nature and size of the residential units, it is unlikely that the building will ever be served by 55-foot tractor-trailer trucks. The loading facilities will be used by residents when they move in or out of the building, and any other use by residents will be infrequent and will be restricted to times which pose the least potential conflicts with retail users. Furthermore, while the Property can accommodate the circulation of trucks into a 30 feet deep loading space, the land-locked nature of the Property would not feasibly accommodate 55 foot tractor-trailer trucks from circulating into and out of the site. Therefore, the Commission finds that the proposed loading facilities are appropriate and adequate for the Project.
31. The Applicant requests flexibility from the roof structure requirements since the roof structure will have walls of unequal heights (§ 411.5) and will not be set back 1:1 from the four corners of the court walls at the rear of the site (§ 770.6). However, the roof structure will not adversely impact the light and air of adjacent buildings since it has been located and designed to minimize its visibility. As a result, the Commission finds that the intent and purposes of the Zoning Regulations will not be materially impaired and the light and air of adjacent buildings will not be adversely affected.

32. The Applicant seeks the flexibility to account for 50% of its IZ requirement off-site (consisting of seven off-site units) without meeting certain of the pre-requisites of 11 DCMR § 2607 as follows:
- a. The Applicant will not be required to demonstrate that compliance on-site would impose an economic hardship. (§ 2607.1.) Although § 2607.3 permits § 2607.2(a) to be waived if the off-site development is owned by the Applicant, that is not the case here. Therefore, the Applicant also seeks flexibility from § 2607.2;
 - b. The off-site units will not be within the same census tract as the PUD; (§ 2607.2(a).)
 - c. The off-site units may not consist entirely of new construction as required by § 2607.2(b), but may also include the renovation of an existing structure;
 - d. The Applicant requests the flexibility to not have the off-site units counted for the purposes of determining whether the off-site project is subject to IZ, which is triggered by there being at least 10 units. In other words, if all seven units were in a project that contained 10 units, the project would not be subject to IZ;
 - e. Based upon the same overall square footage, the PUD building would have 13 IZ units while there would be seven off-site IZ units. This results from the fact that the off-site units would be larger than those on-site. Because there would be fewer off-site units, the Applicant requests flexibility from § 2607.2(f); and
 - f. Subsection 2607.8 provides that “[n]o application for a certificate of occupancy for a market-rate unit on the inclusionary development shall be granted unless construction of the off-site inclusionary units is progressing at a rate roughly proportional to the construction of the on-site market-rate units.” The Applicant does not believe it can make that commitment and instead has proposed that if a building permit application has not been filed for one or more of the off-site inclusionary units, the PUD building would provide a like amount of additional on-site IZ units. Therefore, flexibility from § 2607.8 is required.
33. Further explanation of these areas of flexibility is set forth in Exhibit 51D.
34. The Applicant also requests flexibility in the following areas:
- a. To be able to provide a range in the number of residential units between 281 and 344;
 - b. To vary the location and design of all interior components, including 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 or reduce the number, location, and arrangement of parking (vehicular and bicycle) spaces, provided that the total is not reduced below the number required under the Zoning Regulations;
- d. To vary the number, location, and arrangement of compact parking spaces, provided that the total number of compact parking spaces does not exceed 63% of the total parking spaces;
- e. To vary the sustainable design features of the building, provided the total number of LEED points achievable for the Project is not below the LEED-Silver rating standards;
- f. 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; to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim; and to make any other changes in order to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit;
- g. In the retail and service areas, 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, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail use and to accommodate any specific tenant requirements; and to vary the size of the retail area; and
- h. To vary the features, means and methods of achieving (i) the code-required Green Area Ratio ("GAR") of 0.2, and (ii) stormwater retention volume and other requirements under 21 DCMR Chapter 5 and the 2013 Rule on Stormwater Management and Soil Erosion and Sediment Control.

Project Benefits and Amenities

35. Urban Design, Architecture, Landscaping, and Open Space – § 2403.9(a). The building will have a positive impact on the visual and aesthetic character of the immediate neighborhood and will further the goals of urban design while enhancing the streetscape. The Project involves the replacement of the existing one-story building and parking lots with a new mixed-use, high-density, visually interesting building with a significant

amount of landscape, garden, and open space features. The streetscape will include new plantings and trees, a new 25-foot-wide concrete sidewalk, and pedestrian-oriented lighting consistent with DDOT standards. The street furnishings will include benches, short-term bicycle racks, and trash/recycling receptacles. Throughout the Project, open spaces will be used to create programmed amenity areas for residents, places of quiet, and activity areas including outdoor seating, courtyards, green space, and outdoor dining and lounging areas.

36. Housing and Affordable Housing – § 2403.9(f). As noted, the Applicant is being permitted to account for one-half of its IZ requirement of 15,494 square feet on-site. The other 7,747 square feet will be accounted for within the boundary of ANC 5D and reserved for households earning up to 50% of the AMI. An additional 6,000 square feet will also be set aside for households earning up to 50% of the AMI and will be located in Ward 5, with a priority area of ANC 5D. This resulting 21,494 net square feet of affordable housing (for a total of 26 units) exceeds the 15,493 square foot IZ requirements for the C-3-C Zone District by 38%. The affordable housing is also at a significantly steeper affordability level than required by the Zoning Regulations by providing 64% (approximately 13,747 net square feet) of affordable housing set-aside for households earning 50% or less of the AMI, thus creating truly affordable housing with homeownership opportunities for low income households. The off-site units will result from the Applicant's \$1.4 million contribution to DC Habitat to be made prior to the issuance of a certificate of occupancy for the PUD. A full description of the unit types, the applicable control periods, and the enforcement mechanism to ensure that the off-site units are either created or proportionally accounted for on-site is described in Condition No. B.1. of this Order.
37. Environmental Benefits – § 2403.9(h). The Applicant will ensure environmental sustainability through the implementation of design features and strategies to enhance the sustainable nature of the Property's mixed-use, transit-rich location, and to promote a healthy lifestyle for residents. The Project provides a host of environmental benefits consistent with recommendations of 11 DCMR § 2403.9(h), which include street tree planting and maintenance, landscaping, energy efficient and alternative energy sources, methods to reduce stormwater runoff, and green engineering practices. The building will be designed to include sustainable features to achieve a LEED-Silver designation, including a green roof, bio retention facility, landscaping, construction waste management techniques, recycled and sustainable materials, bicycle parking, energy-efficient building design and systems, and high-density development at a transit-oriented location.
38. Transportation Benefits – § 2403.9(c). The Applicant incorporated a number of elements designed to promote effective and safe vehicular and pedestrian access to the site, convenient connections to public transit services, and on-site amenities such as bicycle parking and sufficient vehicular parking. (See Sheets A27-29 of the Plans.) Moreover,

the Applicant will implement the following transportation demand management (“TDM”) strategies:

- a. Designate a TDM Coordinator;
- b. Unbundle residential parking from the price of units;
- c. Distribute move-in transportation welcome packets to each resident upon move-in. The packets will include information such as:
 - i. Promotion for DDOT’s goDCgo website;
 - ii. Brochures on carsharing, ridesharing, and bikesharing programs;
 - iii. Tips on smartphone applications and websites to use to navigate public transportation options;
 - iv. Maps for nearby bicycle routes and lanes;
 - v. Maps for Metrorail, Metrobus, and DC Streetcar routes; and
 - vi. Information on how to efficiently maintain cars to maximize fuel efficiency;
- d. Hold annual used bicycle drives for residents to donate bicycles to Gearin’ Up Bicycles, or a similar organization that accepts used bicycle donations. Gearin’ Up is a nearby non-profit 501c(3) community bike shop in Ward 5 that creates career development opportunities and teaches essential workplace skills to teenagers from underserved communities, while encouraging cycling as a practical, healthy means of transportation. Gearin’ Up provides access to quality, affordable, used bicycles for those in need and hosts community outreach programs throughout the year;
- e. Provide power stations for electric vehicle car-charging capability in up to five percent of garage parking spaces;
- f. Provide a secure bicycle storage with room for up to 105 bicycle parking spaces, including a maintenance area with a bike pump and tool set;
- g. Display an electronic message board in the residential lobby of the building that provides information on public transportation and other alternative transportation modes;

- h. Offer a one-time, one-year car-sharing or bike-sharing program membership to each initial resident of the building, for up to 313 memberships; and
 - i. Provide parking spaces in the garage for fuel-efficient vehicles.
- 39. Employment and Training Opportunities – § 2403.9(j). The Applicant will submit to DCRA a First Source Employment Agreement executed by the Applicant, consistent with the First Source Employment Agreement Act of 1984 and the Apprenticeship Requirements Amendment Act of 2004, and in substantially the same form as the First Source Employment Agreement included in the record. (Ex. 24E.)
- 40. Use of Special Value to the Neighborhood or the District as a Whole - Section 2403.9(i):
 - a. The Applicant will dedicate up to \$600,000 for the design, construction, and maintenance of a new public park located on District-owned land adjacent to the PUD (Lot 806). Pursuant to Condition No. B.4 of this Order, the Applicant must complete approximately 75% of the construction of the park prior to the issuance of the certificate of occupancy for the PUD, and the remainder of the park must be completed with the next 120 days. As shown on the Plans, the park will include community gardens, trees and planting areas, new light fixtures, lawns, seating areas, a public plaza, a widened sidewalk, and an ADA-accessible pedestrian path from Florida Avenue up to the abutting property line to the north for future connection to Morse Street. The Applicant will collaborate with the contract purchaser of the property to the north of the park (300 Morse Street, N.E.) concerning the pedestrian connection to Morse Street;
 - b. As called for in the FAMS, the park and pedestrian pathway will meet the FAMS's goals of providing a convenient connection between the NoMa and Union Market neighborhoods and creating desired public green space. The park will be 75% complete prior to the issuance of Certificate of Occupancy for the proposed building, with the remainder to be completed within 120 days after issuance of the Certificate of Occupancy; and
 - c. The Applicant will also make a \$10,000 contribution to the NoMa BID for use in connection with the Metropolitan Branch Trail Safety and Access Analysis, a study being commissioned by the NoMa BID to assess and recommend improvements to safety, infrastructure, and access points to the Metropolitan Branch Trail.
- 41. The Commission finds that the benefits and amenities are commensurate with the level of flexibility requested. The Commission further finds that the impacts of the Project are favorable and capable of being mitigated or acceptable, in compliance with § 2403 of the PUD regulations. The construction of the new residential building with ground-floor

retail provides efficient use of land compatible with uses of the surrounding properties. The Commission finds that the Project does not cause any adverse traffic impacts and provides sufficient parking to meet demand, as confirmed by the reports of Gorove/Slade Associates and DDOT. The proposed height is consistent with other existing buildings in the vicinity.

Comprehensive Plan

42. The Future Land Use Map of the Comprehensive Plan designates the Property for High-Density Commercial, High-Density Residential, and Production, Distribution, and Repair. The proposed development is consistent with that designation. The proposed C-3-C zoning classification is specifically identified to accommodate major business and employment areas and to provide substantial amounts of employment, housing, and mixed uses. (11 DCMR §§ 740.1-2.) The C-3-C Zone Districts permit medium- and high-density development, including retail, housing, and mixed-use development. (11 DCMR §§ 740.8.) The proposed PUD incorporates all of these elements into a single, high-density building with a mix of residential, retail, and employment opportunities.
43. The Property is designated as a Multi-Neighborhood Center category on the District of Columbia Comprehensive Plan Generalized Policy Map. The proposed rezoning and PUD redevelopment of the Property is consistent with the policies indicated for the Multi-Neighborhood Centers. The existing C-M-1 Zone District is inconsistent with the Policy Map's designation of the Property since C-M Zone Districts are "intended to provide sites for heavy commercial and light manufacturing activities employing large numbers of people and requiring some heavy machinery under controls that minimize any adverse effect on other nearby, more restrictive districts." (11 DCMR § 800.1.) In contrast, the proposed mix of new residential and retail uses will help to improve the overall neighborhood fabric and bring new residents and retail uses to the area, in compliance with the goals and objectives of Multi-Neighborhood Centers.
44. The Project is consistent with the guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, and building green and healthy communities, as set forth in the Comprehensive Plan. The Project also furthers numerous policies and objectives of the Comprehensive Plan, as discussed below.
45. Policy LU-1.2.2: Mix of Uses on Large Sites. The Project is consistent and compatible with adjacent uses and will provide a number of benefits to the immediate neighborhood and to the city as a whole.
46. Policy LU-1.3 Transit-Oriented and Corridor Development. The Project exemplifies the principals of transit-oriented development. The Property is located within a convenient one-block walking distance of the NoMa/Gallaudet University Metrorail station and is served by several Metrobus routes, including routes 90 and 92, which stop immediately

in front of the Property. The Property is also located within three blocks of four existing Capital Bikeshare stations, and is located two and one-half blocks from the entrance to the Metropolitan Branch Trail, an eight-mile multi-use trail that runs from Union Station to Silver Spring in Maryland. Furthermore, the Property is located in close proximity to NoMa's office district and to multiple dining and entertainment options in the Union Market and H Street neighborhoods. The Property is also one Metro station away from intercity and commuter trains and buses connecting at Union Station. In addition, the Project is consistent with the following principles (i) a preference for mixed residential and commercial uses rather than single purpose uses, particularly a preference for housing above ground-floor retail uses; and (ii) a preference for diverse housing types, including affordable units.

47. Policy LU-1.3.4: Design to Encourage Transit Use. The Project has been designed to encourage transit use and enhance the safety, comfort, and convenience of passengers walking to the Metrorail station and local bus stops since the Project incorporates ground-floor retail uses that will activate and animate the street.
48. Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods. The Project architect sought to augment the mixed income housing supply in the area and expand neighborhood commerce with the parallel goals of protecting the neighborhood's existing character and revitalizing the surrounding community.
49. Policy LU-2.2.4: Neighborhood Beautification. The building is designed to improve the visual aesthetic of the neighborhood. Development of the Property will be an improvement to the current site condition and will help to revitalize the area. The Project also includes a significant amount of landscaped and open spaces which will greatly enhance the streetscape.
50. Policy LU-2.3.3: Buffering Requirements. The Project includes a number of elements designed to serve as buffers, including landscaping, setbacks, and architectural/site planning measures that will prevent adverse effects. The PUD will eliminate the existing one-story building and surface parking uses and will provide much needed new residential and retail opportunities.
51. Policy LU-3.1.4: Rezoning of Industrial Areas. The Property is surrounded by a variety of uses, including residential and commercial development, schools, and industrial warehouses. As the surrounding area continues to be redeveloped with residential, commercial, and entertainment uses, the Property will no longer be suitable for industrial activities. The proposed development and requested rezoning supports the policy of rezoning industrial land to permit residential and commercial uses on land included in a targeted redevelopment area.
52. Policy T-1.1.4: Transit-Oriented Development. The Project is a textbook example of transit-oriented development. It also includes various transportation improvements,

including the construction of new mixed-uses along a major transportation corridor, bicycle storage areas, and public space improvements, including new lighting, trees, benches, bicycle racks, and new and widened sidewalk paving.

53. Policy T-2.3.1: Better Integration of Bicycle and Pedestrian Planning. The Project architect carefully considered and integrated bicycle and pedestrian safety considerations in the design of the Project. The Project is located two and one-half blocks away from the entrance to the Metropolitan Branch Trail. To promote pedestrian travel on the north side of Florida Avenue, the Applicant will widen the sidewalk width from seven feet to 25 feet, and will locate trees and plantings along the curb to act as a buffer for pedestrians from vehicles on Florida Avenue.
54. Action T-2.3-A: Bicycle Facilities. The Applicant will provide secure bicycle parking and bicycle racks as amenities within the development that accommodate and encourage bicycle use. Specifically, the Applicant will provide approximately 105 bicycle parking spaces within the building to serve residents and employees, and a number of bicycle racks in public space adjacent to the Property in coordination with DDOT.
55. Policy H-1.1.1: Private Sector Support. The Project helps meet the needs of present and future District residents at locations consistent with District land use policies and objectives. Specifically, the Project will contain approximately 217,243 square feet of gross floor area devoted to residential use, which represents a substantial contribution to the District's housing supply. Of this housing, more than eight percent will be dedicated as affordable housing, which will add to the District's affordable housing stock; whereas, under the current zoning, no new housing can be provided. The provision of new housing at this particular location is fully consistent with the District's land use policies.
56. Policy H-1.1.3: Balanced Growth. This policy strongly encourages the development of new housing on surplus, vacant and underutilized land in all parts of the city, and recommends ensuring that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including higher-density housing. The Project supports this policy goal by developing new housing on underutilized land in a rapidly growing and changing mixed-use neighborhood.
57. Policy H-1.1.4: Mixed-Use Development. The Project is consistent with the goals of promoting mixed use development, including housing on commercially or industrially zoned land, particularly in neighborhood commercial centers.
58. Policy H-1.2.3: Mixed-Income Housing. The residential component of the PUD is mixed-income and includes both market-rate and affordable housing units. Thus, the Project will further the District's policy of dispersing affordable housing throughout the City in mixed-income communities, rather than concentrating such units in economically

depressed neighborhoods. Under the current zoning, there would be no new housing on the Property.

59. The Project is also consistent with numerous policies set forth in the Environmental Protection Element, including the following:
- a. Encouraging the planting and maintenance of street trees in all parts of the city (Policy E-1.1.1);
 - b. Encouraging the use of landscaping to beautify the city, enhance streets and public spaces, reduce stormwater runoff, and create a stronger sense of character and identity (Policy E-1.1.3);
 - c. Promoting the efficient use of energy, additional use of renewable energy, and a reduction of unnecessary energy expenses (Policy E-2.2.1); and
 - d. Promoting tree planting and landscaping to reduce stormwater runoff, including the expanded use of green roofs in new construction (Policy E-3.1.2).
60. The Property is located within the boundaries of the Upper Northeast Area Element. Section 2407 of the Comprehensive Plan explains the Upper Northeast Area Element's planning and development priorities. One stated priority is to expand retail choices in the Upper Northeast, particularly retail districts along Florida Avenue and areas around Metrorail stations, which have the potential to become pedestrian-oriented shopping districts. (See 10A DCMR § 2407.2(i).) The Upper Northeast Area Element also encourages compatible infill development (Policy UNE-1.1.2), Metro station development (Policy UNE-1.1.3), streetscape improvements (Policy UNE-1.2.1), and environmental quality (Policy UNE-1.2.8), all of which are policies and goals that the PUD will support. The Commission finds that the Project will provide much-needed new housing, retail, and employment opportunities while protecting the nearby lower-density residences and increasing pedestrian accessibility and safety in the area.

Office of Planning Report

61. By report dated May 22, 2015, OP recommended approval of the PUD and related Zoning Map amendment, subject to several conditions to which the Applicant agreed at the public hearing. (Ex. 27.) In its report, OP stated that the PUD and map amendment would not be inconsistent with the maps and written elements of the Comprehensive Plan and the FAMS, and asserted that the Project would further the Land Use; Housing; Parks, Recreation, and Open Space; Urban Design; and Upper Northeast Area Element of the Comprehensive Plan.

62. Through a supplemental report dated July 2, 2015, OP provided additional information in response to questions posed by the Commission during the public hearing concerning the affordable housing and public park proffers. (Ex. 55.) OP expressed concern over the lack of detail concerning how the off-site units would revert to the PUD building should one or more of those units not be constructed by the time the certificate of occupancy for the PUD was issued. OP recommended that the seven off-site IZ units should be constructed prior to the construction of the six non-IZ units. In response, the Applicant provided a detailed chart showing exactly how the reversion would work (which has been inserted in Condition B.1) and agreed to include in its contract with DC Habitat a requirement that the off-site Units be constructed first. OP also expressed concern that the Applicant has backed off its commitment to maintain the public park. However, the Commission notes that the Applicant has promised to dedicate \$600,000 for the park's construction and maintenance.

DDOT Report

63. By report dated May 26, 2015, DDOT stated that it had no objection to the Applicant's request for a PUD and related map amendment, provided the Applicant install at least nine short-term bicycle racks in public space near building's entrances. (Ex. 28.) The Applicant agreed to provide the short-term bicycle parking as required.

DDOE Report

64. By report dated May 21, 2015, DDOE summarized items related to the Property and common issues related to many development projects. (Ex. 26.) The report includes DDOE's comments on the Project, provides additional guidance on regulations and other DDOE areas of interest, and recommends areas where the Applicant could exceed guidelines as a public benefit or amenity.
65. On June 22, 2015, the Applicant submitted a post-hearing filing, which responded to the DDOE report. (Ex. 51.) The Applicant explained that it subsequently met with DDOE representatives and explored the sustainable design strategies recommended in the DDOE report. The Applicant is committed to achieving LEED-Silver certification and will pursue sustainable strategies that may increase the LEED points throughout the design, construction, and operation of the project.

ANC Reports

66. By report dated June 3, 2015, ANC 5D recommended approval of the PUD and related map amendment. (Ex. 42.) It noted that the Project proposes a creative public benefits package that supports the residents of ANC 5D and has the potential to serve as a catalyst for creating affordable housing in the District by underscoring a partnership with DC Habitat. The ANC report also noted that the proposed improvement to the District-

owned land will greatly contribute to the safety and connectivity of the Union Market and NoMa neighborhoods.

67. ANC 6C also submitted testimony in support of the Project, which stated that the PUD is an attractive building that will provide housing and retail close to the NoMa Metrorail station. (Ex. 33.) ANC 6C commended the Applicant for its proposal to construct the first piece of the planned pedestrian connection into the interior of the market area, which is essential for the health, safety, and convenience of the future residents of the building, the surrounding community, and future retail patrons and visitors.

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, FAR, lot occupancy, parking, 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 project with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD complies with the development standards of the Zoning Regulations. The retail and residential uses for the Project are appropriate for the Property. The impact of the Project on the surrounding area and the operation of city services is acceptable, given the quality of the public benefits in the Project. Accordingly, the Project should be approved.
5. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
6. The Applicant’s request for flexibility from the Zoning Regulations is not inconsistent with the Comprehensive Plan. The Commission also concludes that the project benefits and amenities are reasonable trade-offs for the requested development flexibility in accordance with §§ 2400.3 and 2400.4.

7. Approval of this 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 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.
8. The proposal to rezone the Property from the C-M-1 Zone District to the C-3-C Zone District is not inconsistent with the Property's designation on the Future Land Use Map and the Generalized Policy Map.
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 (2012 Repl.)), 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 D.C. Official Code § 1-309.10(d)(3)(A) (20) to give great weight to the issues and concerns raised in the written report of the affected ANC. The Commission has carefully considered the ANC 5D's recommendation for approval and concurs in its recommendation.
11. 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 consolidated review and approval of a planned unit development and related map amendment from the C-M-1 Zone District to the C-3-C Zone District for the Property located at Lot 4 in Square 3587. The approval of this PUD is subject to the guidelines, conditions, and standards set forth below.

A. Project Development

1. The Project shall be developed in accordance with the architectural plans and elevations dated May 15, 2015 (Ex. 24A1-24A3), as modified by the supplemental plans dated June 4, 2015 (Ex. 40), and the additional supplemental sheets dated June 22, 2015 (Ex. 51A) (together, the "Plans"), and as modified by the guidelines, conditions, and standards of this Order.

2. In accordance with the Plans, the PUD shall be a mixed-used project consisting of approximately 227,089 square feet of gross floor area (8.0 FAR), with approximately 217,243 square feet of gross floor area devoted to residential use and approximately 9,880 square feet of gross floor area devoted to retail use. The Project shall have 313 residential units, plus or minus 10%, and shall have a maximum height of 120 feet.
3. The Applicant shall have zoning flexibility with the PUD in the following areas:
 - a. To provide a rear yard of 11 feet, two inches;
 - b. To provide three open courts with the following non-compliant court widths: 25 feet, five inches; 12 feet, eight inches; and 20 feet, 10 inches;
 - c. To provide court niches that do not comply with the 2:1 width-to-depth ratio in some locations;
 - d. To provide 90 compact parking spaces, which is 63% of the total number of on-site parking spaces;
 - e. To provide one loading berth at 30 feet deep, one service/delivery space at 20 feet deep, and one loading platform at 200 square feet;
 - f. To provide a roof structure with enclosing walls of unequal heights; and
 - g. To provide ADUs that do not comply with the requirements of 11 DCMR §§ 2605.5; 2607.1; 2607.2(a)(b)(d)(f); 2607.3; 2607.7; and 2607.8, as set forth in Exhibit 51D.
4. The Applicant shall also have design flexibility with the PUD in the following areas:
 - a. To be able to provide a range in the number of residential units between 285 and 346;
 - b. To vary the location and design of all interior components, including 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 or reduce the number, location, and arrangement of parking (vehicular and bicycle) spaces, provided that the total is not reduced below the number required under the Zoning Regulations;

- d. To vary the number, location, and arrangement of compact parking spaces, provided that the total does not exceed 63% of the total parking spaces;
- e. To vary the sustainable design features of the building, provided the total number of LEED points achievable for the Project is not below the LEED-Silver rating standards;
- f. 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; to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim; and to make any other changes in order to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit;
- g. In the retail and service areas, 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, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail use and to accommodate any specific tenant requirements; and to vary the size of the retail area; and
- h. To vary the features, means, and methods of achieving (i) the code-required GAR of 0.2, and (ii) stormwater retention volume and other requirements under 21 DCMR Chapter 5 and the 2013 Rule on Stormwater Management and Soil Erosion and Sediment Control.

B. Public Benefits

- 1. Affordable Housing.
 - a. *Contribution to DC Habitat.* **Prior to the issuance of a Certificate of Occupancy for the building,** the Applicant shall contribute \$107,000 per unit to DC Habitat to co-develop a minimum of approximately 13,747 net square feet in 13 off-site affordable housing units, set aside for-sale to households earning an average of no more than 50% of the AMI. As will be further described below, 7,747 square feet of this amount will be used to satisfy 50% of the building's Inclusionary Zoning ("IZ") requirements and 6,000 square feet of this amount will be additional affordable housing units regulated under DC Habitat conditions. In the event that the

reversionary process set forth in paragraph (e) of this condition is invoked as a result of building permit applications not being filed for one or more of the 13 units, the Applicant is relieved of its obligation to make the \$107,000 contribution for that unit or units.

- b. *IZ Compliance.* Eight percent of the residential square footage of the building (approximately 15,494 net square feet) shall be subject to the IZ regulations of Chapter 26 of the Title 11 DCMR and shall be accounted for as follows:
 - i. Fifty percent of the IZ requirement, *i.e.* four percent of the residential square footage of the building (approximately 7,747 net square feet resulting in 13 units of approximately equal size) shall be accounted for in the building;
 - ii. Fifty percent of the IZ requirement, *i.e.* four percent of the residential square footage of the building (7,747 net square feet resulting in seven units of approximately equal size) shall be accounted for within the boundary of ANC 5D (“Off-Site IZ Units”). The Off-Site IZ Units shall comply with all the provisions of Chapter 26 including § 2607 therein, except:
 - 1. To the extent that such provisions were expressly waived herein; and
 - 2. The units shall be set aside for-sale to households earning an average of no more than 50% of the AMI;
- c. *Off-Site Affordable Housing in Excess of IZ Requirements.* **For the control period as provided by the current DC Habitat covenants,** a minimum equivalent to three percent of the building’s residential square footage, but not less than 6,000 net square feet (approximately six units) shall be located in Ward 5, with a priority area of ANC 5D (“Off-Site Non-IZ Units”). These units shall be subject to the current DC Habitat covenants (included as part of Ex. 24D in the record) in lieu of the IZ requirements of Chapter 26 of the Zoning Regulations. The off-site homes shall have an average size of not less than approximately 1,000 square feet, and an average of approximately 2.5 bedrooms. The units shall be set aside for sale households earning an average of no more than 50% of the AMI;
- d. *Phasing of Off-Site Construction* **Prior to the Issuance of a Building Permit for the PUD,** the Applicant shall provide proof to the Zoning Administrator that it has entered into a binding and enforceable contract

with D.C. Habitat requiring DC Habitat to complete construction of the Off-Site IZ Units before it begins construction of the Off-Site Non-IZ Units;

e. *Reversion of Off-Site Affordable Units:*

- i. **Prior to the issuance of a certificate of occupancy for the building**, the Applicant shall provide proof to the Zoning Administrator that building permit applications have been filed for all of the Off-Site IZ Units and all of the Off-Site Non-IZ Units;
- ii. If a building permit application for one or more of the Off-Site IZ Units or the Off-Site Non-IZ Units has not been filed, the gross floor area of each such unit shall revert as set forth in the following table:

Permit Applications Filed	Total Off-Site IZ and Non-IZ Units		IZ Units								Non-IZ Units	
			Total IZ Units		50% AMI				80% AMI		50% AMI	
	Off-Site		On-Site		On-Site		Off-Site		On-Site		Off-Site	
	Unit Count	NSF	Unit Count	NSF	Unit Count	NSF	Unit Count	NSF	Unit Count	NSF	Unit Count	NSF
0 Units Off-Site	0	0	26	15,493	6	3,575	0	0	20	11,918	0	0
1 Unit Off-Site	1	1,107	25	14,897	6	3,575	1	1,107	19	11,322	0	0
2 Units Off-Site	2	2,213	24	14,302	6	3,575	2	2,213	18	10,726	0	0
3 Units Off-Site	3	3,320	23	13,706	6	3,575	3	3,320	17	10,130	0	0
4 Units Off-Site	4	4,427	22	13,110	6	3,575	4	4,427	16	9,534	0	0
5 Units Off-Site	5	5,533	21	12,514	6	3,575	5	5,533	15	8,938	0	0
6 Units Off-Site	6	6,640	20	11,918	6	3,575	6	6,640	14	8,343	0	0
7 Units Off-Site	7	7,747	19	11,322	6	3,575	7	7,747	13	7,747	0	0
8 Units Off-Site	8	8,747	18	10,726	5	2,979	7	7,747	13	7,747	1	1,000
9 Units Off-Site	9	9,747	17	10,130	4	2,384	7	7,747	13	7,747	2	2,000
10 Units Off-Site	10	10,747	16	9,534	3	1,788	7	7,747	13	7,747	3	3,000
11 Units Off-Site	11	11,747	15	8,938	2	1,192	7	7,747	13	7,747	4	4,000
12 Units Off-Site	12	12,747	14	8,343	1	596	7	7,747	13	7,747	5	5,000
Max 13 Units Off-Site	13	13,747	13	7,747	0	0	7	7,747	13	7,747	6	6,000
Avg. Unit Size		1,057		596		596		1,107		596		1,000

- iii. All units in the building that result from a reversion shall be subject to the IZ regulations of Chapter 26, even if all 7,747 square feet of Off-Site IZ Units are constructed. Therefore all such reverted units shall deemed to be required by Chapter 26; and
- iv. The first six units in the building that result from a reversion shall be set-aside for households earning an average of up to 50% of the AMI. Any additional units in the building resulting from a reversion shall be set aside for households earning an average of up to 80% of the AMI. Thus in the unlikely circumstance that none of the off-site units are built, there shall be approximately 15,493 net square feet of Inclusionary Zoning Units in the building with six of the units (of approximately 3,575 square feet set aside

for households earning up to an average of 50% of the AMI, and 20 units (of approximately 11,918 square feet set aside for households earning up to an average of 80% of the AMI;

- f. All of the affordable and market rate units will be developed in accordance with the following chart, which is consistent with the calculations for the District’s Certificate of Inclusionary Zoning Compliance form:

Residential Unit Type	Net Square Feet & Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	193,667 residential net square feet	313			
Market Rate	185,920 residential net square feet (96%)	300	Market Rate	N/A	Rental/ Ownership
IZ	7,747 net square feet (4%)	13	80% AMI	In Perpetuity	Rental/ Ownership
IZ	7,747 net square feet (4%)	7	50% AMI	In Perpetuity	Ownership
Affordable/ Non IZ	6,000 net square feet (3%)	6	Affordability established by DC Habitat covenants	Control period established by DC Habitat covenants	Ownership

2. Environmental Benefits. **For the life of the project,** the building shall be designed to include no fewer than 50 points necessary to achieve a LEED-Silver certified designation, as shown on the theoretical LEED score sheet submitted with the Plans. **Prior to the issuance of a building permit,** the Applicant shall register the project with the United States Green Building Council (“USGBC”) to commence the LEED-certification process. Within 12 months after the issuance of the Certificate of Occupancy, the Applicant shall submit a completed certification application to USGBC for review for LEED- Silver certification by the Green Building Certification Institute (“GBCI”) or similar organization.
3. First Source Employment Agreement. **Prior to the issuance of a Certificate of Occupancy for the building,** the Applicant shall submit to DCRA evidence that the Applicant executed and submitted a First Source Employment Agreement to the Department of Employment Services (“DOES”), consistent with the First Source Employment Agreement Act of 1984 and the Apprenticeship Requirements Amendment Act of 2004, and in substantially the same form as the First Source Employment Agreement. (Ex. 24E.)
4. Uses of Special Value to the Neighborhood.
 - a. **Prior to the issuance of a Certificate of Occupancy for the building,** the Applicant shall have completed approximately 75% of the construction

of a new public park, as certified by the landscape architect. The park shall be located on District-owned land adjacent to the PUD (Lot 806). The park shall include community gardens, trees and planting areas, new light fixtures, lawns, seating areas, a public plaza, a sidewalk, and an ADA-accessible pedestrian path from Florida Avenue up to the abutting property line to the north of the Subject Property. The remainder of the construction of the park shall be 100% completed within 120 days after issuance of the Certificate of Occupancy, as certified by the landscape architect;

- b. **Prior to the issuance of a Certificate of Occupancy for the building,** the Applicant shall dedicate up to \$600,000 for the design, construction, and maintenance of the park; and
- c. **Prior to the issuance of a Certificate of Occupancy for the building,** the Applicant shall submit to DCRA evidence that the Applicant has made a \$10,000 contribution to the NoMa BID for use in connection with the Metropolitan Branch Trail Safety and Access Analysis, a study being commissioned by the NoMa BID to assess and recommend improvements to safety, infrastructure, and access points to the Metropolitan Branch Trail, and provide proof that the study has been completed or is being conducted.

C. **Transportation Measures.**

- 1. **Prior to issuance of a Certificate of Occupancy for the building and for the life of the Project,** the Applicant shall provide the following TDM strategies:
 - a. Designate a TDM Coordinator;
 - b. Unbundle residential parking from the price of units;
 - c. Provide power stations for electric vehicle car charging capability in up to five percent of garage parking spaces;
 - d. Provide a secure bicycle storage room with room for up to 105 bicycle parking spaces, including a maintenance area with a bike pump and tool set;
 - e. Display an electronic message board in the residential lobby of the building that provides information on public transportation and other alternative transportation modes; and

- f. Provide parking spaces in the garage for fuel-efficient vehicles.
2. **Upon initial residential move-in and for the life of the Project**, the Applicant shall distribute move-in transportation welcome packets to each resident. The packets shall include information such as:
 - a. Promotion for DDOT's goDCgo website;
 - b. Brochures on carsharing, ridesharing, and bikesharing programs;
 - c. Tips on smartphone applications and websites to use to navigate public transportation options;
 - d. Maps for nearby bicycle routes and lanes;
 - e. Maps for Metrorail, Metrobus, and DC Streetcar routes; and
 - f. Information on how to efficiently maintain cars to maximize fuel efficiency.
3. **Upon initial residential move-in and for the life of the Project**, the Applicant shall offer a one-time, one-year car-sharing or bike-sharing program membership to each resident of the building, for up to 313 memberships.
4. **Upon initial residential move-in and for the life of the Project**, the Applicant shall hold annual used bicycle drives for residents to donate bicycles to Gearin' Up Bicycles, or a similar organization that accepts used bicycle donations. Gearin' Up is a nearby non-profit 501c(3) community bike shop in Ward 5 that creates career development opportunities and teaches essential workplace skills to teenagers from underserved communities, while encouraging cycling as a practical, healthy means of transportation. Gearin' Up provides access to quality, affordable, used bicycles for those in need and hosts community outreach programs throughout the year.

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 property in accordance with this Order, or amendment

- thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The 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.
 3. The PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 15-01. 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 Z.C. Order No. 15-01.
 4. 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 identification 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.

On June 4, 2015, upon a motion by Chairman Hood, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** 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 July 13, 2015, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, 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 § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on August 21, 2015.