

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION CASE NO. 15-27**

**Z.C. ORDER NO. 15-27**

**KF Morse, LLC**

**(Consolidated PUD, First-Stage PUD, and Related Map Amendment  
@ Square 3587, Lots 805, 814, and 817)**

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on January 12, 2017, to consider applications for a consolidated planned unit development ("PUD"), a first-stage PUD, and a related zoning map amendment, filed by KF Morse, LLC ("Applicant"). ~~The Commission considered the merits of the applications pursuant to Chapter 24 of the 1958 Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations ("DCMR")).<sup>1</sup> The public hearing was conducted in accordance with the provisions of Subtitle Z, Chapter 400 of the 2016 Zoning Regulations (Title 11 DCMR). The Commission considered the applications pursuant to Subtitle X, Chapter 3 and Subtitle Z 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 Subtitle Z, Chapter 400.~~ For the reasons stated below, the Commission hereby **APPROVES** the applications.<sup>2</sup>

**FINDINGS OF FACT**

**The Application, Parties, and Hearings**

1. On October 30, 2015, the Applicant filed applications with the Commission for a consolidated PUD, a first-stage PUD, and a related zoning map amendment from the C-M-1 District to the C-3-C District<sup>3</sup> for property located at 300, 325, and 350 Morse Street, NE (Square 3587, Lots 805, 814, and 817) (the "PUD Site").<sup>4</sup>
2. The PUD Site has a land area of approximately 213,044 square feet and is bounded by New

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<sup>1</sup> Chapter 24 and all other provisions of Title 11 DCMR were repealed on September 6, 2016, and replaced with a Chapter 3 of Subtitle 11-X. However, because this application was set down for hearing prior to that date, the Commission's approval was based upon the standards set forth in Chapter 24. Since the hearing was scheduled and held on October 27, 2016, the pre-hearing and hearing procedures of Title 11-Z, Chapter 4 applied.

<sup>2</sup> Pursuant to Subtitle A § 102.3(c) of the 2016 Zoning Regulations, an application for a building permit filed on or after September 6, 2016 is vested under the 1958 Zoning Regulations if the building permit plans are consistent with an unexpired approval of a first stage, second stage, or consolidated PUD that was granted after September 6, 2016, but which was set down for a public hearing prior to September 6, 2016. In this case, the consolidated PUD was set down for a public hearing on April 25, 2016, and is therefore considered a vested project under the 1958 Zoning Regulations. Only the procedural requirements of the 2016 Zoning Regulations were applied to this case.

<sup>3</sup> Under the 2016 Zoning Regulations, the C-M-1 District converts to the PDR-1 District and the C-3-C District converts to the MU-9 District.

<sup>4</sup> Lots 805, 814, and 817 are Assessment and Taxation ("A&T") lots and are located within Record Lot 6. The remaining portion of Record Lot 6 is known as A&T Lot 819 and is owned by the District. Lot 819 is not included within the PUD and is not part of the PUD Site. However, the Applicant will undertake significant improvements to Lot 819 as part of development of the PUD, as described in this Order.

York Avenue, NE to the north, 4th Street, NE to the northeast, Morse Street, NE to the southeast, Florida Avenue to the southwest, and the Amtrak and Metrorail lines to the west. The PUD Site is presently improved with one-story industrial buildings used for wholesale distribution, which the Applicant will raze as part of this PUD. The PUD Site is located within the boundaries of Advisory Neighborhood Commission (“ANC”) 5D.

3. The PUD Site is within the Florida Avenue Market district, which has historically been the District’s center for wholesale and specialized retail food distribution. The newly renovated market at the Union Market building, which is located to the east of the PUD Site, is a year-round indoor market of local artisans and vendors, including local farmers, bakers, and butchers. The Florida Avenue Market district is located at the strategic intersection of New York and Florida Avenues, NE, is served by the NoMA-Gallaudet Metrorail station, and is situated between Gallaudet University, NoMa, and H Street, NE.
4. The Applicant proposes to redevelop the PUD Site with four buildings (“Building A,” “Building B,” “Building C,” and “Building D”), which will include residential, retail, office, and potential hotel uses (the “Project”). The Project will be constructed in two phases. Phase I (the consolidated PUD) includes development of the southern portion of Building A (“Building A1”), Building B, and the southern portion of Building C (“Building C1”). Phase II (the first-stage PUD) includes the northern portion of Building A (“Building A2”), the northern portion of Building C (“Building C2”), and Building D. The Applicant will create new theoretical lots for each Building.
5. Upon completion of all Buildings, the Project will have an aggregate floor area ratio (“FAR”) of approximately 7.1 FAR. Approximately 1,091,201 square feet of total gross floor area will be devoted to residential use, approximately 52,968 square feet of total gross floor area will be devoted to retail use, and approximately 217,558 square feet of total gross floor area will be devoted to office use. If Building D is occupied with the optional hotel use, approximately 121,484 square feet of gross floor area will be devoted to hotel use. Approximately 105,469 square feet of gross floor area will be devoted to parking and loading support spaces for the Project. Building heights will range from 78 feet to 130 feet. The Project will include a total of 682 off-street parking spaces.
6. Pursuant to 11 DCMR § 2403.2, the Project is required to dedicate 8% of the residential gross floor area to inclusionary zoning (“IZ”) units (approximately 87,296 square feet of gross floor area), set aside for households earning up to 80% of the area medium income (“AMI”). The Applicant proposes to exceed that requirement by dedicating 11% of the residential gross floor area (approximately 120,036 square feet of gross floor area) as affordable housing units, with 50% set aside for households earning up to 50% of the AMI (60,018 square feet of gross floor area) and 50% set aside for households earning up to 80% of the AMI (60,018 square feet of gross floor area).
7. On January 15, 2016, the Applicant filed updated architectural plans and elevations and an updated list of proposed public benefits and amenities (Exhibit [“Ex.”] 14). By report dated April 18, 2016 (Ex. 15), the Office of Planning (“OP”) recommended that the applications be set down for a public hearing. At its public meeting on April 25, 2016, the Commission voted to schedule a public hearing on the applications.

8. On April 12, 2016, at a duly noticed, regularly scheduled monthly meeting of ANC 5D, with a quorum of commissioners and the public present, ANC 5D voted 5-0-1 to support the Project as initially presented. (*See* ANC support resolution, dated August 4, 2016, at Ex. 29.) The Applicant returned to ANC 5D's duly noticed, regularly scheduled meeting on September 13, 2016, which also had a quorum of commissioners and the public present. At the second meeting, ANC 5D voted 6-0-0 to continue to support the Project. (*See* ANC support resolution, dated September 20, 2016, at Ex. 36.)
9. The Applicant filed a prehearing statement on May 11, 2016 (Ex. 17-20) and a public hearing was timely scheduled for the matter. On June 10, 2016, the notice of the public hearing was mailed to all owners of property located within 200 feet of the PUD Site; ANC 5D; ANC 5C; and to Councilmember McDuffie of Ward 5. A description of the proposed Project and the notice of the public hearing on this matter were published in the DC Register on June 17, 2016.
10. On July 21, 2016, the Applicant submitted a request to postpone the hearing (Ex. 26), which was approved. On July 28, 2016, notice of the postponed hearing was sent to the recipients of the original notice, and notice of the revised hearing date was published in the DC Register on August 5, 2016.
11. On September 30, 2016, the Applicant submitted a supplemental prehearing statement (Ex. 37) in response to comments raised by the Commission and OP at the setdown meeting. The supplemental submission included revised architectural plans and elevations, a Comprehensive Transportation Review ("CTR") report prepared by Gorove/Slade Associates and submitted to the District Department of Transportation ("DDOT") on September 7, 2016, and a copy of ANC 5D's September 20, 2016 resolution in support.
12. On October 6, 2016, a party status request in support of the Project was submitted by 1250 4TH ST EDENS LLC and UNION MARKET APARTMENTS LLC (together, the "Party in Support"). The Party in Support is the owner of property located in the 1200 block of 4th Street, NE (Parcels 129/77, 129/95, and 129/96), which is adjacent to the PUD Site and was approved as a PUD in Z.C. Case No. 14-07 (the "Fourth Street PUD"). The PUD Site and the Fourth Street PUD are separated by a 48-foot wide private alley, which was the subject of discussion in Z.C. Case No. 14-07 (the "Alley"). The Zoning Commission's approval in Z.C. Case No. 14-07 was conditioned on the buildout of the Alley consistent with the designs submitted by the Party in Support. The Applicant in the subject case submitted a design for the Alley that diverges from the previously approved Alley design (*see* Sheet L1.32 of the Architectural Plans and Elevations dated December 23, 2016 (Ex. 61A)). Thus, the Party in Support submitted documents indicating its intent to ensure that the Commission's approval of the Project does not conflict with its prior approval in ZC Case No. 14-07. The Party in Support also stated that it "welcomes the addition of an exciting, dynamic, and sustainable building and use to the Union Market neighborhood." (Ex. 38, p. 4.)
13. On October 11, 2016, OP submitted a report on the application (Ex. 39). The OP report noted that the Project "represents a great opportunity for creativity between the NoMA neighborhood and the developing Florida Avenue Market area and an influx of new residential where residential does not yet exist." (Ex. 39, p. 1.) The OP report also found that

the proposed uses and density “are not inconsistent with the Future Land Use and Generalized Policy Maps, as well as with the Florida Avenue Market Small Area Plan upon a determination that the PUD results in ‘the provision of significant amenities,’ and would further objectives of the Land Use, Transportation, Housing, Economic Development, Urban Design, and Upper Northeast Area elements and their related policies.” (Ex. 39, p. 11.)

14. OP’s report also asserted that it could not yet make a recommendation on the applications, but recommended that the Commission hold a public hearing and that the Applicant submit the additional information listed in Finding of Fact (“FF”) No. \_\_\_\_ of this Order.
15. On October 11, 2016, DDOT submitted a report on the application (Ex. 40). The DDOT report stated that it had no objection to the applications, subject to a variety of conditions listed in FF No. \_\_\_\_ of this Order.
16. On October 19, 2016, the Applicant submitted responses to the OP and DDOT Reports. (Ex. 45-46.) The responses included updated architectural plans and elevations that responded to specific concerns raised by both agencies; an analysis demonstrating that the Project complies with many of the employment and economic development objectives of the Comprehensive Plan, the Ward 5 Words Study, and the Florida Avenue Market Study (“FAMS”); and an updated list of proposed public benefits and project amenities.
17. On October 20, 2016, the Applicant submitted a motion to accept the late filing of the CTR (Ex. 50), which was submitted to the record less than 30 days prior to the public hearing and thus inconsistent with the requirements of Subtitle Z §§ 401.7 and 401.8 of the 2016 Zoning Regulations.
18. The Commission convened a public hearing on October 20, 2016. At that hearing, the Commission voted to approve the Applicant’s late filing of the CTR. The Commission also accepted Sacha Rosen of R2L Architects as an expert in architecture, Jeff Barber of Gensler as an expert in architecture, and Erwin Andres of Gorove/Slade Associates as an expert in transportation planning and engineering. However, the Commission voted to postpone the hearing in order to give the Applicant additional time to continue working with OP and DDOT on their outstanding issues and concerns. The Commission rescheduled the public hearing for November 22, 2016.
19. On November 3, 2016, the Applicant submitted a request to further postpone the hearing until January 12, 2016 (Ex. 53) in order to continue working with OP and DDOT, which was approved. On November 14, 2016, notice of the postponed hearing was sent to the recipients of the original hearing notice, and notice of the revised hearing date was published in the DC Register on November 25, 2016.
20. On December 21, 2016, the Applicant filed a further revised supplemental prehearing submission (Ex. 61), which included (i) further updated architectural plans and elevations that responded to recommendations from OP’s October 11, 2016 hearing report, (Ex. 39) and additional comments from OP conveyed at subsequent meetings with the Applicant; and (ii) an email confirmation from the Zoning Administrator indicating that FAR relief was not

required for theoretical Lot C, even though the proposed FAR for Lot C was greater than the maximum permitted for a PUD in the C-3-C District, because the aggregate FAR across the PUD Site was less than the maximum permitted FAR for a PUD in the C-3-C District.

21. On January 3, 2017, OP submitted a supplemental hearing report (Ex. 64), which indicated that “OP has continued to work with the applicant on updates to their plans and can now recommend approval of the application.” (Ex. 64, p.1.) The OP report also attached a memorandum from DC Water, which indicated that the design of the proposed DC Water easement is “conceptually adequate and that final review will be conducted at the time of permitting.” (Ex. 64, pp. 2-3.) OP’s only request in its hearing report was for the Applicant to clarify the window selection for the proposed sound-dampening windows on the side of the Buildings facing the rail tracks. The Applicant provided clarification on this issue at the public hearing.
22. On January 3, 2017, DDOT submitted a supplemental hearing report (Ex. 62), which indicated that the Applicant and DDOT had coordinated closely to address comments and mitigations requested in DDOT’s original hearing report. (Ex. 40.) The DDOT report noted that the Applicant had agreed to implement a variety of transportation infrastructure design improvements, physical improvements, and transportation demand management (“TDM”) measures, with which DDOT agreed. DDOT also made the following notes and clarifications:
  - a. Cycle track design in the alley: The Applicant will need to coordinate with DDOT through the EISF process on final design of signage and pavement markings for the cycle track design. This includes best practice designs to accommodate loading and vehicle access points for Buildings C1, C-2, and D.
  - b. Off-site cycle track: The cycle track should be installed as part of Phase 1.
  - c. Capital Bikeshare station: No funding cap should be in place. The Applicant is expected to fund the installation and first year's operation expenses of a new 19-dock Capital Bikeshare station to be located within the boundaries of the PUD and in a mutually acceptable location to the Applicant and DDOT. The current cost for this proffer is approximately \$85,000-90,000 but costs are subject to change over time in response to fluctuating labor and equipment charges. The fee for the installation and first year's operating costs shall be determined at the time of issuance of a Certificate of Occupancy for the Project.
23. The January 3, 2017 DDOT report stated that DDOT had “no objections to the action on the condition that all the agreed upon elements enumerated and clarified [] are included as part of the PUD.” (Ex. 62, p. 2.) The Applicant agreed to all of DDOT’s conditions at the public hearing.
24. On January 3, 2017, DOEE submitted a hearing report (Ex. 63), which provided comments on the application. The DOEE report outlined some concerns related to the level of commitment to sustainability, the design and configuration of the proposed plaza, streetscape and public space, and the schematic design for GAR and stormwater

management. The Applicant addressed these issues at the public hearing and in its post-hearing submission through a letter to DOEE responding to its concerns. (Ex. 72 and 72C.)

25. The Commission convened the public hearing on January 12, 2016, which was concluded the same evening. At the hearing, the Applicant presented five witnesses in support of the applications: Graham Tyrrell on behalf of the Applicant; Sacha Rosen of R2L Architects, architect for the Project; Jeff Barber of Gensler, architect for Building C1; Erwin Andres of Gorove/Slade Associates, transportation consultant for the Project, and Don Hoover of Oculus, landscape architect for the Project. Based upon their professional experience and qualifications, the Commission reasserted the qualifications of Mr. Rosen and Mr. Barber as experts in architecture and Mr. Andres as an expert in transportation planning and engineering.
26. At the public hearing, the Applicant submitted a copy of its PowerPoint presentation, and photographs of the proposed building materials. (Ex. 67A1 and 68.) The Commission also reasserted approval of the Applicant's request to accept the CTR less than 30 days prior to the public hearing.
27. Matthew Jesick testified on behalf of OP at the public hearing. Jonathan Rodgers testified on behalf of DDOT at the public hearing.
28. The parties to the case were the Applicant, ANC 5D, and the Party in Support.
29. The record was closed at the conclusion of the hearing except to receive additional submissions from the Applicant and responses thereto by OP, DDOT, and the parties.
30. At the close of the public hearing, the Commission took proposed action to approve the Applicant by a vote of 5-0-0. The proposed action was referred to the National Capital Planning Commission ("NCPC") on \_\_\_\_\_, pursuant to § 492 of the Home Rule Act. The Executive Director of NCPC, by delegated action dated \_\_\_\_\_, found that \_\_\_\_\_.
31. On January 26, 2017, the Applicant filed a post-hearing submission (Ex. 72), which provided the information requested by the Commission at the public hearing. The post-hearing submission included the following materials: (i) updated architectural plan and elevation sheets that clarified certain aspects of the Project; (ii) a chart indicating the value of the proposed public benefits and project amenities; (iii) a letter to DOEE responding to the DOEE report on the application; (iv) worksheets showing the proposed affordable housing contribution for the Project; and (v) additional analysis regarding the Project's compliance with the Comprehensive Plan.
32. At the public meeting of February 27, 2017, the Commission reviewed the additional materials submitted by the Applicant and took final action to approve the applications.

### **The PUD Site and Surrounding Area**

33. The PUD Site is located at 300, 325, and 350 Morse Street, NE (Square 3587, Lots 805, 814, and 817) and has a land area of approximately 213,044 square feet. The PUD Site is bounded

by New York Avenue, NE to the north, 4th Street, NE to the northeast, Morse Street, NE to the southeast, Florida Avenue to the southwest, and the Amtrak and Metrorail lines to the west. The PUD Site is presently improved with one-story industrial buildings used for wholesale distribution.

34. The PUD Site is within the Florida Avenue Market district, which has historically been the District's center for wholesale and specialized retail food distribution. The newly renovated market at the Union Market building, which is located to the east of the PUD Site, is a year-round indoor market of local artisans and vendors, including local farmers, bakers, and butchers. The Florida Avenue Market district is located at the strategic intersection of New York and Florida Avenues, NE and is served by the NoMA-Gallaudet Metrorail station, and is situated between Gallaudet University, NoMa, and H Street, NE.
35. The PUD Site is also located at the intersection of several District neighborhoods, with Ivy City to the east; NoMa to the southwest, Old City to the south, and Eckington to the northwest. The area immediately surrounding the PUD Site has been the location of a variety of recently-approved mixed-use developments, many of which are being developed as PUDs in the C-3-C District. The area south of the PUD Site and the Florida Avenue Market is the NoMa Business Improvement District ("BID").

### **Existing and Proposed Zoning**

36. The PUD Site is currently zoned C-M-1. The C-M 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 District prohibits residential development except as otherwise specifically provided. 11 DCMR § 800.4. As a matter-of-right, property in the C-M-1 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 District is 40 feet and three stories. 11 DCMR § 840.1.
37. The Applicant proposes to rezone the PUD Site to C-3-C in connection with this application. The C-3-C District permits medium-high density development, including office, retail, housing, and mixed-use development. 11 DCMR § 740.8. The C-3-C District permits, as a matter-of-right, a maximum building height of 90 feet with no limit on the number of stories (11 DCMR § 770.1), a maximum permitted density of 6.5 FAR for any permitted use, but a density of 7.8 FAR for projects subject to IZ (11 DCMR §§ 771.2 and 2604.1). The maximum percentage of lot occupancy in the C-3-C District for all uses is 100%. 11 DCMR § 772.1. Rear yards in the C-3-C District must have a minimum depth of 2.5 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 not required in the C-3-C 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.

38. The parking and loading requirements for buildings are based upon the proposed use of the property. For example, an apartment house or multiple dwelling in the C-3-C 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 are required to provide 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.
39. Consistent with the C-3-C development parameters, the Applicant will develop the PUD Site with a mix of residential, retail, office, and potentially hotel uses. A tabulation of the PUD's development data is included on Sheets 11-19 of the Architectural Plans and Elevations dated December 23, 2016, and included in the record at Ex. 61A, as supplemented by the revised sheets included in the record at Ex. 72A (the "Plans").

### **Description of the PUD Project**

40. The overall Project will be developed with four new mixed-use buildings. The Project will be constructed in two phases, with Buildings A1, B, and C1 constructed in Phase I (the consolidated PUD), and Buildings A2, C2, and D constructed in Phase II (the first-stage PUD). The Applicant will create a new theoretical lot for each Building.
41. Upon completion of all Buildings, the Project will have an aggregate floor area ratio ("FAR") of approximately 7.1 FAR. Approximately 1,091,201 square feet of total gross floor area will be devoted to residential use, approximately 52,968 square feet of total gross floor area will be devoted to retail use, and approximately 217,558 square feet of total gross floor area will be devoted to office use. If Building D is occupied with the optional hotel use, approximately 121,484 square feet of gross floor area will be devoted to hotel use. Approximately 105,469 square feet of gross floor area will be devoted to parking and loading support spaces for the Project. Building heights will range from 78 feet to 130 feet. The Project will include a total of 682 off-street parking spaces.
42. Pursuant to 11 DCMR § 2403.2, the Project is required to dedicate 8% of the residential gross floor area IZ units (approximately 87,296 square feet of gross floor area), set aside for households earning up to 80% of the AMI. The Applicant proposes to exceed that requirement by dedicating 11% of the residential gross floor area (approximately 120,036 square feet of gross floor area) as IZ units, with 50% set aside for households earning up to 50% of the AMI and 50% set aside for households earning up to 80% of the AMI.
43. Buildings A1 and B will achieve LEED Gold certification under the United States Green Business Council ("USGBC") LEED for New Construction v2009 rating standards, Building C1 will achieve LEED Gold certification under the USGBC LEED for Core and Shell v.2009 rating standards, and each Building within the First-stage PUD will, in its Second-stage PUD application, achieve the total number of LEED points consistent with the USGBC LEED Gold for New Construction v2009 rating standards. The Project will also incorporate a number of sustainable and environmentally-friendly elements, such as energy and water efficient systems, construction waste management techniques, landscaping and

street tree planting, and significant bicycle parking, bicycle lanes, and amenities. The Project will also replace several acres of concrete pavement with tree-lined streets, bio-filtration areas, pervious surfaces, and green spaces, which will significantly improve the area's stormwater treatment and management. Moreover, the Project will be located in an infill, transit-rich setting in close walking distance to public transportation facilities and multiple types of services, amenities, and entertainment options.

### **Consolidated PUD**

44. The Applicant proposes to develop Buildings A1, B, and C1 as a consolidated PUD. This consolidated portion of the Project includes approximately 508,610 square feet of residential uses, approximately 36,058 square feet of retail uses, and approximately 217,558 square feet of office uses.
45. Building A1. Building A1 will contain approximately 515,038 square feet of gross floor area and will rise to a maximum height of 130 feet. Building A1 is the centerpiece of the Project and will include approximately 453 residential units, extensive ground floor retail, three-levels of parking, and significant residential amenity spaces. Building A1 consists of an 11-story high-rise component and a six-story mid-rise component. Located at the south end, the taller portion of the building fronts visually on a proposed new public plaza (the "Plaza"), which is integrated into the public park to be constructed as part of the approved PUD located at 320 Florida Avenue, NE, which is immediately to the south of the PUD Site (*see* Z.C. Order No. 15-01) (the "Florida Avenue Park"). The configuration of Building A1 and the Plaza maximizes the solar exposure of the outdoor space and allows the iconic building to serve as a visual entry marker for the neighborhood. The unique curvilinear shape of the 11-story tower will be highly visible for pedestrians walking from the Metro along either Florida Avenue or 3rd Street to the south; for motorists on Florida and New York Avenues; and for riders of both Metro and Amtrak trains. The design and massing of Building A1 will be unique in the city, accentuating the special and dynamic character of this redeveloping neighborhood.
46. Connected to, but architecturally distinct from the high-rise tower, will be the six-story mid-rise structure that extends north along 3rd Street. The design of this portion of Building A1 will recall the more industrial/commercial character of the warehouse structures and market halls that characterized the neighborhood in the past. Various design elements and creative use of materials will be implemented to reflect the neighborhood's history, such as a long, continuous retail canopy along 3rd Street and a double-height retail floor level, which are inspired by the deep canopies covering the existing truck loading docks on the PUD Site and on nearby properties. This canopy will also serve as a balcony for the residential units above, providing a unique feature while protecting the units from the hub-bub of the street.
47. Contrasting with the high-rise component, the façade of the mid-rise component will have a strong horizontal design, which is also consistent with the former character of the block and the present character of this portion of the market neighborhood located two blocks to the east. The use of brick for the lower floors and composite metal panels for the upper floors accentuates this horizontality. The design of the ground floor façade visually and physically

connects the tower and midrise portions of Building A1, and also creates a consistent framework that will accommodate a varied mix of retail store frontages. All of these features, in concert with the street trees and roadway improvements of 3rd Street, will create a strong pedestrian-friendly streetscape and public gathering space. Building A1's residential entrances, parking and loading, and utility infrastructure have been located to not interrupt the continuity, flexibility, and viability of the retail space.

48. Most resident amenity spaces for Building A1 will be located in the high-rise portion of the Building. The main residential lobby, mail room, bicycle lobby, bicycle valet facility, leasing office, and lounge will be located primarily on the ground and mezzanine levels. The second floor will provide a fitness center and workout areas, with an outdoor terrace overlooking the Plaza and a visual connection to an interior courtyard wrapped by the mid-rise structure. A set of terraced seating below the south tower and fronting the Plaza will create a sunny public amphitheater with views towards the Capitol and Washington Monument. The roof of Building A1's high-rise component will provide additional amenity spaces including a pool.
49. **Building B.** Building B will contain approximately 97,530 square feet of gross floor area and will rise to a maximum height of 78 feet. Building B is a six-story structure with approximately 105 residential units above ground floor retail. It is located at the southern end of the PUD Site, with frontage on Morse Street, at the intersection of Morse and 3rd Streets, and extends west of the intersection to engage and define the Plaza. Building B's predominantly orthogonal form, fenestration, and varied materials palette have been carefully coordinated with the curvilinear and taller façade of Building A1 to create a unique, three-dimensional public space, and its form includes a bridge element that anchors the south end of 3<sup>rd</sup> Street to the rest of the PUD Site. The main residential entry is located on Morse Street, and loading is located at the far east end, allowing a continuous retail space to wrap around the west elevation to activate the Plaza.
50. Building B will include minimal amenity spaces, as the Applicant intends for the amenities within Building A to be shared with residents of Building B. The proposed shared program will foster a close residential community and constant movement across the Plaza. The open stair at the Plaza is intended to be an inviting gesture for residents of Building B to easily access the 2nd floor fitness center in Building A, as well as to provide access for visitors to the leasing center.
51. **Building C1.** Building C1 will contain approximately 228,121 square feet of gross floor area and will rise to a maximum height of 130 feet. Building C1 is located on the southeast portion of the PUD Site and will be developed as a high-rise office building with significant ground floor retail and below-grade parking. Building C1 will be bounded by 3rd Street to the west, Morse Street to the south, the Neal Place extension to the north, and the Alley to the east.
52. Building C1 is designed as a modern structure with a primary and secondary grid as a frame for the floor-to-ceiling window elements. The building design and materials consciously differ from Buildings A1 and B in order to create an eclectic character for the neighborhood. Building C1's massing is consistent with traditional Washington urban planning, clearly defining the public realm of Morse and 3rd Streets. The main entrance lobby is located in the

center of the west facade, flanked on both sides by retail space, which together activate the street and engage the Plaza diagonally across the intersection. The ground floor is predominantly glass both at the office lobby as well as on the remainder of the Morse and 3<sup>rd</sup> Street facades, which are designed as high-quality retail shell spaces with high ceilings.

53. Building C1 will include extensive exterior terrace areas, amenities, and flexible/shared work space, which will differentiate Building C1 from conventional office buildings. Building C1 provides unique spatial configurations, fantastic views, and convenient access to outdoor spaces to gather, relax, and work. Building C1 will also include a green roof to add to the environmental performance of the structure.

### **Zoning Flexibility**

54. The Applicant requested the following areas of flexibility from the Zoning Regulations:

55. Flexibility from the Loading Requirements. The Project requires flexibility from the loading requirements. Pursuant to 11 DCMR § 2201.1, for an apartment house with 50 or more dwelling units, one loading berth at 55 feet deep is required. However, the Applicant proposes to provide 30 foot loading berths for each of the apartment houses within the Project, with the exception of Building B, which will not have any residential loading facilities. All buildings in the Project will provide the required retail loading facilities, except for Building B, which will not provide any retail loading, and Building C1, which will not provide the one required retail service/delivery space. For office use, Building C1 requires three loading berths, three loading platforms, and one service/delivery space. However, the Applicant is providing one berth, one platform, and no service/delivery space for Building C1's office component. In the event that Building D is developed with a hotel use, it will not provide the one required service/delivery space. If Building D is developed with office use, it will not provide one of the required loading berths, one of the required loading platforms, or the one required service/delivery spaces.

56. The Commission finds that the proposed loading facilities are appropriate for the proposed mix of uses within the Project. Given the nature and size of the residential units, 55-foot berths are not necessary for the apartment houses, since the loading berths will primarily be used for move-ins and move-outs, which can be accommodated with 30-foot trucks. The Commission also finds that separate loading facilities are not needed in Building B, since it can reasonably share the residential and retail loading facilities within Building A. Shared loading 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 projects. Moreover, additional on-street loading on Morse Street near the Plaza will be provided, such that internal loading is not necessary for Building B. For Building C1, the Commission finds that the retail and office loading facilities as proposed will adequately accommodate these uses, and Building C1 will also be able to share loading space with Building C2, which will provide a variety of loading facilities for its proposed retail and residential uses. For Building D, the potential for hotel or office use with fewer loading facilities than required will similarly not result in any adverse impacts due to the ability to share loading access across the Project. Therefore, the Commission grants the requested

loading flexibility and finds that the loading as proposed is appropriate for the mix of uses within the Project.

57. Flexibility from the Parking Requirements. The Applicant requests flexibility to not provide any on-site parking spaces for Building B, and to instead locate Building B's required parking spaces within Building A. Pursuant to 11 DCMR § 2101.1, Building B requires 34 parking spaces, and Building A requires 183 parking spaces. However, Building A's parking garage will provide a total of 371 parking spaces, which is significantly more than the total required parking spaces for Buildings A and B combined. Given the close proximity of Buildings A and B, users of Building B will not be inconvenienced by the off-site parking location. Moreover, eliminating parking in Building B will reduce curb cuts and any potential pedestrian/vehicle conflicts. Therefore, the Commission finds that providing all of Building B's parking spaces within Building A is appropriate in this case and grants the requested flexibility. The Commission noted that given the "surplus" and the "adjacency of Building A to Building B," OP also supported this area of flexibility. (Ex. 39, p. 15.)
58. Flexibility from the Compact Parking Space Requirements. Pursuant to 11 DCMR § 2115.2, a maximum of 54 compact parking spaces are permitted in the proposed parking garage for Building C1. The Applicant proposes to provide 84 compact parking spaces in Building C1 in order to maximize efficiency for the garage. Given that the Project provides more parking spaces than are required by the Zoning Regulations, the Commission finds that providing a greater number of compact parking spaces than is permitted as a matter-of-right for Building C1 will not have any adverse impacts. The Commission also credits OP's support for this requested flexibility. (*See* Ex. 39, p. 15.)
59. Flexibility from the Rear Yard Depth Requirements. The Applicant requests flexibility from the rear yard depth requirements for Building A. Pursuant to 11 DCMR § 774, Building A is required to have a rear yard depth of 27 feet, 1 inch. However, Building A has an irregularly-shaped rear yard with an average depth of 18 feet, 6 inches. The overall footprint of Building A is based on a typical width for a double-loaded residential building with an interior courtyard that is sized appropriately for the building height. The Applicant cannot increase the rear yard depth without disrupting these proportions. However, based on the location of Building A's rear yard adjacent to the rail tracks, the Commission finds that the Building will have adequate light and air and thus the reduced rear yard depth will not have any adverse impacts.
60. The Applicant requests flexibility to provide a 24-foot rear yard for Building C, whereas a 27 foot, 1 inch rear yard is required. The proposed rear yard depth is intended to allow for an adequate width for 3rd Street, including new sidewalks and landscaping. If the width of 3rd Street was reduced in order to provide a code-compliant rear yard for Building C, it would reduce the amount of public space reserved for pedestrians, and interfere with the public realm design in this location. Moreover, the rear yard of Building C abuts the adjacent Alley, which provides additional space and thus ensures adequate light and air for Building C's occupants. Therefore, the Commission finds that rear yard relief is appropriate for Building C.
61. The Applicant requests flexibility to not provide any rear yard for Building D, whereas a rear

yard of 27 feet, 1 inch is required. If Building D had a rear yard it would be adjacent to a portion of the District-owned land on the PUD Site adjacent to the rail tracks, which will not be developed. Providing a rear yard in this location would create an unnecessary gap between the rear of Building D and the District-owned land. Moreover, the District land will provide adequate open space, light, and air for building occupants. Thus, the Commission finds that the lack of a rear yard in this location will not result in any adverse impacts to the public good or the zone plan.

62. Moreover, the Commission notes that OP supported the flexibility from the rear yard depth requirements for Buildings A, C, and D, noting that “[g]iven that there are features that provide separation from the affected buildings and adjacent structures, be it an alley or railroad tracks, the intent of the rear yard has been met.” (Ex. 39, p. 14.)
63. Flexibility from the Open Court Width Requirements. The Applicant requests flexibility to provide an open court width of 24 feet for Building B, whereas a width of 26 feet is required. The open court for Building B was created to add architectural variation to the building façade and create a more dynamic building program. At only two feet short of the minimum requirement, the Commission finds that flexibility from the open court width requirements for Building B will not result in any adverse impacts.
64. The Applicant proposes to provide an open court width of 34 feet, 8 inches for Building C, whereas an open court width of 36 feet, 4 inches is required. This open court is located between Buildings C1 and C2 and divides both portions of the Building into different uses. At less than two feet short of the minimum requirement, the Commission finds that the proposed open court will provide adequate light, air, and ventilation, and an adequate separation of window lines, for both portions of Building C, and therefore grants the requested flexibility. Moreover, the Commission credits OP’s support for this requested flexibility given that the “flexibility is minimal.” (Ex. 39, p. 14.)
65. Flexibility from the Building Lot Control Requirements. Pursuant to 11 DCMR § 2517.3, open space is required in front of building entrances that is equivalent to the required rear yard depth. In this case, the Applicant proposes to provide no open space in the front of building entrances on the theoretical lots for each of Buildings A, B, C and D. However, given the extensive amount of open space proposed for the PUD Site, including the Plaza, the Florida Avenue Park, the Neal Place Park, street and alley right-of-ways, sidewalks, and landscaping, the Commission finds that additional open space at the front of each theoretical lot is not required, and that flexibility is appropriate. More specifically, the Commission credits OP’s finding that significant areas of open space are appropriately provided elsewhere in the Project “in areas where the space can be used more effectively.” (Ex. 39, p. 15.) For example, “the plaza provides a significant route to Florida Avenue and is a gateway to the Market area as identified in the Small Area Plan, and open space has been provided at the termination of Neal Place, which will provide interesting temporary uses. *Id.* As a result, OP has no objection to the requested flexibility.” The Commission therefore grants flexibility from the building lot control requirements of 11 DCMR § 2517.3, since the Project otherwise provides a significant amount of open space in more effective locations.

## **Development Flexibility**

66. The Applicant also requests flexibility in the following additional areas:

- a. To be able to provide a range in the number of residential units of plus or minus 10%;
- b. To vary the number, location, and arrangement of parking spaces, provided that the total number is not reduced below the minimum number of parking spaces required by the Zoning Regulations;
- c. To develop Building A2 with hotel use above the proposed ground floor retail and to develop Building D with hotel or office use above the proposed ground floor retail, should the market demand be more appropriately satisfied with hotel and/or office use;
- d. 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;
- e. To vary the sustainable design features of the Project, provided (i) the total number of LEED points achievable for Buildings A1 and B are not below LEED Gold under the USGBC's LEED for New Construction v2009 rating standards, (ii) the total number of LEED points achievable for Building C1 is not below LEED Gold under the USGBC's LEED for Core and Shell v2009 rating standards, and (iii) the total number of LEED points achievable for each Building within the First-stage PUD is not below the total number of LEED points consistent with the USGBC LEED Gold for New Construction v2009 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; and 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 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. To use either tonal masonry or warm-tone terracotta cementitious panels for Building C1's exterior building material, as shown on Sheet 80 of Ex. 72A.
- h. In the retail and service areas, flexibility to vary the location and design of the ground floor components of the Project 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 or service use and to accommodate any specific tenant requirements; and to vary the size of the retail area; and

- i. To vary the features, means and methods of achieving the code-required Green Area Ratio (“GAR”) of 0.20.

### **Project Benefits and Amenities**

67. **Urban Design, Architecture, and Open Space (11 DCMR § 2403.9(a))**. The Project includes six new buildings and open space improvements that incorporate high-quality design that will have a positive impact on the visual and aesthetic character of the neighborhood, will respond to the PUD Site’s location and historical context, and will integrate a variety of uses that will directly benefit the community. The Project includes significant new streetscape features, including new streets, sidewalks, landscaping and trees, bicycle racks, benches, lighting, and other amenities that will encourage pedestrian activity and greatly improve the existing streetscape which presently caters exclusively to vehicles and provides unsafe sidewalk conditions. The streets throughout the PUD Site will be lined continuously on both sides with neighborhood-serving retail, and the Buildings will be interspersed with a variety of parks, plazas, seating, and open gathering spaces. The Project’s overall streetscape plan will contribute to the appearance of the proposed Buildings and their appeal to residents and visitors by creating an animated sense of place that connects retail activity with pedestrians on the street and the residents above. In addition, the streetscape has been designed to utilize many of the concepts that are proposed in the Union Market Streetscape Guidelines, which are being developed by DDOT and OP.
68. The Buildings themselves will have varying heights, materials, and a mix of uses. Residential units will be offered at a wide range of price points available through diverse offerings. A variety of commercial spaces will be provided to support diverse businesses and create a well-amenitized community. The PUD is not being developed to the maximum permitted density in order to create human-scaled public open spaces and ensure good light and air between the Buildings and in the public open spaces.
69. With respect to site planning and efficient and economical land utilization, the Applicant's proposal to replace the existing one-story wholesale buildings and surface parking with new mixed-use, mixed-income, high-density buildings constitutes a significant urban design benefit. This is particularly significant given the PUD Site’s location. The Project will complete the transformation of the western side of the Florida Avenue Market district, together with numerous new and exciting development projects in close proximity, thereby fulfilling the goals of the Florida Avenue Market Study.
70. As shown on Sheets 20-21, L1.27 and L1.32 of the Plans, Buildings C and D on the PUD Site are separated from the PUD approved in Z.C. Order No. 14-07, as amended (the “Fourth Street PUD”) by a 48-foot wide alley (the “Alley”). Both the Applicant and the applicants in the Fourth Street PUD have proposed improvements to portions of the Alley and have developed mutually-agreeable conditions related to the timing for development of the Alley improvements. The Alley, as measured from the Fourth Street PUD, labeled from east to west, is comprised of a 5 foot planting area; 24 foot drive lane; 1 foot rolled curb; 10 foot bike lane, 1 foot paving band; and 7 foot circulation zone.
71. **Housing and Affordable Housing (11 DCMR § 2403.9(f))** – The Project will create new

housing and affordable housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative. The overall project will provide a total of approximately 1,091,201 square feet of new residential gross floor area (approximately 1,103 units). Under the Zoning Regulations, the Project is required to dedicate 8% of the residential gross floor area to affordable housing (approximately 87,296 square feet), all of which may be set aside for households earning up to 80% of the AMI. The Project will provide significantly more affordable housing and at a steeper subsidy by dedicating 11% of the residential gross floor area (approximately 120,036 square feet) to affordable units at 50% and 80% of the AMI as follows:

- a. Approximately 5.5% of the residential gross floor area in Buildings A1, A2, B, C2 and D will be set aside for households earning up to 50% of the AMI, as shown on the Affordable Housing Chart; and
- b. Approximately 5.5% of the residential gross floor area in Buildings A1, A2, B, C2 and D will be set aside for households earning up to 80% of the AMI, as shown on the Affordable Housing Chart below.

72. If Building A2 is developed as for-sale housing, then the Applicant will reduce the total affordable housing proposed for Building A2 from 11% to 8% of Building A2's residential gross floor area, all of which will be dedicated to households earning up to 80% of the AMI, and will transfer an additional 13,713 square feet of affordable housing dedicated to households earning up to 50% of the AMI in Buildings A1 and B to result in the following allocations:

- a. Building A1:
  - i. 30,100 square feet of Building A1's residential gross floor area will be dedicated to households earning up to 50% of the AMI; and
  - ii. 17,011 square feet of Building A1's residential gross floor area will be dedicated to households earning up to 80% of the AMI.
- b. Building B:
  - i. 11,587 square feet of Building B's residential gross floor area will be dedicated to households earning up to 50% of the AMI; and
  - ii. 4,731 square feet of Building B's residential gross floor area will be dedicated to households earning up to 80% of the AMI.

The affordable units will include a range of unit types, from studios to three-bedrooms.

73. Affordable Housing Chart <sup>5</sup>

	<b>Building A1</b>	<b>Building A2<sup>6</sup></b>	<b>Building B</b>	<b>Building C2</b>	<b>Building D (resid. option)</b>	<b>Affordable Control Period</b>	<b>Affordable Unit Type</b>	<b>Total</b>
<b>Total</b>	422,605 sf GFA (453 units) (100%)	249,323 sf GFA (198 units) (100%)	86,005 sf GFA (105 units) (100%)	211,784 sf GFA (232 units) (100%)	121,484 sf GFA (115 units) (100%)	NA	NA	1,091,201 sf GFA (1,103 units) (100%)
<b>Market Rate</b>	376,117 sf GFA (89%)	221,897 sf GFA (89%)	76,543 sf GFA (89%)	188,488 sf GFA (89%)	108,120 sf GFA (89%)	NA	NA	971,165 sf GFA (977 units)
<b>50% AMI</b>	23,244 sf GFA (26 units) (5.5%)	13,713 sf GFA (12 units) (5.5%)	4,731 sf GFA (5 units) (5.5%)	11,648 sf GFA (13 units) (5.5%)	6,682 sf GFA (6 units) (5.5%)	Life of the Project	Rental (optional for-sale in Building A2)	60,018 sf GFA (62 units)
<b>80% AMI</b>	23,244 sf GFA (26 units) (5.5%)	13,713 sf GFA (12 units) (5.5%)	4,731 sf GFA (5 units) (5.5%)	11,648 sf GFA (13 units) (5.5%)	6,682 sf GFA (6 units) (5.5%)	Life of the Project	Rental (optional for-sale in Building A2)	60,018 sf GFA (62 units)

74. Environmental Benefits (11 DCMR § 2403.9(h)) – The Applicant will ensure environmental sustainability through the implementation of a variety of design features, materials, and systems, which will further enhance the already sustainable nature of the PUD Site’s mixed-use, transit-rich location and minimize impacts on the environment. The Project provides a

<sup>6</sup> If Building A2 is developed as for-sale housing, then the proffered affordable housing will be redistributed as follows: (i) 19,946 square feet of Building A2’s residential gross floor area will be dedicated to households earning up to 80% of the AMI; (ii) a total of 30,100 square feet of Building A1’s residential gross floor area will be dedicated to households earning up to 50% of the AMI, and a total of 17,011 square feet of Building A1’s residential gross floor area will be dedicated to households earning up to 80% of the AMI; and (iii) a total of 11,587 square feet of Building B’s residential gross floor area will be dedicated to households earning up to 50% of the AMI, and a total of 4,731 square feet of Building B’s residential gross floor area will be dedicated to households earning up to 80% of the AMI. If Building A2 is to be developed as for-sale housing and Buildings A1 and B are constructed prior to Building A2, then the condition enforcing this commitment will be based on the timing of issuance of the certificate of occupancy for Building A1 and Building B, respectively (*see* Condition No. 2).

host of environmental benefits consistent with the recommendations of 11 DCMR § 2403.9(h), which include street tree planting, landscaping, energy and water efficient systems, construction waste management techniques, methods to reduce stormwater runoff, and ample bicycle parking. Moreover, Buildings A1 and B will achieve LEED Gold certification under the USGBC LEED for New Construction v2009 rating standards, Building C1 will achieve LEED Gold certification under the USGBC LEED for Core and Shell v2009 rating standards, and each Building within the First-stage PUD will, in its Second-stage PUD application, achieve the total number of LEED points consistent with the USGBC LEED Gold for New Construction v2009 rating standards.

75. Employment Benefits (11 DCMR § 403.9(j)). The Applicant will submit to the Department of Consumer and Regulatory Affairs (“DCRA”) a First Source Employment Agreement for each Building, consistent with the First Source Employment Agreement Act of 1984 and the Apprenticeship Requirements Amendment Act of 2004.
76. Transportation Benefits (11 DCMR §2403.9(c)) – The Project includes a number of elements designed to promote effective and safe vehicular and pedestrian movement, transportation demand management (“TDM”), and connections to public transportation services. The Project incorporates significant improvements to the streetscape surrounding and within the PUD Site that will improve the transportation network in the Florida Avenue Market district and establish a street grid within the PUD Site in lieu of the chaotic paved areas that currently exist.
77. The Applicant will reconnect the street grid by extending Morse Street, adding a new section of 3rd Street, and connecting Neal Place into 3rd Street, thus creating a two-way vehicular circulation route that connects Morse Street to 3rd Street to Neal Place. The Applicant will also open and improve the existing Alley running between Building C and the Fourth Street PUD, creating a secondary circulation route around the PUD Site and completing the grid. The Applicant will improve Morse Street, 3rd Street, Neal Place, and the Alley with new paving, curbs, gutters, sidewalks, landscaping, lighting, and other pedestrian amenities, all in accordance with DDOT standards, and will provide street-activating and community-serving retail. All three streets will be private but will utilize 10’ x 16’ scored concrete as recommended in the proposed Union Market Streetscape Guidelines, so as to be consistent with the other streets in the market area. The Alley will be finished with permeable pavers to match the balance of the Alley being installed as part of Fourth Street PUD.
78. To promote pedestrian travel, the Applicant will undertake significant improvements to the streetscape surrounding and within the PUD Site. All sidewalks and elements in public space will be built to DDOT standards, and many improvements will include elements of the Union Market Streetscape Guidelines. Sidewalks will be over-sized to allow for café seating, outdoor vending and pedestrian circulation, and to further support new businesses. Building canopies along Morse and 3<sup>rd</sup> Streets will provide extra shade and a visual connection to the historic market warehouse buildings to the east of the PUD Site. In total, the Project will provide over two-thirds of an acre of pedestrian streetscape improvements along the three street sections.

79. To promote bicycle travel, the Applicant will provide secure, indoor bicycle parking within each Building, as well as numerous exterior bicycle racks in appropriate locations on the PUD Site adjacent to the Buildings. The Applicant will create a dedicated bicycle lane in the Alley that will ultimately provide a bicycle connection to the proposed New York Avenue Rails to Trails bicycle path. The Applicant will further install a bicycle lane from the Alley to 4<sup>th</sup> Street, NE, along the north side of Morse Street, NE.
80. In order to further improve vehicular circulation around the PUD Site and surrounding area, the Applicant will install a new traffic signal at the intersection of 4th and Morse Streets, NE, at an approximate cost of \$250,000, and will install traffic management cameras at the intersections of New York Avenue and 4th Street and Florida Avenue and 5th Street for integration into the DDOT traffic management program, at an approximate cost of \$12,000.
81. The Applicant will pay DDOT for the installation and first year's operation expenses of a new Capital Bikeshare station to be located on Morse Street, south of Building C1.
82. The Applicant will further dedicate two curbside parking spaces for carsharing services within the PUD Site. If no carshare providers are willing to operate in those spaces, the dedicated spaces may be returned to the general on-street parking supply.
83. Each Building owner will designate a Transportation Management Coordinator responsible for organizing and marketing the TDM plan and will act as a point of contact with DDOT for the relevant Building;
84. In addition, each Building owner will implement the following TDM strategies:
  - a. Provide TDM materials to new residents as part of the Residential Welcome Package;
  - b. Price all on-site vehicle parking at market rate at minimum, defined as the average cost for parking within a 0.25 mile radius of the PUD Site;
  - c. Unbundle the cost of residential parking from the cost of lease or purchase of residential units for Buildings A, B, C2, and D;
  - d. Exceed the zoning requirements to provide bicycle parking/storage facilities at each of the Buildings, as shown on Sheets 37-39, 44, 69, and 82 of the Plans, which include long term (secure, interior) and short-term (exterior) spaces;
  - e. Provide a total of four bicycle repair stations, located within the bicycle storage rooms in Buildings A1, B, and C1, and adjacent to the public plaza, as shown on Sheets 37-39, 44, 69, and 82 of the Plans;
  - f. Install a transit information screen in each of the residential and office lobbies, containing information related to local transportation alternatives;

- g. Dedicate \$200.00 per residential unit within each phase of development in alternative transportation incentives that can be used for an annual Capital Bikeshare membership, an annual carshare membership, a carshare driving credit, or for bicycle repair/maintenance;
- h. Provide two cargo bicycles within each residential Building; and
- i. Provide three rolling shopping carts within each residential Building.

85. Uses of Special Value to the Neighborhood and the District of Columbia as a Whole (11 DCMR § 2403.9(I)) – The Applicant will develop three public park/plaza spaces within the PUD Site as follows:

a. Florida Avenue Park.

- i. As shown on Sheets 20 and L1.01-L1.05 of the Plans, the Applicant will extend the park space approved as part of Z.C. Case No. 15-01 for The Highline at Union Market into the PUD Site. The additional park area has been designed and fully coordinated with the developer of the Highline (the “Highline Developer”) to create a seamless park experience and community gathering area. The portion of the Florida Avenue Park on the PUD Site will feature a continuation of terraced greenspace, public seating areas, and two pathways that provide handicapped, bike, and stroller accessibility. It will also feature a biofiltration garden and extensive landscaping that will buffer the rail tracks to the west, and wayfinding elements to help orient pedestrians entering the Florida Avenue Market area. The combined park area will encompass approximately one-third of an acre of land that will serve as a meaningful greenspace and gateway into the Florida Avenue Market area from Florida Avenue and the NoMa Metrorail Station. Pursuant to Condition No \_\_ of this Order, the Applicant must complete approximately 75% of the construction of the portion of the Florida Avenue Park located on the PUD Site prior to the issuance of a certificate of occupancy for the first Building completed within the Consolidated PUD, with the remainder to be completed within the next 120 days.
- ii. The Applicant will also place \$150,000 into an escrow fund for the benefit of the Highline Developer, to be used in connection with improvements to the Florida Avenue Park to enable the provision of handicapped accessible pathways.
- iii. The Applicant will establish a Property Management Company that will maintain the Florida Avenue Park in partnership with the Highline Developer.

b. The Plaza.

- i. As shown on Sheets 20, L1.01-L1.19 of the Plans, the Plaza will occupy approximately one-third of an acre of land and extend from Florida Avenue Park to the corner of Morse and 3rd Streets, NE. The Plaza will complete the critical pedestrian connection from NoMa and Old City into the Florida Avenue Market area, and will be a preeminent gathering space or commons for neighborhood residents, office workers, students, shoppers and visitors alike. Together with the Florida Avenue Park (a total 0.6 acre area), the Plaza will afford pedestrians a series of experiences that are enticing, activated, and informative to first-time visitors. Pursuant to Condition No \_\_ of this Order, the Applicant must complete approximately 75% of the construction of the Plaza prior to the issuance of a certificate of occupancy for the first Building completed within the Consolidated PUD, with the remainder to be completed within the next 120 days.
- ii. The central feature of the Plaza is the Gantry (the “Gantry”), a metal-framed structure that represents a de-constructed form of the nearby rail gantries. The Gantry will provide a third side to the Plaza along the rail tracks, creating a window for passengers on passing trains. The Gantry will also serve as a neighborhood identifier and a backdrop for outdoor events, such as musical performances, movies, and festivals. Most significantly, the Gantry will be interactive with a series of jets that will emit fog-like water vapor at regular intervals – recalling the era of steam railcars at the PUD Site. Specialty stone paving will extend through the Gantry allowing people, especially children, to engage with this unique water feature. A series of wooden benches will frame the stone paving, providing parents and others a place to congregate that is outside of the primary pedestrian traffic area. The seating in this area will be positioned using deaf-space design principles that accommodate people speaking sign language.
- iii. Located across the Plaza from the Gantry is a set of terraced steps (“the Steps”), which will provide additional seating to serve as another communal gathering space for everyday users, as well as a viewing area for special events. The Steps utilize a similar design to the wood bench seats at the Gantry, and again utilize deaf-space principles through their orientation. The Steps further frame the southern face of the Building A1 with landscaping connecting a café terrace and covered outdoor terrace that is an extension of the Building A1 residential courtyard.
- iv. At the bottom of the Steps is the entrance to a retail space and resident bike parking on the B01/Plaza Level of Building A1. The A1 Building Owner will make this area available to accommodate additional short-term, public bicycle parking through either (i) designated publicly accessible bicycle parking spaces; or (ii) a bicycle valet operated by the Property Management Company, retail tenant, or BID on weekends and during special events. In combination, these elements will create a highly activated gathering space

that has views of the Gantry, Florida Avenue Park, and beyond toward NoMa and downtown DC.

- v. The easternmost section of the Plaza has been designed as a pedestrian thoroughfare which is intimate enough to be pedestrian-friendly but with room to accommodate temporary vendor stations as contemplated for 3<sup>rd</sup> Street in the Florida Avenue Market Study. Lined on both sides by retail storefronts and café terraces, with landscape separation on the south side, the paved area will comfortably allow for vendor stations and a circulation zone that responds to deaf space design principles.
- vi. Additional deaf space design principles are also incorporated within the Plaza, including pulling back Building B's ground floor and adding a curved stair element in lieu of a wall to improve sight lines into the Plaza and avoiding blind corners. In addition, material variation is incorporated at the transition from the Plaza to the street and sidewalk to help inform the change into a vehicular space. Loose furniture is also provided, which gives greater flexibility for seating arrangements for the hearing impaired.
- vii. As the plaza opens to 3<sup>rd</sup> and Morse Streets, a wayfinding totem or similar element will provide orientation to key destinations within the Florida Avenue Market area, as well as adjacent landmarks such as Gallaudet University, Two Rivers Charter School, NoMa Metro Station, among others.

c. Neal Place Park.

- i. As shown on Sheets 20, L1.01-L1.02, and L1.20-L1.21 of the Plans, Neal Place Park will be an urban park located at the western terminus of Neal Place, NE, and wrapping the northwest corner of Neal Place and 3<sup>rd</sup> Street to provide almost 12,000 square feet of additional public open space. Neal Place Park will include additional seating, outdoor dining, and an artistic water feature that will serve as a focal point for pedestrians walking from Union Market and other retail in the Florida Avenue Market area. The final design of Neal Place Park will be part of the Second-Stage PUD application. Pursuant to Condition No \_\_\_ of this Order, the Applicant must complete approximately 75% of the construction of Neal Place Park prior to the issuance of a certificate of occupancy for the first Building completed within the Consolidated PUD, with the remainder to be completed within the next 120 days.
- ii. The site of the future Neal Place Park will feature pop-up business incubators that will accommodate small, local, start-up businesses devoted to the creation of goods and services ("Makers"). [For the purpose of this Order, a "Maker" space or "Maker" use is defined as production, sale, distribution, and/or consumption of food and beverages; small-scale production and repair of goods and related sales; media/communications production and](#)

distribution; arts and entertainment; traditional crafts and trades; recreation uses; engineering and design; and technology design and production. Maker uses are defined as:

- ~~1. Production, distribution, or repair of goods, including accessory sale of related product;~~
- ~~2. Uses encompassed within the Arts, Design, and Creation Use Category as currently defined in 11 DCMR Subtitle B § 200.2, including an Art Incubator, as currently defined in 11 DCMR Subtitle B § 100.2, but not including a museum, theatre, or gallery as a principal use;~~
- ~~3. Production and/or distribution of food or beverages and the accessory sale or on-site consumption of the related food and beverage;~~
- ~~4.1. Design related uses, including Media/Communications, Computer system and software design; Fashion design; Graphic design; or product and industrial design.~~

iii. The Applicant will install approximately 3,000 square feet of retrofitted containers or similar structures to house Makers on the site of the future Neal Place Park. The Applicant will target marketing of the containers to Makers through the following actions:

1. Retain a retail broker with experience marketing to and securing a variety of tenant types, including Makers;
2. Sponsor a workshop that encourages the maker movement;
3. Market the proposed retail space to retail tenants within Union Market; and
4. Market the proposed retail space to retail tenants operating in Union Kitchen or similar facility.

d. Interim Park.

- i. As shown on Sheets 20-21 and L2.05-L2.07 of the Plans, approximately 41,000 square feet of land area will be devoted to an interim park located where Buildings C2 and D will be constructed (the “Interim Park”). The Interim Park will have a large multi-use lawn area that can accommodate events such as outdoor fitness classes, musical performances, and festivals. A gravel parking area along the Alley and adjacent to the Interim Park will provide a convenient pull-up zone for food trucks, vendors, and exhibitors. The Interim Park will also have space dedicated to outdoor lawn games and

an “Imagination Playground” that will feature interactive foam building blocks.

- ii. The Applicant will install furnishings and equipment for the Interim Park, all of which will be used in other areas of the PUD and/or donated to local schools once the Interim Park is built out.
  - iii. Adjacent to the Interim Park at the rear of Parcel D is an existing dis-used rail loading platform that the Applicant will restore to provide a historic reference. The loading platform will be retained following construction of Building D, but may be relocated as part of the construction.
- e. Maker Spaces. The Applicant will dedicate approximately 2,250 square feet of total retail space in Building A1 or Building B, and approximately 2,250 square feet of total retail space in Building C2 or Building D for Makers. The Maker spaces will be marketed at 10% less rent than the average base rent charged for leased retail space across the PUD Site at the time that each Maker space is leased. The Applicant will target marketing to Makers by retaining a retail broker with experience marketing to and securing a variety of tenant types, including Makers.
- f. Metropolitan Branch Trail. The Applicant will contribute \$10,000 to the Metropolitan Branch Trail beautification program (PowWowMural) via the NoMa BID.
- g. Utilities. The Applicant will extend all new utilities throughout the entire PUD Site, at a cost of approximately \$2.4 million. The utilities for the Consolidated PUD will be oversized for future development to provide capacity for additional buildings outside of the PUD and in order to minimize utility work in the streets during later phases of development of the PUD.

### **Compliance with the Comprehensive Plan**

86. The Comprehensive Plan includes Citywide Elements that each address a topic that is citywide in scope, and Area Elements that focus on issues that are unique to particular parts of the District. *See* 10A DCMR §§ 104.4-104.5. The Comprehensive Plan includes a Generalized Policy Map and a Future Land Use Map, which are incorporated as part of the plan and provide the foundation for land use decision-making and zoning. 10A DCMR § 108.3. For the reasons stated below, the Commission finds that the Project 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, as described herein.

87. Purposes of the Comprehensive Plan. The purposes of the Comprehensive Plan are six-fold: (1) to define the requirements and aspirations of District residents and, accordingly, influence social, economic and physical development; (2) to guide executive and legislative decisions on matters affecting the District and its citizens; (3) to promote economic growth and jobs for District residents; (4) to guide private and public development in order to achieve District and

community goals; (5) to maintain and enhance the natural and architectural assets of the District; and (6) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District. D.C. Code §1-245(b).

88. The Commission finds that the Project significantly advances these purposes by promoting the social, physical, and economic development of the District through the provision of a high-quality mixed-use development without generating any adverse impacts. The Project includes residential, retail, office, and potentially hotel uses that will attract residents, visitors, employees, and the general public to the area. The Project also incorporates well-designed public spaces that emphasize the importance of pedestrians and bicyclists, provide significant new landscaping and open spaces, and create a sense of place that will draw people into the Florida Avenue Market neighborhood. The overall Project will promote economic growth, enhance the District's natural and architectural assets, and will significantly improve the PUD Site and surrounding neighborhood.
89. Compliance with the Future Land Use Map. The PUD Site is designated in the mixed-use High-Density Commercial, High-Density Residential, and Production, Distribution and Repair ("PDR") land use categories on the District of Columbia Comprehensive Plan Future Land Use Map.
90. The High Density Commercial designation is used to define the central employment district of the city and other major office employment centers on the downtown perimeter. It is characterized by office, mixed residential/retail, and mixed office/retail buildings greater than eight stories in height, although many lower scale buildings, including historic buildings, are interspersed. The corresponding zone districts are generally C-2-C, C-3-C, C-4, and C-5, although other districts may apply. 10A DCMR § 225.11.
91. The High Density Residential designation is used to define neighborhoods and corridors where high-rise (eight stories or more) apartment buildings are the predominant use. The corresponding zone districts are generally R-5-D and R-5-E, although other districts may apply. 10A DCMR § 225.6.
92. The PDR category is used to define areas characterized by manufacturing, warehousing, wholesale and distribution centers, transportation services, food services, printers and publishers, tourism support services, and commercial, municipal, and utility activities which may require substantial buffering from noise, air pollution, and light-sensitive uses such as housing. The PDR designation is not associated with any industrial zone and therefore permits a building height of up to 90 feet with 6.0 FAR.
93. The Framework Element of the Comprehensive Plan states that the Land Use Map is not a zoning map. See 10A DCMR § 226.1(a); *see also* Z.C. Order No. 11-13; Z.C. Order No. 10-28. Whereas zoning maps are parcel-specific and establish detailed requirements for setback, height, use, parking, and other attributes, the Future Land Use Map does not follow parcel boundaries and its categories do not specify allowable uses or dimensional standards. *Id.* By definition, the Map is to be interpreted broadly. *Id.*
94. The land use category definitions describe the general character of development in each area,

citing typical building heights (in stories) as appropriate. The granting of density bonuses (for example, through Planned Unit Developments) may result in heights that exceed the typical ranges cited here. *Id.* at § 226.1(c). The zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements, as well as approved Small Area Plans. *Id.* at § 266.1(d). Thus, in evaluating the proposed zoning map amendment, the PUD Site should be viewed in context and not as an isolated parcel.

95. The Commission finds that the Applicant's proposal to rezone the PUD Site to the C-3-C District to construct four new mixed-use Buildings (six total building components) is consistent with the designations for the PUD Site on the Future Land Use Map. 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 Districts permit medium and high density development, including retail, housing, and mixed-use development. 11 DCMR §§ 740.8. The Project incorporates all of these elements into a medium- and high-density development that creates residential, retail, and employment opportunities in a dynamic mixed-use setting.
96. When taken in context with the surrounding neighborhood, the Applicant's proposal to rezone the PUD Site from the C-M-1 District to the C-3-C District is not only consistent with the Comprehensive Plan, but also with other recently-approved projects in the surrounding area. For example, pursuant to Z.C. Order No. 15-01, dated July 13, 2015, the Commission approved a PUD and related zoning map amendment from the C-M-1 District to the C-3-C District for 320 Florida Avenue, NE, to be constructed with a maximum density of 8.0 FAR and a maximum building height of 120 feet. Similarly, pursuant to Z.C. Order No. 06-40C, dated January 27, 2014, the Commission approved a PUD and zoning map amendment from the C-M-1 District to the C-3-C for 340 Florida Avenue, NE, to be constructed with a maximum density of 5.0 FAR and a maximum building height of 80 feet. The 320 Florida Avenue project and the 340 Florida Avenue project are located directly to the south of the PUD Site and are also located in the High Density Commercial, High Density Residential, and PDR land use categories on the Future Land Use Map.
97. The Zoning Commission also recently approved a PUD and related zoning map amendment at 300 M Street, NE, located two blocks south of the PUD Site. The 300 M Street project includes a zoning map amendment from the C-M-1 District to the C-3-C District on property located in the Medium Density Residential category on the Future Land Use Map. The Office of Planning testified in support of that project at its public hearing, noting that the PUD and zoning map amendment were "consistent with the Comprehensive Plan and the land use changes that have been envisioned for the area," that the project "fits within the guidelines of the Comprehensive Plan for what would constitute medium density," and that it is "at the upper end of [the medium-density designation] but it's certainly not outside of what has in the past been considered acceptable." *See* Z.C. Case No. 14-19 Zoning Commission Public Hearing Transcript Dated July 9, 2015, pp. 64-65, 72.
98. Based on this context, the Commission finds that the proposed C-3-C zoning classification and PUD will enable the PUD Site to be developed with four new mixed-use buildings constructed to a maximum building height of 130 feet and an overall PUD Site density of

approximately 7.1 FAR. The Commission finds that the proposed heights and density are consistent with the limitations expressly permitted in high-density zones and are appropriate given the location of the PUD Site and its context adjacent to other recent development projects in the surrounding area.

99. In addition, the Commission finds that the Project is specifically consistent with the PDR designation on the Future Land Use Map. The Comprehensive Plan notes that residents of the Upper Northeast Area Element “are concerned that they are the location of choice for ‘unwanted’ municipal land uses,” and that while there is “an appreciation for the importance of these uses to the city, there are concerns about their continued concentration in Upper Northeast simply because the area has a large supply of industrially zoned land.” 10A DCMR § 2407.2(c). Moreover, the Comprehensive Plan acknowledges that “Upper Northeast neighborhoods have lived with the heavy truck traffic, noise, and visual blight that comes with industrial land uses for decades” and that there is a desire to clean up these sites in the community and return them to productive use. Indeed, “[t]hese sites provide an opportunity to apply ‘green’ development principles, turning environmental liabilities into environmental assets.” 10A DCMR § 2407.2(d).

100. The Commission finds that the Project is consistent with these goals and appropriately balances the dual priorities of maintaining PDR uses while establishing a productive new mix of uses. The Project will reduce the concentration of industrial land uses in the Upper Northeast area by establishing a mix of residential, retail, office, and potentially hotel uses at the PUD Site, which will take advantage of other existing industrial uses in the surrounding area. The Project also involves the major clean-up and revival of the PUD Site into productive use with significant “green” sustainability measures that will be an asset to the surrounding neighborhood and the District as a whole.

101. Moreover, the Commission finds that the Project is consistent with several Policies within the Comprehensive Plan that encourage an appropriate balance between saving existing PDR uses and creating new compatible uses within the area. Reviewing the Comprehensive Plan’s Citywide Elements is appropriate in this context, given the guidance of 10A DCMR § 226.1(d), which provides that “the zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements, as well as approved Small Area Plans.” 10A DCMR § 226.1(d); *see also, e.g.* Z.C. Order Nos. 14-19 and 15-14.

102. For example, the Commission finds that the Project is consistent with Policy UNE-1.1.9, because it creates new uses, including retail and office space, that create jobs for Upper Northeast area residents and that minimize off-site impacts on the surrounding residential areas. Consistent with this policy the Project also involves high-quality design, landscaping, and improved screening and buffering. The Commission finds that the Project is also consistent with Policy UNE 2.3.2, which encourages “the conversion of industrial land to other uses” on key sites, so long as they do not diminish the area’s ability to function as an industrial district and meet the needs of government and District businesses and agencies. In this case, the PUD Site will be converted from its original industrial use, but doing so will not eliminate the significant amount of industrial and PDR uses currently existing in the

surrounding area. Rather, the new uses on the PUD Site will help to spur the growth of those surrounding businesses while enhancing the PUD Site itself.

103. Generalized Policy Map. The PUD Site is located in a Multi-Neighborhood Center category on the District of Columbia Comprehensive Plan Generalized Policy Map. Multi-Neighborhood Centers contain many of the same activities as Neighborhood Commercial Centers<sup>7</sup> but in greater depth and variety. Multi-Neighborhood Centers' service areas are typically one to three miles. These centers are generally found at major intersections and along key transit routes, and they might include supermarkets, general merchandise stores, drug stores, restaurants, specialty shops, apparel stores, and a variety of service-oriented businesses. These centers may also include office space for small businesses, although their primary function remains retail trade. Mixed use infill development should be encouraged to provide new retail and service uses, and additional housing and job opportunities. 10A DCMR § 223.18.
104. The Commission finds that the Project is consistent with the policies indicated for the Multi-Neighborhood Centers. The existing C-M-1 District is inconsistent with the Policy Map's designation for the PUD Site because C-M 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, retail, office, and potential hotel uses are consistent with the C-3-C zone designation, and 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.
105. Compliance with Guiding Principles of the Comprehensive Plan. The Commission finds that 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 below.
106. Managing Growth and Change. In order to manage growth and change in the District, the Comprehensive Plan encourages, among other goals, the growth of both residential and non-residential uses. The Comprehensive Plan also states that redevelopment and infill opportunities along corridors is an important part of reinvigorating and enhancing neighborhoods. The Commission finds that the Project is fully consistent with each of these goals. Redeveloping the PUD Site as a vibrant new mixed-use development with residential, retail, office, and potential hotel uses will further the revitalization of the surrounding neighborhood. These proposed uses will create new jobs for District residents, increase the city's tax base, and help to reinvigorate the existing neighborhood fabric. Moreover, the PUD Site is exceptionally well-located as an infill development along two major corridors, which will allow for convenient access to the PUD Site and draw people into the

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<sup>7</sup> Neighborhood Commercial Centers meet the day to day needs of residents and workers in the adjacent neighborhoods. Typical uses include convenience stores, sundries, small food markets, supermarkets, branch banks, restaurants, and basic services such as dry cleaners, hair cutting, and child care. Office space for small businesses, such as local real estate and insurance offices, doctors and dentists, and similar uses, also may be found in such locations. 10A DCMR § 223.15.

neighborhood to live, work, and play.

107. Creating Successful Neighborhoods. One of the guiding principles for creating successful neighborhoods is getting public input in decisions about land use and development; from development of the Comprehensive Plan to implementation of the plan's elements. The Commission finds that the Project furthers this goal since, as part of the PUD process, the Applicant worked closely with ANC 5D and other neighborhood stakeholders to ensure that the Project will have a positive impact on the immediate neighborhood. As set forth in ANC 5D's resolution in support of the application, "the applicant has done an excellent job of presenting its proposed PUD to the community and responding to the ANC's questions and concerns. The development will contribute to the redevelopment of the Florida Avenue Market area and includes important new connections that will help bring surrounding communities closer together. The project incorporates a mix of uses, including residential, retail, office, and hotel uses, as well as significant new public open spaces, which will together create a vibrant new mixed-use and transit-oriented community." (Ex. 36, p. 1.)
108. Building Green and Healthy Communities. A major objective for building green and healthy communities is that building construction and renovation should minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. In this case, the Commission finds that the Project furthers these goals because it will include a substantial number of sustainable design features and will ensure that all Buildings within the Consolidated PUD are certified as LEED Gold under v2009, and all Buildings within the First-stage PUD are certified as consistent with LEED Gold under v2009.
109. Major Elements of the Comprehensive Plan. As set forth in detail in the Applicant's Statement in Support (Ex. 6), the Applicant's Response to the OP and DDOT Reports (Ex. 46B), the OP Reports (Ex. 15 and 39), and the Applicant's post-hearing submission (Ex. 72F), the Commission agrees that the Project advances many of the objectives and policies in the Comprehensive Plan's Major Elements, including the Land Use, Transportation, Housing, Environmental Protection, Urban Design, Economic Development, Community Services and Facilities, and Infrastructure Citywide Elements, and the Upper Northeast Area Element. These elements together "encourage a mix of uses in the Florida Avenue Market area, high-density development and well-designed open space and public realm" (Ex. 39, p. 24), which is exactly the type of development proposed in this case.
110. Land Use Element. The Commission finds that the Project supports the following policies of the Land Use Element:
  - a. *Policy LU-1.2.2: Mix of Uses on Large Sites*. The Commission finds that the Project, which includes residential, retail, office, and potentially hotel uses on a large underutilized site, 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. The Project will provide significant new housing and affordable housing units, create dynamic new street-activating retail spaces, and provide employment opportunities for District residents. Moreover, these proposed uses are consistent with the Future

Land Use Map's mixed-use designation of the PUD Site.

- b. *Policy LU-1.3 Transit-Oriented and Corridor Development.* The Commission finds that the Project exemplifies the principles of transit-oriented development. The PUD Site is located within convenient walking distance of the NoMa/Gallaudet University Metrorail station and is served by several Metrobus routes, including routes 90, 92, 93, P6, and X3, which are all located within 0.3 miles of the PUD Site. The PUD Site is also located within 0.3 miles of two existing Capital Bikeshare stations and within a few blocks from the entrance to the Metropolitan Branch Trail, an eight-mile multi-use trail that runs from Union Station in the District of Columbia to Silver Spring in Maryland. Furthermore, the PUD Site is located within convenient walking distance to the residential and office district in the NoMA neighborhood, dining and entertainment options in the Union Market and H Street neighborhoods, and just one Metro station away from intercity and commuter trains and buses connecting at Union Station. The Project is also consistent with the following stated transit-oriented 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.
- c. *Policy LU-1.3.4: Design to Encourage Transit Use.* The Commission finds that 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. The Project incorporates ground floor retail uses that will activate and animate the surrounding streets, and provides new sidewalks and crosswalks that will create safe spaces to walk to and from public transportation. The Project also reconnects the street grid by extending Morse Street, adding a new section of 3rd Street, and connecting Neal Place into 3rd Street, thus creating a two-way vehicular circulation route that connects Morse Street to 3rd Street to Neal Place, as recommended in the FAMS. Applicant will also open and improve the existing Alley running parallel to and between 3rd and 4th Streets, creating a secondary circulation route around the PUD Site and completing the grid.
- d. *Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods.* In designing the Project, and consistent with *Policy LU-2.1.3*, the Applicant sought to conserve and enhance the surrounding neighborhood. The Project creates neighborhood-defining public open spaces and parks, establishes pedestrian-oriented streetscapes and amenities, provides significant new retail opportunities for surrounding residents and neighborhood visitors, and augments the mixed income housing supply in the area. Thus, the Commission finds that the Project is consistent with *Policy LU-2.1.3* due to its ability to protect the neighborhood's existing character while expanding neighborhood commerce.
- e. *Policy LU-2.2.4: Neighborhood Beautification.* *Policy LU-2.2.4* encourages projects to improve the visual quality of the District's neighborhoods. In this case, the Commission finds that the Buildings within the Project have been designed to improve the visual aesthetic of the neighborhood and create clear sightlines from multiple points in the neighborhood. The Applicant utilized design techniques in the new construction that enhance the sense of place within and around the PUD Site

and greatly improve the pedestrian character of the surrounding area. Moreover, redevelopment of the PUD Site will be a significant improvement to the current site condition, thus helping to revitalize the area. The Project also includes a significant amount of landscaped and open spaces, which the Commission finds also greatly enhance and beautify the surrounding streetscape.

- f. *Policy LU-3.1.4: Rezoning of Industrial Areas.* This policy encourages the rezoning of land for non-industrial purposes when the land can no longer support industrial or PDR activities or is located such that industry cannot co-exist adequately with adjacent existing uses. In this case, the PUD Site is surrounded by a variety of uses, including industrial warehouses to the north, residential, commercial, and charter school uses to the east and south, and industrial warehouse and major mixed use residential and commercial developments to the west. The PUD Site is located on the east side of the growing NoMa neighborhood, which is extending north and east through numerous recently-approved development projects. As these residential and commercial developments continue to expand, particularly around the NoMa/Gallaudet University Metrorail station, the PUD Site will no longer be suitable for industrial and warehouse activities. Thus, the Commission concludes that the proposed Project and requested zoning map amendment support the policy of rezoning industrial land to permit residential and commercial uses on land included in targeted redevelopment areas.

111. Transportation Element. The Commission finds that the Applicant's proposal to develop the mixed-use Project on the PUD Site will help to advance several policies and actions of the Transportation Element of the Comprehensive Plan, including the following:

- a. *Policy T-1.1.4: Transit-Oriented Development.* As set forth above, the Commission finds that the Project is an excellent example of transit-oriented development due to its location along a major transportation corridor and close proximity to a Metrorail station, multiple Metrobus routes, bicycle lanes, and Capital Bikeshare stations. The Project will include secure bicycle storage areas, a bicycle valet, and public space improvements, including new sidewalks, lighting, landscaping, street trees, and bicycle lanes, which will create safe spaces to walk to and from public transportation. The Applicant has also developed an extensive TDM plan that is grounded in the PUD Site's transit-rich location.
- b. *Policy T-2.3.1: Better Integration of Bicycle and Pedestrian Planning and Action T-2.3-A: Bicycle Facilities.* The Commission finds that the Project carefully integrates bicycle and pedestrian safety considerations. To promote bicycle travel, the Project includes secure, indoor bicycle parking within each Building, as well as numerous exterior bicycle racks in appropriate locations on the PUD Site adjacent to the Buildings. The Applicant will establish a dedicated bicycle lane in the Alley that will ultimately provide a bicycle connection to the proposed New York Avenue Rails to Trails bicycle path. The Applicant will also install a bicycle lane from the Alley to 4th Street, NE, along the north side of Morse Street, NE.

To promote pedestrian travel, the Project includes significant improvements to the streetscape surrounding and within the PUD Site. All sidewalks will be built to

DDOT standards, and in many cases will be over-sized to allow for café seating, outdoor vending and pedestrian circulation, and to support new businesses. Building canopies along Morse and 3rd Streets will provide extra shade and a visual connection to the historic market warehouse buildings to the east of the PUD Site. In total, the Project will provide over two-thirds of an acre of pedestrian streetscape improvements along the three street sections.

The Applicant will also repave the streetscape surrounding the PUD Site according to DDOT's standards, and will otherwise improve the public realm by planting trees and making other landscape and lighting improvements. Together, the Commission finds that these physical enhancements to the streetscape will encourage bicycle and pedestrian activity and will bring additional revitalization to the area.

112. Housing Element. The overarching goal of the Housing Element is to "[d]evelop and maintain a safe, decent, and affordable supply of housing for all current and future residents of the District of Columbia." 10 DCMR § 501.1. The Commission finds that the Project will help achieve this goal by advancing the policies below.

- a. *Policy H-1.1.1: Private Sector Support*. The Commission finds that the Project helps meet the needs of present and future District residents at locations consistent with District land use policies and objectives. The Project will contain a significant amount of new housing that will contribute to the District's housing supply. The Project also provides significantly more affordable housing than is required by the Zoning Regulations, and at a steeper subsidy, particularly given that under the current C-M-1 zoning no new housing could be provided at the PUD Site. Moreover, the provision of new housing at this particular location is fully consistent with the District's land use policies, as set forth above. Therefore, the Commission finds that the Project is fully consistent with *Policy H-1.1.1*, which encourages private sector support for new housing development.
- b. *Policy H-2.1.1: Protecting Affordable Rental Housing, Policy H-1.2.1: Affordable Housing Production as a Civic Priority, and Policy H-1.2.7: Density Bonuses for Affordable Housing*. The Commission finds that the Project exemplifies the goals of *Policies H-2.1.1, H-1.2.1, and H-1.2.7* because a minimum of 11% of the Project's residential gross floor area will be devoted to affordable housing. The overall project will include approximately 1,091,201 square feet of residential gross floor area (1,103 units). Of that, a minimum of 120,036 square feet of gross floor area (124 units) will be dedicated to affordable housing, with 60,018 square feet (62 units) dedicated to households earning up to 50% of the area medium income ("AMI") and 60,018 square feet (62 units) dedicated to households earning up to 80% of the AMI. Each residential building within the Project will dedicate 11% of its residential gross floor area to affordable housing in this same manner.

As contemplated by *Policy H-1.2.7*, the Applicant requested density bonuses associated with development of the PUD in order to build the affordable housing proposed for the Project. The Commission finds that the proposed density is consistent with the limitations permitted in high-density zones and is appropriate given the location of the PUD Site and its context adjacent to other recently approved

development projects in the surrounding area. Moreover, the housing affordability levels proffered for the Project will establish a supply of new residential units that are affordable for teachers, police officers, and other working professionals in the District. Thus, the Commission concludes that the Project furthers the goals of *Policy H-1.2.7* by simultaneously providing a substantial new supply of affordable housing while preserving the well-being of the diversity of the District's neighborhoods

- c. *Policy H-1.1.4: Mixed Use Development.* The Commission finds that the Project is consistent with the goals of promoting mixed use development, including housing, on commercially or industrially zoned land, because the Project incorporates residential, retail, office, and potentially hotel uses into a single, mixed-use, walkable new development.
- d. *Policy H-1.1.3: Balanced Growth.* The Commission finds that the Project advances *Policy H-1.1.3* by developing new housing on surplus, vacant and underutilized land. The PUD Site is presently underutilized, as it is improved with one-story industrial buildings and/or is vacant land. The Project will replace these uses with significant new housing and affordable housing, in addition to retail, office, and potentially hotel uses. Doing so will help the District meet its long-term housing needs by developing moderate and high-density housing that will be affordable for a range of income levels. Thus, the Commission finds that the Project is fully consistent with *Policy H-1.1.3*.
- e. *Policy H-1.2.3: Mixed Income Housing.* The residential component of the Project is mixed-income and includes both market-rate and affordable housing units. Thus, the Commission finds that 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. Of the total gross floor area devoted to housing, 11% will be dedicated to affordable housing units, with half dedicated to households earning up to 50% of the AMI and half dedicated to households earning up to 80% of the AMI. In contrast, under the current zoning, there would be no new housing or affordable housing on the PUD Site.

113. Environmental Protection Element. The Environmental Protection Element addresses the protection, restoration, and management of the District's land, air, water, energy, and biologic resources. The Commission finds that the Project is consistent with the following policies within the Environmental Protection Element for the reasons set forth below: *Policy E-1.1.1: Street Tree Planting and Maintenance*; *Policy E-1.1.3: Landscaping*; *Policy E-2.2.1: Energy Efficiency*; *Policy E-3.1.2: Using Landscaping and Green Roofs to Reduce Runoff*; and *Policy E-3.1.1: Maximizing Permeable Surfaces*.

114. The Commission finds that the Project is consistent with these policies because the Applicant will (i) plant and maintain numerous new street trees throughout the PUD Site; (ii) incorporate significant new landscaping to beautify the city, enhance the streets within and surrounding the PUD Site, reduce stormwater runoff, and create a stronger sense of character and identity; (iii) promote the efficient use of energy in building design and operation; and (iv) incorporate permeable surfaces and green roofs into the project design to reduce runoff. Moreover, each Building within the Consolidated PUD will achieve LEED

Gold under v2009, and each Building within the First-stage PUD will, in its Second-stage PUD application, achieve the total number of LEED points consistent with LEED Gold v2009.

115. More specifically, the Commission finds that the Project is consistent with policies regarding air quality and noise and land use compatibility, as set forth below:

- a. *Policy E-4.1.3: Evaluating Development Impacts On Air Quality.* The Commission finds that the Project is consistent with *Policy E-4.1.3* because it includes a number of sustainable, environmentally-friendly features that will mitigate adverse impacts on air quality. These environmental measures include the use of low emitting materials, air delivery monitoring techniques, energy and water efficient systems, permeable paving and materials, construction waste management techniques, landscaping and tree planting, accommodations for alternative transportation modes, and green power practices, all of which will together work to reduce emissions and absorb carbon monoxide and other pollutants. In addition, each Building will achieve LEED Gold as described above, and the Project will incorporate significant TDM measures that will reduce travel demand and associated carbon emissions.

Moreover, the Commission notes that DOEE reviewed the Project and submitted a report on the application (Ex. 63). DOEE's report indicated that it "met with the applicant several times during the last year...some concerns were included with the Office of Planning's report and were addressed directly in meetings with the applicant." (Ex. 63, p. 1-2.) DOEE's report also stated that it is "generally supportive of the Project" (*id.* at 2) and that it is "glad that the applicant increased their commitment to LEED, and are now projecting certification at the LEED v2009 Gold level." *Id.* at 3. By letter dated January 11, 2017, the Applicant responded to the comments and recommendations in DOEE's report (Ex. 72C), explaining how the Project incorporates a number of sustainability features, including stormwater management and retention techniques, significant greenspaces and trees, bioretention facilities, and energy efficient systems, among others.

Moreover, following issuance of the Applicant's letter to DOEE, and in response to comments at the public hearing, the Applicant increased the amount of permeable paving in the Plaza by 2,400 square feet. (*See* Sheets L1.05-L1.06 of Ex. 72A.). Thus, the Commission finds that the Project incorporates a number of features that will help to ensure sustainability and further the goals of *Policy E-4.1.3*.

The Commission also notes that the Applicant will be required to comply with all applicable laws and regulations regarding construction noise and air pollution, and will address the mitigation of any construction-related impacts during the building permit process.

- b. *Policy E-4.3.5: Noise and Land Use Compatibility.* The Commission finds that the Project is consistent with *Policy E-4.3.5* because it will not establish new land uses that generate excessive noise. The PUD Site will be developed with a mix of uses, including residential, retail, office, and potentially hotel uses. These uses are found throughout the immediately surrounding area in other recently-approved PUDs. *See,*

e.g. Z.C. Case No. 15-01 for a PUD at 320 Florida Avenue, NE (directly to the south of the PUD Site), approved for residential and retail uses; Z.C. Case No. 06-40 at 340 Florida Avenue, NE (directly to the southeast of the PUD Site), approved for residential, retail, and office uses; Z.C. Case No. 14-07 for a PUD at 1270 4th Street NE (directly to the east of the PUD Site), approved for residential and retail uses; and Z.C. Case No. 16-10 for a PUD located at 400 Florida Avenue, NE (one block southeast of the PUD Site), preliminarily approved for residential and hotel uses. Moreover, the Applicant will be required to comply with all federal and District noise regulations during construction and operation of the buildings on the PUD Site. Therefore, the Commission concludes that the Project will not create adverse impacts by generating excessive noise in the surrounding neighborhood

116. Urban Design Element. The goal of the Comprehensive Plan's Urban Design Element is to “[e]nhance the beauty and livability of the city by protecting its historic design legacy, reinforcing the identity of its neighborhoods, harmoniously integrating new construction with existing buildings and the natural environment, and improving the vitality, appearance, and security of streets and public spaces.” 10A DCMR § 901.1. Consistent with these objectives, the Commission finds that the Applicant has gone to great lengths to align the Project with the character of the surrounding neighborhood, and is consistent with the following specific policies for the reasons stated below: *Policy UD-2.2.1: Neighborhood Character and Identity and Policy UD-2.2.7: Infill Development; Policy UD-2.2.5 Creating Attractive Facades*, and *Policy UD-3.2.5: Reducing Crime Through Design*.

117. The Commission finds that the Project will strengthen the architectural quality of the immediate neighborhood by relating the Project's scale to the existing neighborhood context, including both existing and approved development projects. The Project is a true infill development, and includes elegant, aesthetically-appealing and well-designed building façades to create stunning visual interest and to contribute to the architectural quality of the neighborhood and streetscape. The building architecture takes its cues from the industrial surroundings and from the adjacent rail tracks, and the overall site plan is integrally connected to the approved PUDs to the south and east of the PUD Site through the coordinated development of the Florida Avenue Park and the alley. Moreover, the Commission finds that the Project will reduce crime through design by bringing additional "eyes and ears" to the area, as well as improved lighting, clear lines of sight, and visual access, all of which will help to minimize the potential for criminal activity in the immediate area.

118. Economic Development Element. The purpose of the Economic Development Element is to address the future of the District's economy and the creation of economic opportunity for current and future District residents. See 10A DCMR § 700.1. The Commission finds that the Project is consistent with a variety of policies in the Economic Development Element as follows:

- a. *Policy ED-3.2.1: Small Business Retention and Growth*. Consistent with *Policy ED-3.2.1*, the Commission finds that the Project will encourage the retention, development, and growth of small and minority businesses for the following reasons:

- i. The Applicant will enter into a First Source Employment Agreement with DOES consistent with the First Source Employment Agreement Act of 1984 and the Apprenticeship Requirements Amendment Act of 2004, to ensure that District residents are given priority for new jobs created by municipal financing and development programs;
- ii. The Applicant will provide approximately 3,000 square feet for temporary pop-up business incubators that will accommodate small, local, start-up businesses devoted to the creation of goods and services. The Applicant will target marketing to Makers by (i) retaining a retail broker with experiencing marketing to and securing a variety of tenant types, including Makers; (ii) sponsoring a workshop that encourages the Maker movement; (iii) marketing the proposed retail space to retail tenants within Union Market; and (iv) marketing the proposed retail space to retail tenants operating in Union Kitchen; and
- iii. The Applicant will dedicate approximately 4,500 square feet within the Project for permanent Maker spaces. These spaces will be marketed at 10% less rent than the average base rent charged for leased retail space across the PUD Site at the time that each Maker space is leased. The Applicant will target marketing to Makers by retaining a retail broker with experience marketing to and securing a variety of tenant types, including Makers.

Therefore, the Commission finds that the Project is fully consistent with the goals of *Policy ED-3.2.1*.

- b. *Policy ED-3.2.6: Commercial Displacement.* Consistent with *Policy ED-3.2.6*, the Commission finds that the Project will not result in the displacement of small and local businesses. The PUD Site is presently improved with one-story industrial buildings used for wholesale distribution. However, the owners of those parcels have chosen to sell their interests in the PUD Site to the Applicant and move their businesses elsewhere. Indeed, development of the Project will help support small and local businesses by introducing significant new housing and affordable housing into the neighborhood on a site where none previously existed. The new housing will be occupied by mixed-income residents who will need neighborhood goods and services on a daily basis. This type of mixed-income development will generate diverse new customers for small and local businesses in the surrounding area, and due to the mixed-income nature of the Project, will not result in rising real estate costs that could potentially displace existing businesses.
- c. *Policy ED-3.2.7: Assistance to Displaced Businesses.* As stated above, the Commission finds that the Project will not result in the displacement of small businesses. To the contrary, the Project will help to spur the growth and development of businesses in the area by creating new housing for residents in need of local goods and services. Moreover, the Applicant's commitments regarding First Source Employment and providing temporary and permanent space for Makers will help to create new employment opportunities for District residents.

- d. *Action ED-3.2.A: Anti-Displacement Strategies*. Consistent with *Action ED-3.2.A*, the Commission finds that the Project will not result in commercial gentrification or the displacement of small and local businesses. The Project will be a benefit to the entire community and will help maintain economic stability and support the growth of small and local businesses. Due to the Project’s mix of uses, including subsidized retail space for Makers, and its mixed-income housing options with 11% affordable housing, half of which will be dedicated to households earning up to 50% of the AMI, the Commission finds that the Project will not result in destabilization of land values, acceleration of gentrification, or any displacement of neighboring residents. Rather, the Applicant will provide dedicated, rent-reduced space within the Project to small and local businesses, which will encourage their growth and development within the neighborhood.
- e. *Policy ED-4.2.4: Neighborhood-Level Service Delivery, Policy ED-4.2.7: Living Wage Jobs, and Policy ED-4.2.12: Local Hiring Incentives*. The Project will advance the goals of *Policies ED-4.2.4, 4.2.7, and 4.2.12* by entering into a First Source Employment Agreement with DOES in order to promote living wage jobs, comply with resident job training and placement requirements, and ensure that District residents are given priority for new jobs created by the PUD.

119. Community Services and Facilities Element. The Comprehensive Plan provides that a “well-balanced and adequate public facility system is a key part of the city’s drive to sustain and enhance the quality of life for its residents.” 10A DCMR § 1100.1. The Commission finds that the Project is consistent with several policies within the Community Services and Facilities Element of the Comprehensive Plan, including the following:

- a. *Policy CSF-1.1.1: Adequate Facilities*. The Commission finds that the Applicant will construct all facilities necessary for the efficient delivery of public services to current and future District residents. Compliance with this requirement will be confirmed during the building permit process. Moreover, the Commission notes that DC Water reviewed the Applicant’s proposal to establish an easement for an existing 8-foot sewer main running along the western property line of the PUD Site. After reviewing the proposed easement width, accessibility, clearance, truck turning movements, and foundation design for the proposed buildings, DC Water found that the easement would meet DC Water’s requirements. *See DC Water Report at Ex. 64*. Therefore, the Commission finds that the Project will fully comply with *Policy CSF-1.1.1*.
- b. *Policy CSF-1.2.6: Impact Fees*. Consistent with *Policy CSF-1.2.6*, the Commission finds that the Applicant will pay all applicable application, permit, and other required fees associated with the Project, and that there are no specific impact fees associated with development of the PUD Site.

120. Infrastructure Element. The Infrastructure Element provides policies and actions on the District’s water, sanitary sewer, stormwater, solid waste management, energy, and telecommunication systems. *See 10A DCMR § 1300.1*. The Commission finds that the Project is consistent with policies within the Infrastructure Element as follows:

- a. *IN-1.2 Modernizing Water Infrastructure and Policy IN-2.1.1: Improving*

*Wastewater Collection.* Consistent with *Section IN-1.2* and *Policy IN-2.1.1*, the Applicant will be required to construct and maintain all public facilities and infrastructure, including water infrastructure, to accommodate future demand and maintain efficient delivery of public services for the Project. The civil sheets submitted to the record include plans for utilities, erosion and sediment control, and stormwater management. Moreover, the Applicant will be required to coordinate with all applicable public utilities and District agencies during the permitting process, including DC Water, to ensure that adequate services will continue to be available for the existing and new uses. Therefore, the Commission finds that the Project will fully comply with *Policies IN-1.2* and *2.1.1*.

- b. *Policy IN-6.1.3: Developer Contributions.* The Commission finds that the Project is consistent with *Policy IN-6.1.3* because the Applicant will coordinate with all applicable public utilities and District agencies during the permitting process to ensure that adequate services will continue to be available for new uses on the PUD Site and for the existing uses in the surrounding neighborhood. The Applicant will extend all new utilities throughout the entire PUD Site, at a cost of approximately \$2.4 million. The utilities for the Consolidated PUD will be oversized for future development to provide capacity for additional buildings outside of the PUD and in order to minimize utility work in the streets during later phases of development of the PUD. Moreover, the Applicant will pay any required costs/fees associated with securing required utility permits for the PUD Site. Therefore, the Commission finds that the Project will further the goals of *Policy IN-6.1.3*.

121. Upper Northeast Area Element. The PUD Site is located within the boundaries of the Upper Northeast Area Element. Section 2407 of the Upper Northeast Area Element sets forth the planning and development priorities for this Area Element. The Commission finds that the Project is consistent with several of these priorities. For example, the Project will expand retail choices in the Upper Northeast, which are specifically encouraged along Florida Avenue and around Metrorail stations. The new retail opportunities, streetscape improvements, and public open spaces at the PUD Site will create a lively new pedestrian-oriented shopping district, consistent with 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 Project directly supports, as detailed above. Moreover, the Project will provide much-needed new infill housing, retail, and employment opportunities while protecting the nearby lower density residences and increasing pedestrian accessibility and safety in the area. Thus, the Commission finds that the Project is fully consistent with the Upper Northeast Area Element.

### **Compliance with the Florida Avenue Market Study**

122. The Comprehensive Plan provides that the zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements, as well as approved Small Area Plans. See 10A DCMR § 226.1(d). The Comprehensive Plan requires zoning to be “interpreted in conjunction with... approved Small Area Plans.” 10A DCMR § 266.1(d).

123. The Zoning Regulations further require consistency with “other adopted public policies and active programs related to the subject site.” *See* 11 DCMR § 2403.4. Small area policies appear in “separately bound Small Area Plans for particular neighborhoods and business districts. As specified in the city’s municipal code, Small Area Plans provide supplemental guidance to the Comprehensive Plan and are not part of the legislatively adopted document.” 10A DCMR § 104.2

124. In this case, the Commission finds that the PUD and related zoning map amendment will help to implement the FAMS, which provides a framework for the strategic redevelopment of the Florida Avenue Market study area. [The FAMS was prepared by OP and released in June, 2009, and was approved by the District Council as Resolution Number R18-0257 on October 6, 2009.](#) The District’s purpose in undertaking the FAMS was to evaluate the existing infrastructure, the economic vitality and potential, and the historic significance of the study area in order to prepare a small area plan that guides and evaluates future development proposals. *See* FAMS, p. 5. The FAMS envisions the study area as a vibrant, mixed-use neighborhood that protects the look and feel of the historic retail markets, while also providing a basis for new development and rehabilitation. *Id.* At 9.

125. In addition, the FAMS encourages new residential, office, and retail uses that create a vibrant, mixed-use destination that retains a revitalized wholesale/retail market and incorporates a mix of densities, ranging from moderate to medium to high density, designed to be integrated into surrounding development and community fabric. *Id.* at 53. The FAMS includes a number of components, and the Development Framework section makes detailed recommendations for improving the area’s land use, development priorities, transportation facilities, and public realm features. The Commission credits OP’s findings that the Project is consistent with the following key elements of the Development Framework:

- a. Zoning and Intensity Plan: Designated as “High Density,” which corresponds to development of 90’ in height and an FAR of 6.5 as a matter-of-right; or 130’ in height and an 8.0 FAR in a PUD/TDR scenario. *See* FAMS at 57 and OP Report at Ex. 39, p. 27.
- b. Public Realm: “To fulfill the public realm and sense of place vision for the Study Area, it is essential that street-activating or pedestrian-enlivening activities are featured in the ground floors of development or within public space of key streets such as...Morse Street...and Neal Place...” *Id.* at 54. Create a pedestrian-friendly environment with clear pathways throughout the market...Improve sidewalk conditions...encourage active ground-floor uses (such as restaurants and retail) along expected pedestrian routes...” *See* FAMS at 59 and OP Report at Ex. 39, p. 27.
- c. Sense of Place: Utilize design techniques in new construction to enhance the sense of place and pedestrian character of the FAMS.” *See* FAMS at 58 and OP Report at Ex. 39, p. 27.
- d. Open Space: “Include amenities in open space for users, such as benches, water

fountains, etc....Create defensible open space that is well-lit, with clear sightlines from multiple points in and near the market...Ensure accessibility for a wide range of users—both physically accessibility and obvious visual cues will ensure people know the space is public....Utilize and enhanced streetscape as part of the open space system.” See FAMS at 58 and OP Report at Ex. 39, p. 27.

- e. Transportation: “Increase pedestrian connectivity to/from the New York Avenue Metro Station...Reestablish a more complete street grid in the study area...” See FAMS at 58 and OP Report at Ex. 39, p. 27.

126. The Commission finds that the Project is consistent with these and many more recommendations set forth in the FAMS, and will help to implement the FAMS’ vision and goals for the area. For example, the Project includes a mix of retail uses and street enlivening activities in the form of retail spaces with vibrant facades, highly transparent storefronts, and public realm activities such as plazas, and outdoor cafes. See FAMS at 54. The Project provides public space amenities, such as varied seating options, parks and open spaces, public art, way-finding elements, and lighting techniques. The Project incorporates a new street grid and clear pathways for separation of pedestrians, bicycles, and vehicles. Moreover, the Buildings and public spaces utilize sustainable design elements and low impact development techniques in deference to the natural environment, all of which are consistent with the recommendations in the FAMS. See FAMS at 82, 86.

127. The Project is also consistent with the FAMS’ recommended zoning and intensity plan (see FAMS, p. 57), which establishes high density for the PUD Site and for all other properties in the Florida Avenue Market district located to the west of 4th Street, NE. As defined in the FAMS, the “high density sub-area encourages the development of larger scale projects adjacent to the rail line and along New York Avenue, which is considered one of the “gateways” to the city. The width and traffic volumes of New York Avenue support this level of building height and density... High density development at these locations is in accordance with the goals of the Northeast Gateway Revitalization Strategy and the New York Avenue Corridor studies.” *Id.* at 5.

128. [The FAMS specifically recognizes that the “zoning for the study area could be changed through the zoning map amendment process, which requires public review and approval by the District’s Zoning Commission.” \*Id.\* at 58. The zoning recommendations in the FAMS include providing opportunities for additional density and associated building height, especially in areas designated as “High Density” or “Medium-High Density.” \*Id.\* The FAMS recognizes that the PUD Site is located in the High Density development area \(see Figure 6.01, p. 61\), and states that the maximum height and density for High Density development \(130 feet and 8.0 FAR\) is achievable only through a PUD that includes the provision of significant amenities. \*Id.\* at 55. In this case, the Commission finds that the Project is consistent with the FAMS’ recommendation to change the PUD Site’s zoning through the zoning map amendment process. The Commission also finds that, as set forth in FF Nos. \\_\\_\\_ of this Order, the Project includes significant public benefits and amenities that warrant the High Density development envisioned in the FAMS and as proposed by the Applicant for the PUD Site.](#)

129. Overall, the Commission concludes that the Project is consistent with the FAMS because it will provide new residential, retail, office, and potentially hotel uses in a vibrant new mixed-use designation. The Project’s architecture, open spaces, and site plan will retain and improve the character of the Florida Avenue Market area, and will provide a mix of densities that are appropriate for the PUD Site and integrate well into the surrounding community. Importantly, the Project includes significant new job opportunities, which will be located in a transit-rich and highly walkable and bikeable location, thus increasing access and enhancing sustainability. New streets and sidewalks created within and around the PUD Site will promote improved vehicular circulation by completing the street grid, avoid pedestrian conflicts by locating loading and parking in appropriate locations, and enhancing pedestrian circulation by providing wide sidewalks, ground floor retail, and pedestrian-oriented lighting and furnishings. Overall, the Commission finds that the improvements proposed for the PUD Site will significantly improve economic development in the Florida Avenue Market area and increase access to a variety of jobs and new employment opportunities.

### **Compliance with the Ward 5 Works Industrial Land Transformation Study**

130. The Commission finds that the Project is consistent with the Ward 5 Works Industrial Land Transformation Study (the “Ward 5 Works Study”). The Ward 5 Works Study recognizes the demand for small and medium-sized PDR spaces and encourages the District to partner with local stakeholders to capitalize on current economic trends to transform the industrial areas of Ward 5 into a hub of cutting-edge and sustainable PDR businesses. Key opportunities include the development of maker uses (described as small-scale production activities that include both engineering-oriented pursuits and traditional crafts/trades); arts and creative uses; and green, sustainable businesses. *See* Ward 5 Works Study, p. 3. The Ward 5 Works Study’s strategic recommendations span a wide range of policies, actions, and place-based investments, and include the goal of partnering with the private sector to support development of affordable space for PDR and new and emerging businesses with, a particular focus on arts uses and makers, media and communications, food industries and green, sustainable businesses. *Id.* at 4.

131. The Commission finds that the Project is consistent with several specific policy actions within the Ward 5 Works Study. For example, *Action 1.2* focuses on emerging industries, such as “media, communications, food and arts/maker and businesses” and encourages the linking of these emerging industries to “resources and each other, possibly within the context of shared facilities.” *Id.* at 90. In addition, *Action 2.2* encourages the location of PDR uses on the ground floor of residential developments (referred to as “Make/Live Districts”). The Plan indicates that “with a higher overall density, the land could be used more productively while still providing as much dedicated space for production uses. Cross-subsidy from the residential uses could reduce the required rents for the first-floor PDR uses.” *Id.* at 92.

132. The Commission finds that the Project is consistent with these Actions because it includes subsidized business incubator spaces that be dedicated exclusively to Makers. These “Makers” are exactly the type of emerging industries referenced in the Ward 5 Works Study, and the Project creates an environment in which different types of Makers can be linked and share resources. For example, the Project includes space that will be exclusively reserved for small, local, start-up businesses devoted to the creation of goods and services. The Applicant

will retain a retail broker with experience marketing to and securing a variety of tenant types, including Makers, and will market the Maker spaces at 10% less rent than the average base rent charged for leased retail space across the PUD Site at the time that each Maker space is leased. Consistent with the Ward 5 Works Study, the Maker spaces will be located within mixed-use residential buildings, allowing for increased density and highly productive land. Moreover, the Applicant's commitment to provide the Maker spaces at a subsidized rent is consistent with the Ward 5 Works Study's recommendation to partner with the private sector to support development of affordable Mmaker space to help create a hub of cutting-edge and sustainable local businesses.

133. Therefore, based on the foregoing, as well as OP's finding that the Project's proposed ground floor retail uses provide an opportunity for certain creative, start-up Mmaker uses that complement the food-focused retail of Union Market (Ex. 39, p. 28), the Commission concludes that the Project is consistent with many goals and recommendations of the Ward 5 Works Study.

## **District Review of Project Impacts**

### **Office of Planning**

134. By report dated April 18, 2016 (Ex. 15), OP recommended that the applications be set down for a public hearing. The OP setdown report stated that the "proposed zoning and PUD would not be inconsistent with the maps and written elements of the Comprehensive Plan and the small area plan known as the Florida Avenue Market Study. However, OP also notes that both the FAMS and the Comprehensive Plan Future Land Use Map identify this site for the highest density and OP would support more density than proposed." (Ex. 15, p. 2.)
135. On October 11, 2016, OP submitted a hearing report (Ex. 39). The OP hearing report noted that the Project "represents a great opportunity for creativity between the NoMA neighborhood and the developing Florida Avenue Market area and an influx of new residential where residential does not yet exist." (Ex. 39, p. 1.) This report also found that the proposed uses and density "are not inconsistent with the Future Land Use and Generalized Policy Maps, as well as with the Florida Avenue Market Small Area Plan upon a determination that the PUD results in 'the provision of significant amenities,' and would further objectives of the Land Use, Transportation, Housing, Economic Development, Urban Design, and Upper Northeast Area elements and their related policies." (Ex. 39, p. 11.)
136. The October 11, 2016 OP hearing report stated that OP could not yet make a recommendation on the applications, but recommended that the Commission hold a public hearing and that the Applicant submit the following additional information: (i) details on the proposed building materials; (ii) additional renderings; (iii) confirmation on whether Neal Place would be open during construction of the adjacent buildings; (iv) status of continued coordination with DC Water regarding the necessary DC Water easement; (v) correspondence from Virginia Railway Express ("VRE") regarding the use of Track 2 for the New York Avenue storage facility and on mitigation measures to impact the use of the track to adjacent properties; (vi) provision of the square foot area of green roof for the

consolidated PUD; (vii) details on the connection between the Florida Avenue Park and the Plaza; (viii) correspondence from DMPED regarding the use of city-owned land within the PUD; (ix) a determination letter from the Zoning Administrator regarding FAR calculations for the theoretical lots; and (x) additional information regarding flexibility to allow Buildings C1 and C2 to be a single building.

137. On October 17, 2016, VRE submitted a letter in support of the Project (Ex. 42), stating that VRE's planned track improvements and rail alignment will not conflict with Project.
138. On October 17, 2016, DMPED submitted a letter in support of the Project (Ex. 44), indicating that as fee owner of Lot 819 in Square 3587, it consented to the inclusion of Lot 819 in the PUD application and designated the Applicant as the agent of the District for the purposes of filing and processing the PUD applications.
139. On October 19, 2016, the Applicant submitted responses to the OP hearing report (Ex. 45-46). The responses included updated architectural plans and elevations; an analysis demonstrating that the Project complies with many of the employment and economic development objectives of the Comprehensive Plan, the Ward 5 Words Study, and the FAMS; and an updated list of proposed public benefits and amenities. On December 21, 2016, the Applicant filed a Supplemental Prehearing submission, which included an email confirmation from the Zoning Administrator indicating that FAR relief was not required for theoretical Lot C because the aggregate FAR across the PUD Site was less than the maximum permitted FAR for a PUD in the C-3-C District.
140. On January 3, 2017, following postponement of the public hearing, OP submitted a supplemental hearing report (Ex. 64), which indicated that "OP has continued to work with the applicant on updates to their plans and can now recommend approval of the application." (Ex. 64, p.1.) The Applicant and OP both testified at the public hearing that the Applicant had adequately responded to all of the questions and concerns that were previously raised by OP. OP's only request in its hearing report was for the Applicant to clarify the window selection for the proposed sound-dampening windows on the side of the buildings facing the rail tracks. The Applicant provided this information at the public hearing.

### **District Department of Transportation**

141. On October 11, 2016, DDOT submitted a report on the application (Ex. 40). The DDOT report stated that it had no objection to the applications, subject to the following conditions:
  - a. Revise the site's transportation infrastructure to meet the following design requirements:
    - i. Street centerlines: Align the centerline of the Neal Place and Morse Street with the Neal Place extension under ZC 14-07 and public segment of Morse Street, respectively.
    - ii. Pedestrian crossing designs: Commit to design all pedestrian crossings

internal to the site to current DDOT and ADA standards.

- iii. Clear circulation zones: Maintain circulation zones as clear and continuous pedestrian paths along all streets devoid of obstacles such as sidewalk cafes, street furniture, utility vaults, etc. The clear sidewalks should be in the same location for each block face, and the sidewalk clear zone should not jog within a block face.
  - iv. Construction-related interim Neal Place cross section: Construct a cross section featuring two 11' travel lanes for bidirectional vehicular operations and minimum 6' clear pedestrian circulation zones on both sides of the street.
  - v. Cycle track design: Construct a 10' cycle track in the alley featuring a 2' raised buffer to separate bicycle traffic from vehicular traffic and a 1' buffer to separate bicycle traffic from pedestrian traffic. Breaks in the barriers should be provided to accommodate loading and vehicle access points for Buildings C-1, C-2, and D.
- b. Construct off-site cycle track connections between the proposed cycle track in the private alley and the planned cycle track on 4th Street between Florida Avenue and Morse Street; and
- c. Strengthen the proposed TDM plan by implementing the following measures:
- i. Place and fund the operations and maintenance for one year of a new Capital Bikeshare station within the site;
  - ii. Increase the duration of the annual carsharing or Capital Bikeshare membership to each residential unit for a period of five years.
  - iii. Provide at least 63 and 28 short-term bicycle parking spaces for Phases 1 and 2, respectively;
  - iv. Dedicate two curbside parking spaces for car sharing services to use with right of first refusal;
  - v. Purchase a total of 20 electric bikes and install ten electric bike charging stations to be distributed proportionally across the residential buildings;
  - vi. Purchase a total of 20 cargo bicycles for residents to use to be distributed proportionally across the residential buildings;
  - vii. Install six publicly-accessible electric bike charging stations; and
  - viii. Provide 40 rolling shopping carts to be distributed proportionally across the residential buildings.

142. On October 19, 2016, the Applicant submitted responses to the issues and requests raised

in the DDOT report (Ex. 45-46). At the public hearing, the Applicant testified that it agreed to implement all of DDOT's requested conditions, except for providing 20 electric bikes and installing 10 electric bike charging stations. At the public hearing, DDOT testified that it was satisfied with the Applicant's proposed infrastructure improvements and TDM measures. Therefore, the Commission finds that the Applicant has fully satisfied all of DDOT's initial concerns and requests, and that the Project is consistent with current DOT policy.

### **DC Water**

143. DC Water reviewed the Project and submitted a letter in support. (Ex. 62, pp. 5-10.) The substance of the letter described the need for an easement for an existing 8-foot sewer main running along the western property line of the PUD Site. The letter indicated that the Applicant met with DC Water to discuss the easement and to review the associated width, accessibility, clearance, and other easement requirements. The Applicant submitted a variety of documents for DC Water's review (*see* Ex. 62, pp. 6-10), to which DC Water determined that "the proposed easement layout was found to conceptually meet DC Water's easement requirements." (Ex. 62, p. 5.)

### **Department of Energy and Environment**

144. DOEE reviewed the Project and submitted a report on the application. (Ex. 63.) DOEE's report stated that it is "generally supportive of the Project" and that it is "glad that the applicant increased their commitment to LEED, and are now projecting certification at the LEED v2009 Gold level." (Ex. 63, pp. 2, 3.) The DOEE report also indicated that it "met with the applicant several times during the last year...some concerns were included with the Office of Planning's report and were addressed directly in meetings with the applicant." (Ex. 63, p. 1-2.) The DOEE report also set forth a variety of recommendations to increase the Project's overall sustainability and reduce its impact on the environment.

145. By letter dated January 11, 2017, the Applicant responded to the comments and recommendations in DOEE's report (Ex. 72C), explaining how the Project incorporates a number of sustainability features, including stormwater management and retention techniques, the planting of new street trees and the creation of new greenspaces, the establishment of bioretention facilities, and the incorporation of energy efficient systems, among others. Moreover, following issuance of the Applicant's letter to DOEE, and in response to comments at the public hearing, the Applicant increased the amount of permeable paving in the Plaza by 2,400 square feet. *See* Sheet L1.05-L1.06 of the Plans dated January 26, 2017 (Ex. 72A.)

### **Advisory Neighborhood Commission**

146. ANC 5D, the ANC in which the PUD Site is located, submitted two resolutions in support of the Project. The first report noted that on April 12, 2016, at a duly noticed, regularly scheduled monthly meeting of ANC 5D, with a quorum of commissioners and the public present, ANC 5D voted 5-0-1 to support the Project as initially presented (Ex. 29). The second report noted that on September 13, 2016, at a duly noticed, regularly scheduled monthly meeting of ANC 5D, with a quorum of commissioners and the public present, ANC 5D voted 6-0-0 to continue to support the Project (Ex. 36). The ANC's second report stated

that the “applicant has done an excellent job of presenting its proposed PUD to the community and responding to the ANC’s questions and concerns. The development will contribute to the redevelopment of the Florida Avenue Market area and includes important new connections that will help bring surrounding communities closer together.” The ANC report also indicated that the Project would “include a number of significant public benefits and project amenities developed in coordination with the ANC, including (i) [a]dditional IZ ... with greater affordability - 50% of IZ units at 50% AMI and 50% at 80% AMI; (ii) [s]upport for local businesses with maker space, incubators and a first-source employment agreement; (iii) LEED Gold buildings; (iv) [a]ctivation and programming of open spaces to appeal to all members of the community.” (Ex. 36, p. 1.)

### **Review by Other Agencies**

147. Pursuant to 11 DCMR § 2403.3, the Commission is required to evaluate the impact of PUDs on the surrounding area and determine whether the operation of city services and facilities will be found to be unacceptable. The Commission’s evaluation is informed by District agencies who review and advise on the impact on the subject application.

148. In this case, and as set forth in the OP setdown report (Ex. 15), OP referred the application to other District agencies for review, including DDOT, DOEE, DC Water, the Department of Housing and Community Development (“DHCD”), the Department of Parks and Recreation (“DPR”), the Department of Public Works (“DPW”), DC Public Schools (“DPS”), Fire and Emergency Medical Services Department (“FEMS”), Metropolitan Police Department (“MPD”), and Washington Metropolitan Area Transit Authority (“WMATA”). OP’s hearing report also stated that it “coordinated with other agencies in the completion of this report, including DHCD and DC Water.” (Ex. 39, p. 20.) However, of the above-referenced agencies, only OP, DDOT, DOEE, and DC Water submitted reports on the application.

149. Although many of the relevant District agencies did not submit reports on the application, based on the evidence in the case record, the Commission finds that the Project’s ~~will not have any negative impacts on the surrounding area, and will not have an unacceptable impact on the operation of city services and facilities and on the surrounding area are capable of being mitigated.~~ In support of this conclusion, the Commission makes the following findings:

- a. The Project will not have any negative impacts on fire hazards or public safety because the proposed Buildings and site plan have been designed to meet all Fire and Construction Code requirements, and because the proposed open spaces, activated storefronts, and pedestrian amenities will put additional “eyes and ears” on the street, thus increasing safety and security in the area;
- b. The District has previously determined that it has capacity to provide adequate police services throughout the city;
- c. The Applicant will construct and maintain all necessary public facilities and infrastructure to accommodate future demand and maintain the efficient delivery of public services;

- d. The Applicant will ensure adequate provision of utilities for the Project and for existing development in the surrounding area;
- e. The Project will not result in residential or commercial displacement, and will instead spur the growth and development of businesses in the area through its mixed-income and mixed-use amenities. These qualities are evident through the significant amount of affordable housing throughout all of the residential Buildings and the subsidies provided for dedicated “Maker” space;
- f. The Project includes a significant amount of parks and green spaces that will be open to the public, include a variety of interactive design techniques, and incorporate landscaping and permeable materials to benefit the environment;
- g. The District has previously determined that the DC public school system has available capacity to accommodate new students, such that the Project will not impose an unreasonable burden on the DCPS system; and
- h. The Project is located in close proximity to a wide variety of public transportation options, including Metrorail, Metrobus, carshare, and bikeshare, and is also located in a mixed-use, walkable location, such that the Project will not have any negative impacts on transit capacity.

Therefore, based on all of the evidence in the record and the Findings of Fact set forth above, the Commission finds that the Project is consistent with 11 DCMR § 2403.3 in that the Project’s impacts on the city services and the surrounding area are capable of being mitigated.

150. Moreover, as part of the building permit process, the Applicant will be required to comply with all applicable laws and regulations, which are established to preclude negative impacts and ensure the continued and safe operation of city services and facilities. As set forth in 12A DCMR § 101.2.4, these laws and regulations will “safeguard the public health, safety, and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, accessibility, sustainability, and safety to life and property from fire and other hazards attributed to the built environment, and to provide safety to fire fighters and emergency responders during emergency operations.” ~~Therefore, based on all of the evidence in the record and the Findings of Fact set forth above, the Commission finds that the Project is consistent with 11 DCMR § 2403.3 in that it will not have any negative impacts on the surrounding area, and will not have an unacceptable impact on the operation of city services and facilities.~~

### 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, welfare, and convenience.” (11 DCMR § 2400.2.)

- 4.2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider the application as a consolidated PUD or a two-stage PUD. The Commission may impose development guidelines, conditions, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts.
3. The PUD Site meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
4. Proper notice of the proposed PUD and related rezoning was provided in accordance with the requirements of the Zoning Regulations and as approved by the Commission.
5. The development of the PUD will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right standards. Here, the height, character, scale, mix of uses, and design of the proposed PUD are appropriate. The proposed redevelopment of the PUD Site, with a mix of uses, capitalizes on the Property's transit-oriented location and is compatible with citywide and area plans of the District of Columbia.
6. The Applicant seeks a PUD-related zoning map amendment to the C-3-C Zone District, as well as flexibility relating to the loading, parking, compact parking, rear yard, open court, and building lot control requirements of the Zoning Regulations—. The Commission has judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects, and concludes approval is warranted for the reasons detailed below.
7. The PUD complies with the applicable height and bulk standards of the Zoning Regulations and will not cause a significant adverse effect on any nearby properties. The residential, retail, office, and potential hotel uses for this PUD are appropriate for the PUD Site's location. The PUD's height, bulk, and uses are consistent with the District's planning goals for the surrounding neighborhood.
8. The PUD provides superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the PUD Site would provide. The Commission finds that the urban design, site planning, efficient and safe transportation features and measures, housing and affordable housing, ground-floor retail uses, and uses of special value are all significant public benefits. The impact of the PUD is acceptable given the quality of the public benefits of the PUD.
9. The impact of the PUD on the surrounding area and the operation of city services is not unacceptable. The Commission agrees with the conclusions of the Applicant's traffic expert and DDOT that the proposed PUD will not create adverse traffic, parking, or pedestrian impacts on the surrounding community. The application will be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

10. Approval of the PUD and rezoning is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP and finds that the proposed PUD is consistent with the PUD Site's mixed-use High-Density Commercial, High-Density Residential, and Production, Distribution and Repair -designation on the Future Land Use Map, and furthers numerous goals and policies of the written elements of the Comprehensive Plan as well as other District planning goals for the immediate area.
11. The Commission concludes that the proposed PUD-related Zoning Map Amendment for the Property from the C-M-1 to the C-3-C Zone District is not inconsistent with the Comprehensive Plan, including the Property's land use designation on the Future Land Use map, and is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives. The PUD-related rezoning of the PUD Site to C-3-C is consistent with the purposes and objectives of zoning as set forth in the Zoning Act of 1938, approved June 20, 1938.
12. The PUD 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 Zoning Map of the District of Columbia.
- 2-13. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to the recommendations of OP in all zoning cases. The Commission carefully considered the OP reports and found OP's reasoning persuasive in recommending approval of the application.
14. 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. In this instance, ANC 5D expressed no issues or concern, but rather indicated its support of the application. The District of Columbia Court of Appeals has noted that the ANC Act does not require an agency "to give 'great weight' to the ANC's recommendation but requires the [the agency] to give great weight to any issues and concerns raised by the ANC in reaching its decision." *Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1086 (D.C. 2016). The court thus held that in the context of a BZA application, although "it may be helpful to an applicant seeking a variance or a special exception to have the support of the local ANC, that body's recommendation in favor of a project does not provide any substantial support to justify the BZA's decision." *Id.* at 1087. Thus the Zoning Commission did not consider the ANC's recommendation of approval as providing substantial support to justify its decision to grant this application, except to the extent it reflected community sentiment.
- 3-15. The Applicant 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 applications for review and approval of a consolidated PUD, a first-stage PUD, and a related zoning map amendment from the C-M-1 District to the C-3-C District for property located at 300, 325, and 350 Morse Street, NE (Square 3587, Lots 805, 814, and 817). 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 December 23, 2016 (Ex. 61A), as supplemented by the revised sheets dated January 26, 2017 (Ex. 72A) (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-use project comprised of four buildings (“Building A,” “Building B,” “Building C,” and “Building D”) constructed in two phases. Phase I (the Consolidated PUD) shall include the southern portion of Building A (“Building A1”), Building B, and the southern portion of Building C (“Building C1”). Phase II (the First-Stage PUD) shall include the northern portion of Building A (“Building A2”), the northern portion of Building C (“Building C2”), and Building D. Upon completion of all Buildings, the Project shall have an aggregate density of approximately 7.1 FAR. Approximately 1,091,201 square feet of total gross floor area will be devoted to residential use, approximately 52,968 square feet of total gross floor area will be devoted to retail use, and approximately 217,558 square feet of total gross floor area will be devoted to office use. Building heights shall range from approximately 78 feet to approximately 130 feet. The Project will include a total of approximately 682 off-street parking spaces.
3. As shown on Sheets 20-21, L1.27 and L1.32 of the Plans, Buildings C and D on the PUD Site are separated from the Fourth Street PUD by the 48-foot wide Alley. Both the Applicant and the applicants in the Fourth Street PUD have proposed improvements to portions of the Alley and have developed mutually-agreeable conditions related to the timing for development of the Alley improvements, as set forth below. The Alley, as measured from the Fourth Street PUD, labeled from east to west, is comprised of a 5 foot planting area; 24 foot drive lane; 1 foot rolled curb; 10 foot bike lane, 1 foot paving band; and 7 foot circulation zone.
4. The Applicant shall not undertake construction of any improvements to the 35-foot wide portion of the Alley between Buildings C1 and C2 of the PUD Site and the Fourth Street PUD, until such time as the Alley improvements approved as part of the Fourth Street PUD have been constructed and the certificate of occupancy has been issued for the South Parcel building on the Fourth Street PUD. If such Alley improvements have not been completed by December 31, 2019, the Applicant may proceed to construct its proposed Alley improvements at that time but shall cooperate with the developers of the Fourth Street PUD to ensure that the Applicant’s work in the Alley does not compromise the completion and opening of the South Parcel of the Fourth Street PUD. This condition does not preclude either party from utilizing the Alley and making any necessary repairs to allow for access to their respective properties.

5. The Applicant shall not undertake construction of any improvements in the 35-foot wide portion of the Alley between Building D of the PUD Site and the North Parcel building of the Fourth Street PUD until such time as the Alley improvements approved as part of the Fourth Street PUD have been constructed and the Certificate of Occupancy has been issued for the North Parcel building. If such Alley improvements have not been completed by December 31, 2022, the Applicant may proceed to construct its proposed Alley improvements at that time but shall cooperate with the developers of the Fourth Street PUD to ensure that the Applicant's work in the Alley does not compromise the completion and opening of the North Parcel of the Fourth Street PUD. This condition does not preclude either party from utilizing the Alley and making any necessary repairs to allow for access to their respective properties.
6. The Applicant is granted flexibility from the loading, parking, compact parking, rear yard, open court, and building lot control requirements of the Zoning Regulations, consistent with the Plans and as discussed in the Development Incentives and Flexibility section of this Order.
7. The Applicant shall also have flexibility with the design of the PUD in the following areas:
  - a. To be able to provide a range in the number of residential units of plus or minus 10%;
  - b. To vary the number, location, and arrangement of parking spaces, provided that the total number is not reduced below the minimum number of parking spaces required by the Zoning Regulations;
  - c. To develop Building A2 with hotel use above the proposed ground floor retail and to develop Building D with hotel or office use above the proposed ground floor retail, should the market demand be more appropriately satisfied with hotel and/or office use;
  - d. 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;
  - e. To vary the sustainable design features of the Project, provided (i) the total number of LEED points achievable for Buildings A1 and B are not below LEED Gold under the USGBC's LEED for New Construction v2009 rating standards, (ii) the total number of LEED points achievable for Building C1 is not below LEED Gold under the USGBC's LEED for Core and Shell v2009 rating standards, and (iii) the total number of LEED points achievable for each Building within the First-stage PUD is not below the total number of LEED points consistent with the USGBC LEED Gold for New Construction v2009 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; and 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 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. To use either tonal masonry or warm-tone terracotta cementitious panels for Building C1's exterior building material, as shown on Sheet 80 of the Plans dated January 26, 2017 (Ex. 72A);
- h. In the retail and service areas, flexibility to vary the location and design of the ground floor components of the Project 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 or service use and to accommodate any specific tenant requirements; and to vary the size of the retail area; and
- i. To vary the features, means and methods of achieving the code-required Green Area Ratio ("GAR") of 0.20.

## **B. Public Benefits**

1. **Prior to the issuance of a Certificate of Occupancy for each residential Building and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator the following:
  - a. **For the life of the Project**, the Applicant shall:
    - i. Provide a total of 1,091,201 square feet of residential Gross Floor Area ("GFA") of housing;
    - ii. Set aside no less than 11% of the residential GFA, equaling not less than 120,036 square feet, as inclusionary units pursuant to ~~11-C-DCMR~~ [Chapter 26 of the Zoning Regulations](#);
    - iii. Set aside no less than 62 units (50% of the inclusionary units) comprising at least 60,018 square feet of GFA as inclusionary units for households earning equal to or less than 50% of the Median Family Income ("MFI") (50% MFI Units"); and
    - iv. Set aside no less than 62 units (50% of the inclusionary units) comprising at least 60,018 square feet of GFA as inclusionary units for households earning equal to or less than 80% of the MFI ("80% MFI Units").

- b. The distribution of the affordable housing units shall be in accordance with Sheets 16-16A and 122-133 of the Plans dated January 26, 2017, marked as Exhibit 72A of the record, and in accordance with the following chart:

	<b>Building A1</b>	<b>Building A2<sup>8</sup></b>	<b>Building B</b>	<b>Building C2</b>	<b>Building D (resid. option)</b>	<b>Affordable Control Period</b>	<b>Affordable Unit Type</b>	<b>Total</b>
<b>Total</b>	422,605 sf GFA (453 units) (100%)	249,323 sf GFA (198 units) (100%)	86,005 sf GFA (105 units) (100%)	211,784 sf GFA (232 units) (100%)	121,484 sf GFA (115 units) (100%)	NA	NA	1,091,201 sf GFA (1,103 units) (100%)
<b>Market Rate</b>	376,117 sf GFA (89%)	221,897 sf GFA (89%)	76,543 sf GFA (89%)	188,488 sf GFA (89%)	108,120 sf GFA (89%)	NA	NA	971,165 sf GFA (977 units)
<b>50% AMI</b>	23,244 sf GFA (26 units) (5.5%)	13,713 sf GFA (12 units) (5.5%)	4,731 sf GFA (5 units) (5.5%)	11,648 sf GFA (13 units) (5.5%)	6,682 sf GFA (6 units) (5.5%)	Life of the Project	Rental (optional for-sale in Building A2)	60,018 sf GFA (62 units)
<b>80% AMI</b>	23,244 sf GFA (26 units) (5.5%)	13,713 sf GFA (12 units) (5.5%)	4,731 sf GFA (5 units) (5.5%)	11,648 sf GFA (13 units) (5.5%)	6,682 sf GFA (6 units) (5.5%)	Life of the Project	Rental (optional for-sale in Building A2)	60,018 sf GFA (62 units)

- c. The Inclusionary Zoning Covenant required by D.C. Official Code §§ 6-1041.05(A)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with all the terms of this condition.

2. If Building A2 is developed as for-sale housing, then the Applicant shall reduce the total affordable housing proposed for Building A2 from 11% to 8% of Building A2's residential gross floor area, all of which shall be dedicated to households earning up to 80% of the AMI, and shall transfer an additional 13,713 square feet of affordable housing dedicated to households earning up to 50% of the AMI in Buildings A1 and B, to then result in the following allocations:

- a. **Prior to the issuance of a Certificate of Occupancy for Building A1 and for the**

<sup>8</sup> If Building A2 is developed as for-sale housing, then the proffered affordable housing will be redistributed as follows: (i) 19,946 square feet of Building A2's residential gross floor area will be dedicated to households earning up to 80% of the AMI; (ii) a total of 30,100 square feet of Building A1's residential gross floor area will be dedicated to households earning up to 50% of the AMI, and a total of 17,011 square feet of Building A1's residential gross floor area will be dedicated to households earning up to 80% of the AMI; and (iii) a total of 11,587 square feet of Building B's residential gross floor area will be dedicated to households earning up to 50% of the AMI, and a total of 4,731 square feet of Building B's residential gross floor area will be dedicated to households earning up to 80% of the AMI. If Building A2 is to be developed as for-sale housing and Buildings A1 and B are constructed prior to Building A2, then the condition enforcing this commitment will be based on the timing of issuance of the certificate of occupancy for Building A1 and Building B, respectively (*see* Condition No. 2).

**life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has dedicated the following affordable housing in Building A1:

- i. 30,100 square feet of Building A1's residential gross floor area to households earning up to 50% of the AMI; and
- ii. 17,011 square feet of Building A1's residential gross floor area to households earning up to 80% of the AMI.

b. **Prior to the issuance of a Certificate of Occupancy for Building B and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has dedicated the following affordable housing in Building B:

- i. 11,587 square feet Building B's residential gross floor area to households earning up to 50% of the AMI; and
- ii. 4,731 square feet of Building B's residential gross floor area to households earning up to 80% of the AMI.

c. The requirement to dedicate the additional affordable housing totaling 13,713 square feet in Buildings A1 and B as set forth above is only triggered if Building A2 is developed as for-sale housing and dedicates 8% of its residential gross floor area to households earning up to 80% of the AMI. In no event shall any building include less than 8% of its residential gross floor area devoted to inclusionary units.

d. All IZ units shall maintain affordability in accordance with all applicable requirements of the Zoning Regulations as of the date of this Order.

3. **Prior to the issuance of a building permit for Buildings A1 and B**, each Building owner shall have the individual obligation to register the subject Building with the USGBC to commence the LEED certification process under the USGBC's LEED for New Construction v2009 rating standards. **Prior to the issuance of a building permit for Building C1**, the Building C1 owner shall have the individual obligation to register Building C1 with the USGBC to commence the LEED certification process under the USGBC's LEED Core and Shell v2009 rating standards. **Prior to the issuance of a building permit for each Building in the Second-Stage PUD**, each Building owner shall have the individual obligation to register the subject Building with the USGBC to commence the LEED certification process under the version of LEED that is in place at the time of applying for that Building's building permit.

4. **Prior to the issuance of a Certificate of Occupancy for each Building in the Consolidated PUD**, each Building owner shall have the individual obligation to furnish a copy of the associated LEED certification application submitted to the USGBC for that Building. The application for Buildings A1 and B shall indicate that the subject Building has been designed to include at least the minimum number of points necessary to achieve

LEED-Gold certification under the USGBC's LEED for New Construction v2009 rating standards. The application for Building C1 shall indicate that Building C1 has been designed to include at least the minimum number of points necessary to achieve LEED Gold certification under the USGBC's LEED for Core and Shell v2009 rating standards. **Prior to the issuance of a Certificate of Occupancy for each Building in the Second-Stage PUD**, each Building owner shall have the individual obligation to furnish a copy of the associated LEED certification application submitted to the USGBC for that Building. The application shall indicate that the subject Building has been designed to include at least the minimum number of points necessary to be consistent with the USGBC LEED Gold for New Construction v2009 rating standards.

5. **Prior to the issuance of a Certificate of Occupancy for each Building within the Consolidated PUD and the First-Stage PUD**, each Building owner shall have the individual obligation to demonstrate to the Zoning Administrator that it has executed and submitted a First Source Employment Agreement to DOES for the subject Building, consistent with the First Source Employment Agreement Act of 1984 and the Apprenticeship Requirements Amendment Act of 2004.
6. **Prior to the issuance of a Certificate of Occupancy for the first Building completed within the Consolidated PUD**, the Applicant shall demonstrate to the Zoning Administrator that it has completed construction of:
  - a. The street grid, landscaping, sidewalks, streetscape improvements, street trees, energy and water efficient systems, construction waste management elements, stormwater runoff materials, and bicycle parking facilities, consistent with the Landscape Plans included in the Plans dated December 23, 2016 (Ex. 61A), and the Plans dated January 26, 2016 (Ex. 72A), showing such improvements for each relevant Building delivery. Morse Street, 3<sup>rd</sup> Street, and Neal Place shall utilize 10' x 16' scored concrete; the Alley shall be finished with permeable pavers. All sidewalks and elements in public space shall be built to DDOT standards and shall utilize the Union Market Streetscape Guidelines; and
  - b. The Neal Place Extension, consistent with Sheets 20-21, L1.01-L1.02, L1.20-L1.21, L1.26-L1.28, L1.31, L2.05-L2.06, and C200-C201 of the Plans. However, if at the time of issuance of a Certificate of Occupancy for the first Building completed within the Consolidated PUD, a Second-Stage PUD application has been approved for Building C2 or Building D, then the final construction and opening of Neal Place may be deferred until the earlier of (i) completion of construction of Building C2 or Building D, or (ii) three years from the date of issuance of the Certificate of Occupancy for the first Building completed within the Consolidated PUD. If the Neal Place Extension is deferred as set forth above, then **prior to the issuance of a Certificate of Occupancy for the first Building completed within the Consolidated PUD**, the Applicant shall demonstrate to the Zoning Administrator that it has built a temporary street in either of the locations shown on Sheet C202 of the Plans, in order to provide an interim east-west connection between 3rd Street and the Alley.

7. **Prior to the issuance of a Certificate of Occupancy for Building C1**, the Applicant shall demonstrate to the Zoning Administrator that it has installed the improvements in the western 13-feet of the Alley, labeled from west to east as a 7-foot circulation zone, a 1-foot paving band, and half of the 10-foot bicycle lane, and as shown on Sheet L1.32 of the Plans.
8. **Prior to the issuance of a Certificate of Occupancy for Building C1**, the owner of Building C1 shall demonstrate to the Zoning Administrator that it has installed a bicycle lane in the Alley, as shown on Sheet L1.32 of the Plans. In the event that the owner of Building C1 is unable to complete the installation of the bicycle lane in the Alley prior to the issuance of a Certificate of Occupancy for Building C1, due to the resultant timing of completion of the Alley improvements that are part of the Fourth Street PUD, then the owner of Building C1 shall have the flexibility to complete the installation of the bicycle lane no less than 6 months following the issuance of the Certificate of Occupancy for the South Parcel building of the Fourth Street PUD; and
9. **Prior to the issuance of a Certificate of Occupancy for each Building**, each Building owner shall have the individual obligation to demonstrate to the Zoning Administrator that it has constructed the interior bicycle parking within the relevant Building, as shown on Sheets 37-39, 44, 69, and 82 of the Plans.
10. **Prior to the issuance of a Certificate of Occupancy for each Building completed within the Consolidated PUD**, each Building owner shall have the individual obligation to demonstrate to the Zoning Administrator that it has installed the exterior bicycle parking adjacent to the relevant Building and open spaces.
11. **Prior to the issuance of a Certificate of Occupancy for the first Building completed within the Consolidated PUD**, the Applicant shall demonstrate to the Zoning Administrator that it has installed a bicycle lane on Morse Street, between the Alley and 4<sup>th</sup> Street.
12. **Prior to the issuance of a Certificate of Occupancy for the first Building completed within the Consolidated PUD**, the Applicant shall demonstrate to the Zoning Administrator that it has (i) installed a new traffic signal, subject to DDOT approval, at the intersection of 4<sup>th</sup> and Morse Streets, NE, and (ii) installed traffic management cameras at the intersections of New York Avenue and 4<sup>th</sup> Street and Florida Avenue and 5<sup>th</sup> Street for integration into the DDOT traffic management program. If DDOT is not ready to incorporate these improvements at the time that the Applicant is submitting for Certificate of Occupancy for the first Building, then prior to the issuance of a Certificate of Occupancy for the first Building completed within the Consolidated PUD, the Applicant shall put into an escrow account (i) \$250,000 necessary to install a new traffic signal at 4<sup>th</sup> and Morse Streets, NE, and (ii) \$12,000 necessary to install a traffic management camera at the intersections of New York Avenue and 4<sup>th</sup> Street and Florida Avenue and 5<sup>th</sup> Street.
13. **Prior to the issuance of a Certificate of Occupancy for the first Building completed within the Second-stage PUD**, the Applicant shall demonstrate to the Zoning

Administrator that it has paid DDOT for the installation and first year's operation expenses of a new Capital Bikeshare station to be located on Morse Street, south of Building C1.

14. **Prior to the issuance of a Certificate of Occupancy for the first Building completed within the Consolidated PUD**, the Applicant shall demonstrate to the Zoning Administrator that it has designated two curbside parking spaces for carsharing services within the PUD Site. If no carshare providers are willing to operate in those spaces, the dedicated spaces may be returned to the general on-street parking supply.
15. **Prior to the issuance of a Certificate of Occupancy for each Building completed within the Consolidated PUD, and for the life of the Project**, each Building owner shall have the individual obligation to demonstrate to the Zoning Administrator that it has designated a Transportation Management Coordinator responsible for organizing and marketing the TDM plan and acting as a point of contact with DDOT for the relevant Building.
16. **For the life of the Project**, each Building owner shall have the individual obligation to:
  - a. Provide TDM materials to new residents as part of the Residential Welcome Package for Buildings A, B, C2, and D;
  - b. Price all on-site vehicle parking at market rate at minimum, defined as the average cost for parking within a 0.25 mile radius of the PUD Site;
  - c. Unbundle the cost of residential parking from the cost of lease or purchase of residential units for Buildings A, B, C2, and D.
17. **Prior to the issuance of a Certificate of Occupancy for Buildings A1, B, or C1**, each Building owner shall have the individual obligation to demonstrate to the Zoning Administrator that it has installed one bicycle repair station in the relevant Building listed above, consistent with Sheets 37-39, 44, 69, and 82 of the Plans.
18. **Prior to the issuance of a Certificate of Occupancy for each Building**, the Applicant shall demonstrate to the Zoning Administrator that it has exceeded the zoning requirements for bicycle parking for the applicable building.
19. **Prior to the issuance of a Certificate of Occupancy for the A1 Building**, the Applicant shall demonstrate to the Zoning Administrator that it has installed one bicycle repair station at the public Plaza.
20. **Prior to the issuance of a Certificate of Occupancy for each Building**, each Building owner shall have the individual obligation to demonstrate to the Zoning Administrator that it has installed a transit information screen in each of the residential and office lobbies.
21. **Prior to the issuance of a Certificate of Occupancy for each residential Building completed within the Consolidated PUD and Second-stage PUD**, respectively, each Building owner shall have the individual obligation to demonstrate to the Zoning

Administrator that it has dedicated \$200.00 per residential unit in alternative transportation incentives that can be used as an annual Capital Bikeshare membership, an annual carshare membership, a carshare driving credit, or for bicycle repair/maintenance. These funds shall be pooled during each phase of the Project into a fund that would make incentives available to residents until the fund is exhausted. This benefit shall be included in rental or condominium documents for all of the residential units planned within the project, both in Phase 1 and Phase 2. If the fund is not exhausted within five years of issuance of a certificate of occupancy for the first Building within each phase of the project, it shall be disbursed to a TDM-related entity or organization at DDOT direction.

22. **Prior to the issuance of a Certificate of Occupancy for each residential Building**, each Building owner shall have the individual obligation to demonstrate to the Zoning Administrator that it has:
- a. Purchased and placed two cargo bicycles within each residential Building; and
  - b. Purchased and placed three rolling shopping carts within each residential Building.

### **Florida Avenue Park**

23. **Prior to the issuance of a Certificate of Occupancy for Building A1 or B (whichever is first)**, the Applicant shall demonstrate to the Zoning Administrator that it has completed 75% of construction of the portion of the Florida Avenue Park located on the PUD Site, in accordance with Sheets 20 and L1.01-L1.04 of the Plans, as certified by the landscape architect. The portion of the Florida Avenue Park located on the PUD Site shall be improved with terraced greenspace, public seating areas, and two pathways that provide handicapped, bike, and stroller accessibility. The portion of the Florida Avenue Park located on the PUD Site shall also include biofiltration gardens, landscaping to buffer the rail tracks to the west, and wayfinding. The remainder of the construction of the portion of the Florida Avenue Park located on the PUD Site shall be 100% completed within 120 days after issuance of the Certificate of Occupancy, as certified by the landscape architect. [No Certificate of Occupancy shall be issued for Building A1 or B \(whichever is second\) until the portion of the Florida Avenue Park located on the PUD Site is 100% complete.](#)
24. **Prior to the issuance of a building permit for the first Building to be constructed within the Consolidated PUD**, the Applicant shall demonstrate to the Zoning Administrator that it has placed \$150,000 into an escrow fund for the benefit of the Highline Developer, to be used in connection with improvements [on the portion of the Florida Avenue Park required by Z.C. Order No. 15-01](#) to enable the provision of handicapped accessible pathways.
25. **Prior to the issuance of a Certificate of Occupancy for the first Building completed within the Consolidated PUD**, the Applicant shall demonstrate to the Zoning Administrator that it has contracted with a Property Management Company to maintain and operate the portion of the Florida Avenue Park located on the PUD Site for the life of the Project, or is contributing to a maintenance agreement in partnership with the Highline

Developer or market-wide BID.

### **The Plaza**

26. **Prior to the issuance of a Certificate of Occupancy for Building A1 or B (whichever is first)**, the Applicant shall demonstrate to the Zoning Administrator that it has completed 75% of construction of the Plaza, as certified by the landscape architect, in accordance with Sheets 20, L1.01-L1.04, and L1.07-L1.19 of the Plans. The Plaza shall complete the pedestrian connection from NoMa and Old City into the Florida Avenue Market area, and shall be developed as an active public gathering space with a variety of seating options positioned using deaf-space design principles that accommodate people speaking sign language. The easternmost section of the Plaza shall be designed to accommodate temporary vendor stations, and shall be lined on both sides by retail storefronts and café terraces. The remainder of the construction of the Plaza shall be 100% completed within 120 days after issuance of the Certificate of Occupancy, as certified by the landscape architect. [No Certificate of Occupancy shall be issued for Building A1 or B \(whichever is second\) until the Plaza is 100% complete.](#)
27. **Prior to the issuance of a Certificate of Occupancy for Building A1**, the A1 Building owner shall demonstrate to the Zoning Administrator that it has either (i) reserved a portion of the B01/Plaza Level for publicly accessible bicycle parking; or (ii) established a bicycle valet operated by the Property Management Company, retail tenant, or BID to operate on weekends and during special events.
28. **Prior to the issuance of a Certificate of Occupancy for Building A1 or B (whichever is completed first)**, the Applicant shall demonstrate to the Zoning Administrator that it has installed a wayfinding totem or similar element at the Plaza where it opens to 3<sup>rd</sup> and Morse Streets, to provide orientation to key destinations within the Florida Avenue Market area.

### **Neal Place Park**

29. **Prior to the issuance of a Certificate of Occupancy for Building A2**, the Applicant shall demonstrate to the Zoning Administrator that it has completed 75% of construction of the Neal Place Park in accordance with Sheets 20, L1.01-L1.02, and L1.20-L1.21 of the Plans, and as certified by the landscape architect. Neal Place Park shall be 100% completed within 120 days after issuance of the Certificate of Occupancy, as certified by the landscape architect. The Applicant shall submit detailed landscape design sheets as part of the Second-Stage PUD application that shall be consistent with the above-referenced sheets. [No Certificate of Occupancy shall be issued for Building C2 or D \(whichever is first\) until Neal Place Park is 100% complete.](#)
30. **Prior to the issuance of a Certificate of Occupancy for Building A1**, the Applicant shall demonstrate to the Zoning Administrator that it has (i) installed a minimum of 3,000 square feet of retrofitted containers or similar structures on the site of the future Neal Place Park, as shown on Sheet 20 of the Plans, numbered as “1” and labeled/identified as “Pop-Up Retail/Makers Space Incubators” to house Makers, and (ii) marketed, or is in the process

of marketing, the retrofitted containers to Makers through the following actions:

- a. Retain a retail broker with experience marketing to and securing a variety of tenant types, including Makers;
  - b. Sponsor a workshop that encourages the maker movement;
  - c. Market the container spaces to retail tenants within the Florida Avenue Market area; and
  - d. Market the container spaces to retail tenants operating in Union Kitchen.
31. The Applicant shall install, maintain, and operate this area as Pop-Up Retail/Makers Space Incubators and green space until the filing of a building permit application for the construction of Building A2. If the Applicant files a building permit application for the construction of Building A2 at or before issuance of a Certificate of Occupancy for Building A1, then the Applicant is under no obligation to undertake the conditions set forth in Condition B.30.
32. The Applicant shall have the flexibility to relocate the containers as necessary to accommodate building construction.

### **Interim Park**

33. **Prior to the issuance of a Certificate of Occupancy for Building A1**, the Applicant shall demonstrate to the Zoning Administrator that it has installed the temporary improvements shown on Sheet 20 of the Plans, numbered as “3” and labeled/identified as a “Temporary Park.” The Applicant shall install, maintain, and operate this area as a landscaped temporary park until the filing of a building permit for the construction of Building D.
34. **Prior to the issuance of a Certificate of Occupancy for Building C1**, the Applicant shall demonstrate to the Zoning Administrator that it has installed the temporary improvements labeled as “1” on Sheet 21 of the Plans. The Applicant shall install, maintain, and operate this area as a landscaped temporary park until the filing of a building permit for the construction of Building C2.
35. **Prior to the issuance of a Certificate of Occupancy for the first Building completed within the Consolidated PUD**, the Applicant shall demonstrate to the Zoning Administrator that it has:
- a. Completed the installation of furnishings and equipment for the Interim Park. **Prior to the issuance of a Certificate of Occupancy for the last Building completed within the Second-Stage PUD application**, the Applicant shall demonstrate to the Zoning Administrator that it has reused the Interim Park furnishings in other areas of the PUD and/or has donated the furnishings to local schools; and

- b. Restored the dis-used loading platform at the rear of Parcel D.

**Maker Spaces**

- 36. **Prior to the issuance of a Certificate of Occupancy for Building A1 and Building B,** the Building owner shall have the individual obligation to demonstrate to the Zoning Administrator that
  - a. It has dedicated a minimum of 2,250 total square feet for Makers in Building A1 or Building B (spread between Buildings A1 and B, or located in either Building A1 or B);
  - b. It is marketing the Maker Spaces at 10% less rent than the average base rent charged for leased retail space across the PUD Site at the time that each Maker space is leased; and
  - c. It has and/or is in the process of marketing the 2,250 total square feet of Maker space to Makers by retaining a retail broker with experience marketing to and securing a variety of tenant types, including Makers.
  
- 37. **Prior to the issuance of a Certificate of Occupancy for Building C2 and Building D,** the Building owner shall have the individual obligation to demonstrate to the Zoning Administrator that
  - a. It has dedicated a minimum of 2,250 total square feet for Makers in Building C2 or Building D (spread between Buildings C2 and D, or located in either Building C2 or D);
  - b. It is marketing the Maker Spaces at 10% less rent than the average base rent charged for leased retail space across the PUD Site at the time that each Maker space is leased; and
  - c. It has and/or is in the process of marketing the 2,250 total square feet of Maker space to Makers by retaining a retail broker with experience marketing to and securing a variety of tenant types, including Makers.
  
- 38. **For the life of the Project,** a minimum of 4,500 square feet of gross floor area shall be reserved in Buildings A1, B, C2 and/or D for Maker Spaces, consistent with the immediately preceding condition.

**Metropolitan Branch Trail**

- 39. **Prior to the issuance of a Certificate of Occupancy for the first Building completed within the Consolidated PUD,** the Applicant shall demonstrate to the Zoning Administrator that it has contributed \$10,000 to the Metropolitan Branch Trail beautification program (PowWowMural) via the NoMa BID, and that the trail

beautification items and/or services are being provided.

## **Utilities**

40. **Prior to the issuance of a Certificate of Occupancy for the first Building completed within the Consolidated PUD**, the Applicant shall demonstrate to the Zoning Administrator that it has extended all new utilities throughout the PUD Site. The utilities for the Consolidated PUD shall be oversized to minimize utility work in the streets during future phases of development.

## **C. 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 Consolidated PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 15-27. Within such time, an application must be filed for a building permit for construction of Buildings A1, B, and C1, with construction of any of Buildings A1, B, or C1 to commence within three years of the effective date of this Order.
3. The First-Stage PUD shall be valid for five years after the effective date of Z.C. Order No. 15-27; provided that a Second-Stage application for one or more of the second phase buildings must be filed no later than two years after the effective date of this Order.
- ~~2.4. The Consolidated PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 15-27. Within such time, an application must be filed for a building permit for construction of Buildings A1, B, and C1, with construction of any of these buildings to commence within three years of the effective date of this Order. An application must be filed for a building permit for the second phase of the Project within two years after the completion of the Consolidated PUD, as evidenced by the issuance of a Certificate of Occupancy for the first building completed within the Consolidated PUD. Construction of the second phase of the Project shall begin within one year after the building permit is issued.~~
- ~~3.5. 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.

4.6. 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.

On \_\_\_\_\_, upon the motion of \_\_\_\_\_, as seconded by \_\_\_\_\_, the Zoning Commission took PROPOSED ACTION to APPROVE the application at its public meeting by a vote of \_\_\_\_\_ (Anthony J. Hood, Robert E. Miller, Peter G. May, Michael G. Turnbull, and Peter Shapiro to approve).

On \_\_\_\_\_, upon the motion of \_\_\_\_\_, as seconded by \_\_\_\_\_, the Zoning Commission took FINAL ACTION to APPROVE the application at its public meeting by a vote of \_\_\_\_\_ (Anthony J. Hood, Robert E. Miller, Peter G. May, Michael G. Turnbull, and Peter Shapiro to approve).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *DC Register*; that is on \_\_\_\_\_.