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VIA IZIS ONLY
Anthony J. Hood, Chairman
Zoning Commission for the District of Columbia
441 Fourth Street, N.W., Suite 200-S
Washington, D.C. 20001

Re: Z.C. Case No. 14-12I – Application of EAJ 1309 5th Street, LLC ("Applicant") for a Time Extension for the Consolidated Planned Unit Development and Related Zoning Map Amendment ("Approved PUD") for 1309 5th Street, N.E. (Square 3591, Lots 801, 802, 7004, 7005, 7011, 7012, 7013, 7034, 7036, 7037, and 7038) (the "Property")

Dear Chairman Hood and Members of the Commission:

The Applicant hereby respectfully requests, pursuant to Subtitle Z §§ 101.9 and 705 of the District of Columbia Zoning Regulations, a five (5)-year time extension for the Approved PUD, approved in Z.C. Order No. 14-12 (the "**Original Order**").

The Approved PUD includes two parts: (i) a consolidated PUD and map amendment for a vertical addition (the "**Future South Building**") to the existing building on the Property ("**The Market**"), and (ii) a first-stage PUD and map amendment for a new building (the "**North Building**") on the parcels immediately north of the Property. The Commission approved the North Building via a second-stage PUD in 2019, and the North Building is now constructed, open, and fully occupied.

This request concerns only the consolidated PUD for the "Future South Building" which would vertically expand The Market building, the existing building that has become the icon of the neighborhood. During the extension, the Applicant proposes to continue the food hall and Dock 5 event space in The Market, the 'Hi-Lawn' rooftop activity space above, and the plazas to the north and south of The Market. These uses will continue to serve the neighborhood and the District while market and financing conditions do not support the approved vertical expansion.

The Original Order became final and effective on May 8, 2015. Following prior extensions, Z.C. Order No. 14-12H, effective March 7, 2025, extended the deadline to file a building permit application for the Future South Building until November 9, 2026. The Commission granted that request with a waiver of Subtitle Z § 705.5 to permit a fourth applicant-initiated extension and a third extension of more than one year. This application seeks a fifth applicant-initiated extension and a further waiver of the restrictions on both the number and duration of extensions.

Through this application, the Applicant requests that the Commission extend the building permit application deadline by five (5) years, from November 9, 2026, to November 9, 2031, and establish November 9, 2032, as the corresponding deadline to commence construction of the Future South Building. This relief will preserve the approved long-term redevelopment framework while allowing continued operation and programming of the successful existing and interim uses. The request does not seek a modification of the approved development program or the existing interim conditions.

I. BACKGROUND REGARDING THE APPROVED PUD AND THE APPROVED PROJECT

The Property is located in the heart of the Union Market District in Ward 5, between 5th and 6th Streets, N.E. and active pedestrian plazas, with the completed North Building to the north and a surface parking lot to the south of the plazas.

In the Original Order, the Commission approved a consolidated PUD for the Future South Building, a first-stage PUD for the North Building, and a related amendment to the Zoning Map changing the designation for the Property from the former CM-1 zone to the former C-3-C zone (now MU-9B). The Approved PUD preserves The Market and its retail, restaurant, and event uses, together with surrounding outdoor plazas, and permits a vertical expansion to a height of 120 feet and approximately 216,400 square feet of gross floor area, including a movie theater and either office or residential uses above the theater, at the Applicant's election (the "**Approved Project**"). The Market is to remain open and operational during construction of the Approved Project.

The South Building approval was modified by Z.C. Order Nos. 14-12C and 14-12C(1) to permit interim improvements and uses, including the rooftop outdoor activity space now known as 'Hi-Lawn'. The Commission previously granted time extensions under Z.C. Order Nos. 14-12A, 14-12D, 14-12D(1), 14-12D(2), 14-12G, and 14-12H, including administrative pandemic-related extensions.

Separately, Z.C. Order No. 14-12E approved the second-stage PUD for the North Building at 1325 5th Street, N.E., which delivered in 2023 and is now open and leased up. The North Building is not the subject of this request.

II. JURISDICTION AND APPLICABLE STANDARD OF REVIEW

This application is filed pursuant to Subtitle Z §§ 101.9 and 705 for a five (5)-year time extension of the Approved PUD and a waiver of the Commission's rules limiting the number and duration of PUD time extensions, including Subtitle Z § 705.5.

A. Time Extension

The Commission has jurisdiction to grant the requested extension pursuant to Subtitle Z § 705. Under Subtitle Z § 705.2, a written request filed before expiration of the approval must demonstrate good cause, provided that (i) the request is served on all parties and all parties are allowed thirty (30) days to respond, (ii) there has been no substantial change in the material facts upon which the Commission based its original approval that would undermine its justification, and (iii) the applicant demonstrates with substantial evidence one or more qualifying circumstances. Those circumstances include an inability to obtain sufficient project financing, following diligent good-faith efforts, because of changes in economic and market conditions beyond the applicant's reasonable control, or other conditions, circumstances, or factors beyond the applicant's reasonable control that prevent compliance with the order's time limits. The Applicant relies on Subtitle Z § 705.2(c)(1) and (3).

B. Waiver of Rules Limiting the Number and Duration of Time Extensions

Subtitle Z § 705.5 limits an approved PUD to two (2) extensions and limits the second extension to one (1) year. The Applicant therefore expressly requests a waiver under Subtitle Z § 101.9 to permit a fifth applicant-initiated extension and a time extension for five (5) years. Section 101.9 allows a waiver for good cause shown where it will not prejudice the rights of any party and is not otherwise prohibited by law. The Applicant requests this waiver in light of the economic conditions and the continued operation of the Property and preservation of the approved benefits.

III. THIS APPLICATION SATISFIES THE STANDARDS FOR A 5-YEAR TIME EXTENSION

The Commission should grant the requested five (5)-year time extension and the waiver of the rules limiting the number and duration of extensions for the following reasons.

A. Service On and No Prejudice to Any Parties

The only parties to the Approved PUD are the Applicant and ANC 5D. The Applicant has presented the request to ANC commissioners and will formally present at an upcoming ANC meeting. This request has been served on the ANC, as reflected in the accompanying Certificate of Service. ANC 5D will have at least thirty (30) days to respond.

The requested extension will not prejudice any party because it preserves, rather than expands, the approved development program, maintains the applicable public benefits and conditions, and allows the existing food hall, event spaces, rooftop activity area, and outdoor gathering spaces to continue serving the community. The Applicant will continue coordination with ANC 5D concerning the Property.

B. No Substantial Change in Material Facts

There has been no substantial change in the material facts upon which the Commission based its approval that would undermine the justification for the Approved PUD. The Property remains an appropriate location for the approved mixed-use project and for the retention and continued operation of The Market. The approved planning rationale continues to support the Union Market District's mix of uses, pedestrian activity, public gathering spaces, and economic development. The continued success of The Market and completion of the North Building reinforce, rather than undermine, the rationale for preserving the approved development framework.

The requested extension does not increase approved height or density, change the authorized mix of uses, reduce any applicable affordable housing obligation, or eliminate any transportation, streetscape, sustainability, preservation, or community-benefit commitment. All approved plans, conditions, and benefits remain in force as previously modified, except for the South Building timing provisions. The separate North Building approval and its recorded covenant are not amended by this request.

C. No Prohibition by Law

The requested extension and waiver are not otherwise prohibited by law.

D. Good Cause Exists for the Requested Time Extension

Good cause exists under Subtitle Z §§ 101.9 and 705.2(c)(1) and (3) for the requested extension and waiver, for the following reasons:

1. Continuing the Existing Interim Uses Justifies the Extension for the Requested Period: The Applicant proposes to continue the food hall and Dock 5 event space in The Market, the 'Hi-Lawn' activity space on the roof, and the accessible outdoor seating and gathering spaces to the north and south of the building during the pendency of this requested time extension. The Applicant has demonstrated its continued commitment by hosting over 150 events annually, through its robust food, arts, and events calendar. These activities make the Property a neighborhood- and District-serving destination and sustain one of the Union Market District's limited outdoor gathering opportunities while the approved vertical expansion awaits feasible conditions. This request concerns only the continuation of the South Building's existing and previously approved interim conditions. It does not seek approval of additional development

or a change in the approved uses. The extension will preserve the relationship between those uses and the long-term Approved PUD without changing the approved program. The interim uses have become an iconic element of the Union Market District, a major economic and community draw to Northeast DC and Ward 5, and a bright spot for the District more generally. The Market helps incubate small businesses and brings together neighbors, visitors, and residents.

2. Market Conditions, Financing Constraints, and Project-Specific Construction Challenges Prevent Implementation of the Approved Project: Significant economic and market challenges beyond the Applicant's reasonable control, including the depressed office and movie theater markets, financing costs, and high construction costs District-wide, justify this time extension request. In addition, the particular structural challenges of constructing a theater and upper-story office or residential uses above an operating market building provide further justification. Overall market conditions have not improved sufficiently to allow the vertical expansion of the Future South Building to proceed. The Applicant proposes to continue its robust interim uses until improved overall DC market conditions allow for densification to resume.

3. The Applicant Has Advanced the Approval and Remains Committed to the Property: The Applicant's implementation history demonstrates sustained investment rather than inactivity. The North Building was delivered in 2023 under its separate second-stage approval and is now open and leased up; the plaza between that building and The Market has been improved for pedestrian use and community programming. The Applicant also implemented the approved rooftop interim improvements and has continued to operate and program The Market. These actions demonstrate a continuing commitment to the Union Market District and supplement the required showing under Subtitle Z § 705.2(c).

4. The Time Extension Preserves the Approved PUD's Public Benefits: The Original Order secures preservation and operation of The Market, park and plaza improvements, educational programming, community events and event space, streetscape improvements and design guidelines, security, employment commitments, transportation measures, sustainability requirements, and affordable housing if the South Building's upper component is residential. Exhibit C summarizes the status of those commitments, including benefits delivered or advanced through the North Building and the interim rooftop improvements. The extension preserves all outstanding obligations; the Applicant does not seek their release.

5. A Five-Year Extension Is Necessary: Five years from the existing expiration date provides a realistic planning horizon, preserves the redevelopment option, and supports continuity of existing and interim uses without repeated short extensions. Although the five-year extension exceeds the typical duration for an approved PUD, it is necessary here. The five-year period provides certainty for the investment that underlies the interim uses and allows the Property to provide ongoing important community, cultural, and economic contributions.

IV. PROPOSED REVISION TO CONDITION D.2 OF THE ORDER

To implement the requested extension, the Applicant requests that the South Building portion of Condition D.2 of Z.C. Order No. 14-12, as previously extended, be revised as follows, with the North Building language retained unchanged:

> The consolidated PUD approval for the South Building hereunder shall be valid until November 9, 2031. Within such time, an application must be filed for the building permit for the Future South Building. Construction of the Future South Building shall begin no later than November 9, 2032. The first-stage PUD approval for the North Building hereunder shall be valid for a period of five years from the effective date of this Order. Within

such time period, the Applicant must file an application with the Commission for a second-stage PUD approval for the North Building.

V. EXHIBITS

Exhibit A – Z.C. Order Nos. 14-12 and 14-12H
Exhibit B – Applicant Authorization Letter and Application Signature Page
Exhibit C – Public Benefits Status Summary
Exhibit D – Current Photographs of Events and Programming at The Market, 'Hi-Lawn', and the North and South Plazas

VI. CONCLUSION

For the foregoing reasons, the Applicant respectfully requests that the Commission approve a five (5)-year extension of the deadline to file a building permit application for the Future South Building to November 9, 2031, establish November 9, 2032 as the corresponding construction commencement deadline, and waive the restrictions on the number and duration of extensions under Subtitle Z § 705.5 pursuant to Subtitle Z § 101.9.

Approval of this application preserves the Commission-approved redevelopment framework for the Future South Building and all applicable public benefits, avoids prejudice to any party, and permits continued activation of The Market and its surrounding gathering spaces while conditions support neither financing nor construction of the approved vertical expansion.

Thank you for your consideration of this request.

Respectfully submitted,

Jeff C. Utz

David A. Lewis

Counsel for the Applicant

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing document was sent by first-class mail or email by no later than November 6, 2026 to the following:

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