

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 15-27B\_\_**

**Z.C. Case No. 15-27B**  
**Carr Properties OC, LLC**  
**(Modifications to Approved First-Stage PUD and Second-Stage PUD**  
**@ Square 3587, Lot 834)**

**July \_\_, 2020**

At the properly noticed virtual public hearing on July 6, 2020, the Zoning Commission for the District of Columbia (the “Commission”) considered an application from Carr Properties OC, LLC (the “Applicant”) for (i) a modification to the approved consolidated planned unit development (“PUD”) for Lot 833 in Square 3587 (the “Building C1 Site”); and (ii) a second-stage PUD and a modification to the approved-first stage PUD for Lot 834 in Square 3587 (the “Building C2 Site”) (together, the “Application”) in accordance with the consolidated and first-stage PUD approved by Z.C. Order No. 15-27 (the “Original Order”). At the hearing, the Commission determined to issue individual orders for the Building C1 Site and the Building C2 Site; the subject of this order is the Building C2 Site only.

The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “Zoning Regulations,” to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

**FINDINGS OF FACT**

**Notice**

1. On May 13, 2020, the Office of Zoning (“OZ”) sent notice of the virtual<sup>1</sup> public hearing to:
  - The affected Advisory Neighborhood Commission (“ANC”) 5D, the “affected ANC” pursuant to Subtitle Z § 101.8;
  - The affected ANC Single Member District (“SMD”) 5D01;
  - The Office of Planning (“OP”);
  - The District Department of Transportation (“DDOT”);
  - The Department of Energy and the Environment (“DOEE”);
  - The D.C. Housing Authority (“DCHA”);
  - The Council of the District of Columbia (“DC Council”); and

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<sup>1</sup> The hearing was originally scheduled and noticed for April 23, 2020 (Ex. 17); however, because of the COVID-19 pandemic, OZ suspended all public hearings and the hearing did not occur as originally scheduled.

- Property owners within 200 feet of the Building C1 and C2 Sites.

(Exhibit [“Ex.”] 17.)

2. OZ also published notice of the July 6, 2020 public hearing in the D.C. Register on May 22, 2020 (67 DCR 5331) as well as through the calendar on OZ’s website. (Ex. 22.)

### **Parties**

3. The only parties to this case were the Applicant and ANC 5D.
4. 1250 4<sup>TH</sup> ST EDENS LLC and UNION MARKET APARTMENTS, LLC (“Parties in Support”) in the original case, did not participate in this case.
5. There were no additional requests for party status.

### **First-Stage Approval**

6. Pursuant to the Original Order, the Commission approved a consolidated PUD (the “Consolidated PUD”) and a first-stage PUD (the “First-Stage PUD,” and collectively with the Consolidated PUD, the “Overall PUD”), together with a related Zoning Map amendment from the C-M-1 Zone District to the C-3-C Zone District<sup>2</sup> (currently the PDR-1 and the MU-9 zones, respectively) for property now known as Lots 833-835 and 838-840 in Square 3587 (the “Overall PUD Site”).<sup>3</sup>
7. As approved in the Original Order, the Overall PUD contemplated the development of the Overall PUD Site with four buildings known as Buildings A through D containing a range of residential, retail, office, and hotel uses.
8. The Original Order approved the Overall PUD to be constructed in two phases:
  - a. Phase I/Consolidated PUD - the southern portion of Building A (“Building A1”), Building B, and the southern portion of Building C (“Building C1”); and
  - b. Phase II/First-Stage PUD - the northern portion of Building A (“Building A2”), the northern portion of Building C (“Building C2”), and Building D.

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<sup>2</sup> The C-M-1 and C-3-C Zone Districts were designations of the 1958 Zoning Regulations under which the Commission approved the Order.

<sup>3</sup> At the time the Original Order was approved the Overall PUD Site was known as Lots 805, 814, and 817, which were Assessment and Taxation (“A&T”) lots 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 Overall PUD Site. However, the Original Order approved significant improvements to Lot 819 that will be undertaken by the Applicant as part of development of the Overall PUD. *See* Original Order, footnote 3.

Following approval of the Original Order, new A&T lots were created for the Overall PUD Site, such that the Overall PUD Site is now known as Lots 833-835 and 838-840. A new survey was also prepared and confirmed that the PUD Site area is 208,671 square feet, excluding Lot 819.

9. The Original Order approved an aggregate density of 7.1 FAR for the Overall PUD Site, with approximately 1,091,201 total square feet of GFA devoted to residential use, approximately 52,968 total square feet of GFA devoted to retail use, and approximately 217,558 total square feet of GFA devoted to office use. (Original Order, Decision No. A.2.) The Original Order granted building heights up to 130 feet and approximately 682 off-street parking spaces. (Original Order, Decision No. A.2.)
  
10. Despite the specific square footage identified for each individual use in Decision No. A.2. of the Original Order, the Original Order also granted flexibility 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.” (Original Order, Decision No. A.8.c.) Thus, the Original Order permitted the following range in uses as a result of the flexibility granted:
  - a. 720,394 square feet to 1,091,201 square feet of residential GFA;
  - b. 79,246 square feet to 120,036 square feet of affordable housing GFA; and
  - c. 790 to 1,103 residential units.(Ex. 10, p. 7; Ex, 15, pp. 8-9, Ex. 26, p. 4; Ex. 28, pp. 3, 9.)
  
11. With respect to the first-stage PUD approval for Building C2 specifically, the Original Order granted the following:
  - a. A maximum building height of 130 feet;
  - b. Approximately 211,784 square feet of GFA devoted to 232 residential units;
  - c. Approximately 9,200 square feet of GFA devoted to retail use; and
  - d. 90 on-site parking spaces.
  
12. The Original Order required Building C2 to dedicate 11% of its residential GFA to Inclusionary Zoning (“IZ”) units as follows:
  - a. 11,648 square feet of GFA (13 units) dedicated to households earning up to 50% of the Area Median Income (“AMI”); and
  - b. 11,648 square feet of GFA (13 units) dedicated to households earning up to 80% of the AMI.

(Original Order, Decision No. B(1)(b).)

13. As part of the first-stage PUD approval for Building C as a whole, the Commission granted the following flexibility as development incentives:
  - a. Loading berth size requirements:
  - b. The rear yard depth requirements; and
  - c. The building lot control requirements.

**Original Order – PUD Analysis**

14. In approving the Overall PUD, the Commission concluded that the Overall PUD had satisfied the criteria of Sections 2403.3 through 2403.5 of the 1958 Zoning Regulations<sup>4</sup> as follows:
  - a. The Overall PUD would not result in any adverse impacts that were not capable of being mitigated or outweighed by the proffered public benefits; (Original Order, FF Nos. 149-151; Decision Nos. 7, 9.)
  - b. The Overall PUD was consistent with the Comprehensive Plan (Title 10 of the District of Columbia Municipal Regulations, the “CP”), including the Generalized Policy Map, Future Land Use Map, and Elements; (Original Order, FF 88-135, Conclusions of Law Nos. 10-11); and
  - c. The Overall PUD proffered a commendable number of meaningful public benefits that were compatible with the CP. (Original Order, FF 69-87, Conclusions of Law Nos. 6, 8).

**The Application**

15. On March 22, 2019, the Applicant filed the Application requesting (i) a modification to the approved consolidated PUD for Building C1 to make minor design refinements to the Building C1 penthouse and special exception relief to permit nightclub, bar, cocktail lounge, and restaurant uses in the penthouse of Building C1; and (ii) a second-stage PUD and a modification to the approved first-stage PUD to convert the primary use of Building C2 from residential to office use and to also permit nightclub, bar, cocktail lounge, and restaurant uses in the Building C2 penthouse.
16. On December 19, 2019, the Applicant filed a letter requesting that the Commission set down the Application for the change in use of Building C1’s penthouse only. (Ex. 11.) The Applicant’s letter stated that after filing the Application, the Applicant filed and the Commission approved, a modification of consequence to make the requested design refinements to the Building C1 penthouse (Z.C. Order No. 15-27D), and therefore, with

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<sup>4</sup> Pursuant to Subtitle A §§ 102.1, 102.3(a), and 102.4, the Overall PUD has vested development rights under the 1958 Zoning Regulations under which the Commission approved it, but any modification other than a minor modification is subject to the Zoning Regulations of 2016.

respect to Building C1, the Commission only needed to consider the special exception request for Building C1's penthouse, since no further changes were proposed to its design.

### **First-Stage Modifications for Building C2**

17. The Application sought to modify the plans approved by the Original Order<sup>5</sup> for Building C2 and to convert the primary use of Building C2 from residential to office. The modifications did not result in an increase or decrease to the range of total GFA, FAR, or number of units approved for the Overall PUD in the Original Order. The modifications requested the following for Building C2:

- a. Convert 211,784 square feet of residential GFA to approximately 225,398 square feet of office GFA;
- b. Decrease the retail GFA from 9,200 square feet of GFA to 6,532 square feet of GFA, which includes 1,125 square feet of "Maker Space" required by the Original Order, Decision Nos. B.23 and 24;
- c. Increase the number of on-site parking spaces from 90 to 132 zoning-compliant spaces; and
- d. Permit nightclub, bar, cocktail lounge, or restaurant uses in the penthouse of Building C2.

(Ex. 2, as revised by the final Architectural Plans and Elevations at Ex. 26A (the "Architectural Plans."))

18. Based on the modification from residential to office use, the Applicant proffered a \$1,500,000 contribution to the Housing Production Trust Fund ("Trust Fund") as an additional benefit to the Overall PUD.

19. The Application stated that the same zoning flexibility that was approved for Building C in the Original Order was still required (loading, rear yard, and building lot control) but that no additional flexibility was requested.

20. The Application requested special exception relief to permit nightclub, bar, cocktail lounge, and restaurant uses in the penthouse of Building C2, pursuant to Subtitle C § 1500.3 and Subtitle X § 901.2.

21. The Application requested that the Commission modify two conditions of the Original Order related to the timing for development of Neal Place Park, which modifications were already approved in the second-stage PUD for Building A2. (Z.C. Order No. 15-27A,

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<sup>5</sup> The increases proposed in the Application for FAR, GFA, and number of residential units are all within the totals approved, including applicable flexibility, for the Overall PUD in the Original Order. (Original Order Decision Nos. A.2 and A.8.a.).

Decision No. A.3 and A.4.)

**Second-Stage PUD Application for Building C2**

22. The Application proposed to develop Building C2 with approximately 225,398 square feet of GFA devoted to office use, approximately 6,532 square feet of GFA devoted to retail use (including 1,125 square feet devoted to Maker Space), and approximately 7,049 square feet devoted to penthouse habitable space. Building C2 would have 132 zoning-compliant parking spaces in a below-grade garage plus additional tandem parking spaces; one 30-foot loading berth and one 20-foot service-delivery space; 77 long-term bicycle parking spaces, and 16 short-term bicycle parking spaces. Building C2 would have a maximum building height of 130 feet and a site density of 10.9 FAR computed for its individual A&T lot.<sup>6</sup>
23. The Application stated that the office use proposed for Building C2 would provide unique amenity spaces, including a two-story office lobby with an open retail concept that would activate the public space and draw a variety of patrons into the building. The building façade showcases floor to ceiling glass ribbon windows with textured masonry spandrels and a two-story concrete truss at the base to evoke the industrial history of the Union Market neighborhood. Abundant plantings are used on the exterior and interior of the building to provide a soft, biophilic approach to design and to foster a sense of nature and serenity.
24. The primary office lobby entrance is located on 3<sup>rd</sup> Street, with retail entrances on 3<sup>rd</sup> Street and Neal Place. The adjacent streetscape design will encourage pedestrian activity and enhance safety in the immediate neighborhood. The base of the building will be highlighted by a large canopy that will be accessed through the building's main lobby; the canopy will provide an additional gathering space above the sidewalk to further activate the streetscape.
25. Entrances to the parking garage and loading facilities will be located along the private alley to the east of Building C2. As requested in the DDOT Report (Ex. 27), the streetscape design for the alley will include a 10-foot wide cycle track adjacent to Building C2 with an uninterrupted pedestrian path across the alley at the intersection of the alley and Neal Place. The cycle track will include special striping at the parking and loading entrances. The curb between the Building C2 Site and the alley will be flush to allow for handicap access from Building C2 eastward across the alley. (Ex. 31A, Sheets 502 and 505.)
26. The Building C2 penthouse will include a variety of informal gathering spaces, communal co-working rooms, and small and large conference rooms where building tenants will be able to work and socialize. During the week, the penthouse will primarily be used for these office amenity uses. The Applicant requested special exception relief to permit nightclub, bar, cocktail lounge, and restaurant uses in the

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<sup>6</sup> The total density for the Overall PUD remains 7.11 FAR, which was the overall density approved in the Original Order. (Ex. 26A, Sheet 203.)

penthouse so that it would have the ability to rent out the penthouse habitable space to third parties for events not otherwise associated with the office use, which could include uses and/or events that fall within the “nightclub, bar, cocktail lounge, or restaurant” use categories as defined in the Zoning Regulations. The portion of the penthouse habitable space that would be dedicated to the nightclub, bar, cocktail lounge, and restaurant uses will be approximately 7,049 square feet. The penthouse has a maximum height of 20 feet and meets all penthouse setback requirements.

27. Building C2 will achieve LEED Gold certification under LEED v4 Building Design and Construction. It will also include solar panels on the roof within the 20-foot height limit and setback requirements.
28. As part of the proposal to convert the primary use of Building C2 from residential use to office use, and as an additional benefit to the Overall PUD, the Applicant proposed to contribute \$1,500,000 to the Trust Fund prior to the issuance of the first above-ground Certificate of Occupancy for Building C2.
29. The Applicant will also contribute an additional payment to the Trust Fund based on the construction of habitable penthouse space in Building C2, pursuant to Subtitle C § 1505, which was not contemplated in the first-stage PUD for Building C2.
30. The conversion of Building C2 from residential use to office use maintains the range of total housing and affordable housing that was approved in the Overall PUD for the following reasons:
  - a. The Overall PUD’s range of housing and affordable housing was granted through the flexibility provided in the Original Order for Buildings A2 and D to have either residential or non-residential uses. *See* Original Order, Decision No. A.8(c); the approved first-stage PUD plans (Z.C. Case No. 15-27, Exhibit 61A, Sheet 11); and Ex. 26A, Sheet 203;
  - b. The upper range of residential square footage and unit number (assuming Buildings A2 and D were both developed as residential buildings) was 1,091,201 square feet of residential GFA, 120,036 square feet of affordable housing GFA, and 1,103 residential units;
  - c. The lower range of residential square footage and unit number (assuming Buildings A2 and D were both developed as non-residential buildings) was 720,394 square feet of residential GFA, 79,246 square feet of affordable housing GFA, and 790 residential units;
  - d. The second-stage PUD for Building A2 has already been approved in Z.C. Order No. 15-27A, which confirmed that Building A2 will be developed as a residential building with approximately 260,108 square feet of residential GFA and approximately 260 residential units;

- e. The second-stage PUD for Building D was approved on \_\_\_\_\_ in Z.C. Case No. 15-27E, which confirmed that Building D will be developed as a residential building with approximately 144,399 square feet of residential GFA and 159 residential units;
- f. Therefore, the Overall PUD will have a total of approximately 897,127 square feet of residential GFA; approximately 98,684 square feet of affordable housing GFA (11%), and approximately 970 residential units, which is well within the range of housing, affordable housing, and number of units approved for the Overall PUD in the Original Order.<sup>7</sup>

### Design Flexibility

- 31. The Applicant requested that the Commission approve the same design flexibility from the final plans that the Commission granted in Decision No. A(8) of the Original Order, with the following additions:
  - a. For Building C2, flexibility to move the maker space to an alternate location, so long as a minimum of 1,125 square feet is maintained and so long as the maker space remains on the ground floor of Building C2 with visible frontage on Neal Place or 3<sup>rd</sup> Street;
  - b. For Building C2, flexibility on the exact location, design, and materials of the exterior penthouse terrace, so long as the overall design meets the intent of the landscape drawings shown at Sheets C-2\_307 and C-2\_501 of Exhibit 26A of Z.C. Case No. 15-27B; and
  - c. For Building C2, flexibility to increase or decrease the exact square footage of solar panels by approximately 10% so long as the solar panels are located in the same general location as shown on Sheets C-2\_308 and C-2\_501 of Exhibit 26A of Z.C. Case No. 15-27B.

### Special Exception Relief

- 32. The Application provided evidence that nightclub, bar, cocktail lounge, and restaurant uses proposed for the penthouse would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map. The relief would permit office tenants to take advantage of the penthouse space for informal gatherings for the majority of the week, and give the Applicant the ability to host outside, third-party events on the evenings and weekends. The penthouse would create a unique and

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<sup>7</sup> Total numbers are based on the approved building permit plans for Buildings A1, B, and C1, and the approved second-stage PUD plans for Buildings A2, C2, and D. (Ex. 26A, Sheet 203.) The total affordable housing GFA assumes that Building A2 is developed as a rental residential building. If Building A2 is developed as a for-sale residential building, then a minimum of 90,881 square feet of total IZ GFA for the Overall PUD and a corresponding reduction in the number of IZ units would be required to be set aside for IZ units in the Overall PUD. (Z.C. Order No. 15-27A, FF 19, Decision No. A.2.c.) Additional IZ at 50% of the MFI would be provided within Buildings A2 and D generated by penthouse habitable space in those buildings. *See* Z.C. Order Nos. 15-27A and 15-27E, respectively.



enjoyable space at the top of the Union Market neighborhood, overlooking the city, and would not create any adverse effects. The nightclub, bar, cocktail lounge, and restaurant uses are consistent with the goals of the penthouse regulations to generate an affordable housing contribution. Moreover, the penthouse structures will comply with all height, bulk, and setback standards set forth in 11-C DCMR § 1500.

33. The Application also provided evidence that the proposed nightclub, bar, cocktail lounge, and restaurant uses would not tend to affect adversely the use of neighboring property. Although the Overall PUD Site and much of its surroundings are presently vacant or under construction, the Building C site will eventually be surrounded on all sides by streets or alleys, with no portion of Building C directly abutting any residential properties. Moreover, Building C2 would be an office building without any residential tenants.
34. In addition, the Application stated that the majority of the patrons visiting the proposed penthouse nightclub, bar, cocktail lounge, and restaurant uses would be residents or visitors of the Overall PUD and/or the Union Market neighborhood, such that no impacts would be created by additional vehicular trips driving to the Building C2 Site to access the rooftop. Moreover, Building C2 exceeds the minimum number of required on-site vehicle parking spaces, such that it will be able to accommodate the proposed bar/restaurant use. Thus, the proposed uses for the penthouse will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely the use of neighboring property, in compliance with the special exception standards of Subtitle C § 1500.3 and Subtitle X § 901.2.

#### **Application in Accordance with Intent of First-Stage PUD**

35. The proposed modifications to the first-stage PUD for Building C2 do not exceed the range of uses, GFA, FAR, or building height approved for the Overall PUD by the Original Order (FF \_\_\_) and do not result in any material changes to the original approval. The Application reallocates uses, GFA, and FAR among buildings on the PUD Site within the ranges approved in the Original Order .
36. Thus, the Application is in accordance with the intent of the first-stage PUD and does not require a reevaluation of the PUD criteria pursuant to Subtitle X § 304.3 because:
  - a. The Application does not request any additional development incentives that would require a reevaluation of the consistency of the second-stage PUD with the CP;
  - b. The Application does not result in any potential adverse impacts that are not capable of mitigation and that would affect the PUD balancing test used by the Commission in the Original Order; and
  - c. The Application does not change any of the proffered public benefits in a way that would require the Commission to reevaluate the PUD balancing test.

However, the Applicant proffered an additional public benefit of a \$1,500,000 contribution to the Trust Fund as part of its proposal to convert the use of Building C2 from residential to office. The Applicant submitted that to the extent any rebalancing of benefits was necessary, the additional benefit of contributing a \$1,500,000 contribution to the Trust Fund addressed that issue.

### **Applicant's Submissions**

37. In addition to the original application, the Applicant made the following submissions to the record in support of the Application:
  - a. A letter dated December 19, 2019, requesting that the Commission set down the Application for the change in use for Building C1's penthouse only, and clarifying that the previously proposed design refinements to the penthouse were separately approved in Z.C. Order No. 15-27D (the "C1 Letter") (Ex. 11);
  - b. A submission dated February 7, 2020, responding to questions raised by OP and the Commission at setdown (the "Prehearing Statement") (Ex. 14-15);
  - c. A Comprehensive Transportation Review report, dated March 9, 2020, and prepared by Gorove/Slade Associates (the "CTR") (Ex. 20-20A);
  - d. A supplemental prehearing statement dated June 16, 2020 (the "Supplemental Prehearing Statement"); and (Ex. 26.);
  - e. A PowerPoint presentation dated June 6, 2020, which included a revised landscape plan and alley section to demonstrate compliance with the conditions in the DDOT Report and an additional sheet showing building materials (the "Hearing Presentation") (Ex. 30 and 31A); and
  - f. A letter dated July 15, 2020, providing information requested by the Commission at the public hearing (the "Post-Hearing Submission"). (Ex. \_\_.)

### **The C1 Letter**

38. The C1 Letter was submitted to clarify that the proposed modifications to Building C1's penthouse design, which were part of the original Application, were separately considered and approved in Z.C. Order No. 15-27D and therefore no longer relevant to the subject Application. Thus, the C1 Letter requested that the Commission continue to evaluate the Applicant's request to permit nightclub, bar, cocktail lounge, and restaurant uses in the penthouse of Building C1 only, without considering the design modifications.
39. The C1 Letter referenced materials submitted with the Application, including a description of the proposed penthouse use for Building C1 and an analysis of how the proposed use meets the special exception standard of review required by Subtitle C § 1500.3(c) and Subtitle X § 901.2.

## **The Prehearing Statement**

40. The Prehearing Statement provided the following information in response to comments at setdown:
- a. Explaining how the total housing and affordable housing proposed for the Overall PUD is within the range of total housing and affordable housing approved for the Overall PUD in the Original Order;
  - b. Confirming the location of the Maker Space and that it would be constructed to the industrial specifications stated in Attachment III to the OP Setdown Report (Ex. 10), except for the clear ceiling height;
  - c. Providing evidence that the aggregate density for the Overall PUD does not exceed 7.1 FAR, as approved in the Original Order;
  - d. Providing the approximate contribution that would be made to the Trust Fund generated by Building C1's and Building C2's habitable penthouse spaces;
  - e. Providing a rationale for the number of on-site parking spaces provided in Building C2;
  - f. Providing additional information on the proposed building materials and demonstrating that the materials would be of high quality, and providing additional details on the windows, including the window mullion depth from the building façade;
  - g. Providing a detailed streetscape plan and corresponding sections to demonstrate compliance with the Union Market Streetscape Guidelines;
  - h. Explaining the planting and maintenance details of the greenery accents on the ground floor of Building C2;
  - i. Providing an updated signage plan;
  - j. Providing perspectives of the proposed roof and penthouse;
  - k. Providing a chart identifying the approved first-stage PUD conditions related to Building C2 and an update as to whether each condition was being amended to facilitate the Application for Building C2; and
  - l. Submitting draft language regarding the Applicant's proffer to contribute \$1,500,000 to the Trust Fund.

## **The CTR**

41. The CTR described the development program and reviewed the transportation aspects of the proposed office use for Building C2, provided trip generation projections and described traffic operations, provided information on transit services, pedestrian and bicycle facilities, and a safety analysis, and outlined the proposed transportation demand management (“TDM”) plan and loading management plan (“LMP”) for Building C2. The CTR acknowledged the proposed change in use for the penthouses on Buildings C1 and C2. The CTR also explained that Building C1 and C2 are a single building for zoning purposes, which was taken into consideration in doing the analysis.
42. The CTR concluded that the Application would not have a detrimental impact on the surrounding transportation network assuming implementation of the proposed site design elements and TDM measures. (Ex. 20A, p. i.) Specifically, the CTR found that:
  - a. Access to the below-grade parking garage and loading facilities would be from two separate curb cuts in the alley, and all truck turning maneuvers would occur on-site, allowing for head-in and head-out access;
  - b. Building C2’s loading facilities meet all zoning and DDOT dimensional requirements;
  - c. Building C2’s proposed bicycle parking exceeds the requirements of the Zoning Regulations;
  - d. The pedestrian environment would be greatly improved as a result of Building C2;
  - e. Three intersections would require mitigation as a result of the minor impacts to delay created by Building C2, and appropriate mitigation measures will be implemented;
  - f. An enhanced-tier TDM plan is proposed to address the on-site parking supply and the minor intersection impacts. The TDM commitments made in the first-stage PUD approval would also be honored and included in the TDM plan for Building C2.
43. The TDM plan proposed in the CTR for Building C2 was subsequently updated in the Applicant’s Supplemental Prehearing Statement. The Supplemental Prehearing Statement also included the final LMP.

## **The Supplemental Prehearing Statement**

44. The Supplemental Prehearing Statement included revised Architectural Plans and Elevations (the “Architectural Plans”) that provided the following additional and updated information:

- a. Updated renderings of the full building from the north and southwest and close-up renderings showing details of Building C2’s primary entrance, northern retail corner, and rooftop terrace, and refinements to the building façade and window details;
  - b. Updated zoning tabulation chart and updated parking and ground floor plans showing an increased number of bicycle parking spaces;
  - c. Updated landscape plan showing a flush curb along the east side of Building C2 along the private alley;
  - d. Updated east building elevation showing building-mounted lighting to illuminate the alley;
  - e. Updated zoning diagram showing the accurate land areas for the individual lots within the Overall PUD Site;
  - f. Updated development chart illustrating how density has been reallocated within the Overall PUD Site since the Original Order;
  - g. Updated signage plan; and
  - h. A commitment to provide a minimum of 600 square feet of solar panels on the roof of Building C2 and a request for flexibility to increase or decrease the exact square footage of solar panels provided by approximately 10%.
45. The Supplemental Prehearing Statement also provided detailed information to further justify (i) its request to convert the primary use of Building C2 from residential to office; and (ii) its additional proffer of a \$1,500,000 contribution to the Trust Fund.
46. The Supplemental Prehearing Statement included a memorandum prepared by Gorove/Slade dated May 20, 2020 (Ex. 26C) (the “Transportation Memo”) which set forth the final TDM plan and LMP agreed to by the Applicant.
47. The components of the final TDM plan are as follows:
- a. Unbundle the cost of parking from the cost to lease an office unit and only hourly, daily, or weekly rates will be charged. Free parking, validation, or discounted rates will not be offered.
  - b. Identify Transportation Coordinators for the planning, construction, and operations phases of development. There will be a Transportation Coordinator for each tenant and the entire site. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement.
  - c. Will provide Transportation Coordinators’ contact information to goDCgo,

conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year. All employer tenants must survey their employees and report back to the Transportation Coordinator.

- d. Transportation Coordinators will develop, distribute, and market various transportation alternatives and options to the employees and customers, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications.
- e. Transportation Coordinators will receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan.
- f. Will notify goDCgo each time a new office tenant moves in and provide TDM information to each tenant as they move in.
- g. Will post “getting here” information in a visible and prominent location on the website with a focus on non-automotive travel modes. Also, links will be provided to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area, and instructions for discouraging parking on-street in Residential Permit Parking (RPP) zones.
- h. Transportation Coordinator will implement a carpooling system such that individuals working in the building who wish to carpool can easily locate other employees who live nearby.
- i. Distribute information on the Commuter Connections Guaranteed Ride Home (GRH) program, which provides commuters who regularly carpool, vanpool, bike, walk, or take transit to work with a free and reliable ride home in an emergency.
- j. Transportation Coordinator will demonstrate to goDCgo that tenants with 20 or more employees are in compliance with the DC Commuter Benefits Law and participate in at least one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer-paid direct benefit, or shuttle service), as well as any other commuter benefits related laws that may be implemented in the future.
- k. Provide employees who wish to carpool with detailed carpooling information and refer to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOC) or other comparable service if MWCOC does not offer this in the future.
- l. Designate a minimum of two (2) preferential carpooling spaces and one (1)

vanpooling spaces in a convenient location within the parking garage for employee use.

- m. Offer a free SmarTrip card and one (1) complimentary Capital Bikeshare coupon good for a free ride to each new employee for the first year.
- n. Will meet ZR16 requirements for showers and lockers for use by employees. The Applicant will provide shower and locker facilities that meet Zoning Regulations (6 showers and 42 lockers).
- o. Long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo and tandem bikes.
- p. Provide a minimum of six (6) electric vehicle parking spaces in the garage.
- q. Install a Transportation Information Center Display (electronic screen) within the office lobby containing information related to local transportation alternative.
- r. Offer an annual Capital Bikeshare membership to each employee for three (3) years after the building opens.
- s. Employers will participate in the Capital Bikeshare Corporate membership program and offer discounted annual memberships to employees.
- t. Provide a free parking space for all vehicles that employees use to vanpool to work.
- u. Additional short and long-term bicycle parking spaces above ZR16 requirements.
- v. Will not lease unused surplus parking spaces to anyone aside from tenants of the building or Market Terminal PUD unless the other building is under parked or provides zero (0) on-site parking.
- w. Provide a bicycle repair station in each long-term bicycle storage room.
- x. Following the issuance of a certificate of occupancy for the Project, the Transportation Coordinator shall submit documentation from DCRA summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case.
- y. Following the issuance of a certificate of occupancy for the Project, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo every five (5) years (as measured from the final certificate of occupancy for the Project) summarizing continued compliance with the

transportation and TDM conditions in the Order.

- z. Contribute \$25,000 to the DDOT Transportation Mitigation Fund in lieu of installing the turn lane and making traffic signal adjustments. This money will be used by DDOT within ANC 5D (the ANC of Union Market) to fund these roadway geometric changes, other traffic flow improvements, traffic calming, bike/ped improvements, and/or improved transit connections.
48. The Applicant will also honor the applicable TDM commitments as approved under the Original Order as follows:
- a. Prior to the issuance of COO for Building C2, the building owner shall have the individual obligation to demonstrate to the Zoning Administrator that it has constructed the interior bicycle parking within Building C2.
  - b. Prior to the issuance of COO 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.
  - c. Prior to the issuance of a COO for Building C2, the Applicant shall demonstrate to the Zoning Administrator that it has exceeded the zoning requirements for bicycle parking for Building C2.
  - d. Prior to the issuance of a COO for Building C2, the building owner shall have the individual obligation to demonstrate to the Zoning Administrator that it has installed a transit information screen in the lobby.
  - e. Transportation Coordinators will develop, distribute, and market various transportation alternatives and options to the employees, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications
49. The components of the final LMP are as follows:
- a. A loading dock manager will be designated by the building management who will be on duty during delivery hours. The dock manager will be responsible for coordinating with vendors and tenants to schedule deliveries and will work with the community and neighbors to resolve any conflicts should they arise.
  - b. The dock manager will monitor inbound and outbound truck maneuvers and will ensure that trucks accessing the loading dock do not block vehicular, bike, or pedestrian traffic along the private alley except during those times when a truck is actively entering or exiting a loading berth.



- c. All tenants will be required to schedule deliveries that utilize the loading area (any loading operation conducted using a truck 20-feet in length or larger).
- d. Delivery trucks for the retail tenants will be prohibited from serving the site between the commuter peak hour times of 8:00 to 10:00 AM and 4:00 to 6:00 PM.
- e. Retail loading in the 30-foot berth will be restricted to times before 8:00 AM and after 6:00 PM to allow for deliveries to be accessed through the building lobby from the loading berth to the retail space.
- f. Outside of these hours, retail tenants may access the loading dock via the sidewalk along the private alley. This is projected to occur no more than five (5) times in a week.
- g. The dock manager will schedule deliveries using the berths such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to use the C1 loading facility or return at a later time when a berth will be available so as to not compromise safety or impede the private alley functionality.
- h. When needed, the dock manager will coordinate usage of Building C1's loading facilities with the Building C1 dock manager. Building C2 loading and delivery schedules will be coordinated to lessen the need of this overflow option.
- i. Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the goDCgo Motorcoach Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map ([godcgo.com/freight](http://godcgo.com/freight)).
- j. The dock manager will be responsible for disseminating suggested truck routing maps to the building's tenants and to drivers from delivery services that frequently utilize the development's loading dock as well as notifying all drivers of any access or egress restrictions (ex. No left turn onto Neal Place Extension). The dock manager will also distribute flyer materials, such as the MWCOG Turn Your Engine Off brochure, to drivers as needed to encourage compliance with idling laws. The dock manager will also post these materials and other relevant notices in a prominent location within the loading area.

### **The Hearing Presentation Materials**

- 50. The Hearing Presentation was an excerpt from the Architectural Plans previously submitted at Ex. 26A with the following updates: (i) updated Sheets C-2\_502 and C-2\_505 showing revisions to the landscape plan and alley section, respectively, to demonstrate compliance with the conditions in the DDOT Report; and (ii) a new Sheet

C-2\_206 showing additional details on the building materials.

### **The Post-Hearing Submission**

51. The Post-Hearing Submission provided the following additional information requested by the Commission at the public hearing:
  - a. The Applicant's response regarding the Application's compliance with the PUD standards;
  - b. A status update regarding implementation of the First Source Employment Agreement for Building C1; and
  - c. The Applicant's draft Findings of Fact and Conclusions of Law.

### **Applicant's Public Hearing Presentation**

52. At the July 6, 2020, virtual public hearing, the Applicant proffered John Crump of Smithgroup, Erwin Andres of Gorove/Slade Associates, Lauren Brandes of Oculus, and Shane Dettman of Holland & Knight as expert witnesses in architecture, transportation planning, landscape architecture, and land use planning, respectively. The Commission granted expert status to all four witnesses, noting that only John Crump had not previously been accepted as an expert, but accepting him as an expert based upon review of his resume. (Ex. 15B).
53. The Applicant rested on the existing case record and did not provide a formal presentation. However, the Applicant responded to questions posed by the Commission primarily regarding the Overall PUD's housing and affordable housing proffer and the PUD standards applicable to a second-stage PUD regarding the rebalancing of public benefits and amenities to development incentives and potential adverse effects. (Subtitle X § 304.3.) The Applicant's Post-Hearing Submission was filed in response to specific questions posed by the Commission at the public hearing.
54. At the public hearing the Applicant agreed to the three conditions in the DDOT Report.
55. The Applicant and the Commission discussed that the Original Order had an inherent inconsistency regarding the total housing and affordable housing proffer, which is addressed in the Decision herein.

### **Responses to Application**

#### **Office of Planning**

56. OP submitted a total of three reports concerning the Application:
  - a. A report dated November 27, 2019, recommending that the Commission set down the Building C2 components of the Application for a public hearing

(the “OP Setdown Report”); (Ex. 10.)

- b. A report dated January 3, 2020, recommending that the Commission also setdown the Building C1 components of the Application for a public hearing (the “Supplemental OP Setdown Report”) (Ex. 12.); and
- c. A pre-hearing report dated June 26, 2020, recommending approval of the Application (the “OP Hearing Report”) (Ex. 29.)

### **OP Setdown Report**

- 57. The OP Setdown Report recommended that the Commission set down the Application for Building C2 for a public hearing, and also identified items for which more information or clarification was needed from the Applicant prior to the public hearing. The OP Setdown Report did not address the portion of the Application requesting special exception relief for Building C1’s penthouse.
- 58. The OP Setdown Report stated that the Commission previously found that the Overall PUD would be not inconsistent with the CP maps and text and would further the objectives of the Florida Avenue Market Small Area Plan and the Ward 5 Industrial Land Transformation Study, and that the proposed Application for Building C2 “as part of the overall PUD and map amendment would continue to be not inconsistent with the map designations.” (Ex. 10, p. 7.)
- 59. The OP Setdown Report also found that the Application for Building C2 “is generally consistent with the First Stage PUD, and the proposed modifications do not detract from the project’s correlation with major tenets of the Plan. The proposal would continue to further a number of the major policies from the Comprehensive Plan elements, including: Land Use; Transportation; Parks, Recreation and Open Space; Urban Design; and Upper Northeast Area Element as provided in Appendix I of this report. The applicant proposes to modify the mix of uses in Building C2 by replacing the approved retail/residential uses with retail/office uses. Although this would result in a loss of housing and affordable housing, it would add crucial daytime uses to the Market Area, which it presently lacks. The proposed office use is supported by the Comprehensive Plan designation and area elements.” (Ex. 10, p. 10-11).
- 60. The OP Setdown Report also explained that the Original Order approved “a total of 1,091,201 square feet of residential use, 52,968 square feet of retail use, and 217,558 square feet of office use. However, flexibility for use was permitted for Buildings A2 and D, which could have resulted in a total of 720,394 square feet of residential use. The proposed modification to change the use from residential to office, along with the certainty of Building D providing residential uses (ZC Case No. 15-27E), results in the overall residential use remaining within the range approved for the overall PUD by providing 912,303<sup>8</sup> square feet of residential use.” ((Ex. 10, p. 7) (emphasis added).)

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<sup>8</sup> The total residential GFA for the Overall PUD is approximately 897,127 square feet (see FF Nos. \_\_\_\_ and Decision No. \_\_\_\_ ) due to revised GFA numbers submitted to the record that had not yet been updated prior to OP’s review.

61. The OP Setdown Report stated that OP referred the Application to other District agencies for review and comment, including:

- DOEE;
- DHCD;
- DDOT;
- The Department of Parks and Recreation (“DPR”);
- DC Public Schools (“DCPS”);
- Department of Public Works (“DPW”);
- Department of Aging (“DOA”);
- Department of Employment Services (“DOES”);
- Fire and Emergency Medical Services Department (“FEMS”);
- Metropolitan Police Department (“MPD”);
- DC Water; and
- WMATA.

(Ex. 10 at 20-21.)

62. The Applicant provided the additional information requested by OP in its Prehearing Statement. (FF \_\_; Ex. 15.)

### **OP Supplemental Setdown Report**

63. The OP Supplemental Setdown Report acknowledged that the Building C2 components of the Application were setdown by the Commission on December 9, 2019, but that the modification for the penthouse use for Building C1 was not included. In reviewing the request, OP recommended setdown of the requested modification to introduce nightclub, bar, cocktail lounge, and restaurant uses in the Building C1 penthouse originally approved for office amenity space.

64. The OP Supplemental Setdown Report stated that the proposed penthouse use met the special exception standards of Subtitle X § 901.2 and that it would also be consistent with the approved PUD to create an active, mixed-use development and generate an affordable housing contribution. (Ex. 12, p. 2.)

### **OP Hearing Report**

65. The OP Hearing Report recommended approval of (i) the modification of the first-stage PUD and second-stage PUD for Building C2; (ii) the modification of the consolidated PUD for Building C1; and (iii) special exception relief to allow nightclub, bar, cocktail lounge, and restaurant uses in the habitable penthouses for Buildings C1 and C2. (Ex. 29, p. 1.)

66. With respect to the loss of housing in Building C2 specifically, the OP Hearing Report stated that the Applicant “demonstrated that the housing obligation for the PUD would be met. The upper range of housing approved for the overall PUD is 1,091,201 square

feet, and the lower range is 720,394 square feet. Buildings A2 and D were approved with flexibility to have residential or nonresidential uses, which has resulted in the range of square footage for residential uses. This particular condition of the PUD would be met since both buildings A2 and D would be developed as residential, resulting in a total of 896,313<sup>9</sup> square feet of residential use.” (Ex. 29, p. 3.)

67. With respect to affordable housing, the OP Hearing Report did not indicate that any rebalancing pursuant to Subtitle X § 304.3 was needed in their analysis as to whether the modification for Building C2 should be granted. The OP Hearing Report stated that the “overall PUD was required to set aside a total of 11% of the gross floor area for Inclusionary Zoning units, to be allocated evenly between households earning 50% MFI and households earning 80% MFI. The upper range of affordable housing approved for the overall PUD is 120,036 square feet, and the lower range is 79,246 square feet. The development of Building C2 as an office use would result in a total of 98,594<sup>10</sup> square feet of affordable housing, which is consistent with the Order. The applicant has clarified that housing requirements for the overall PUD would be met, and that the \$1.5 million contribution to the Housing Production Trust Fund would be an additional benefit to the PUD. The contribution relates to the 23,296 square feet of affordable housing that would no longer be provided in Building C2.” Therefore, OP concluded that it “supports the proposal to develop Building C2 as an office use since the housing and affordable housing requirement for the overall PUD would continue to be satisfied.” (Ex. 29, p. 3.) The OP Hearing Report also stated that “OP strongly supports this commitment to affordable housing, which is encouraged through Mayoral and OP priorities and policies.” (Ex. 29, p. 6.)
68. Moreover, the OP Hearing Report acknowledged information provided by the Applicant in its Supplemental Prehearing Statement and agreed that the “additional 232,000 square feet of office use proposed for Building C2 would diversify the Market area, allowing more people to work close to housing, retail, and public transportation.” (Ex. 29, p. 9.)
69. The OP Hearing Report also found that the “current second-stage PUD application is generally consistent with the first-stage as approved and does not detract from the project’s correlation with the tenants of the [Comprehensive] Plan.” (Ex. 29, p. 9.) OP found that the Application would “further a number of the Plan’s Guiding Principles and major polices from Plan elements, including: Land Use; Transportation; Economic Development; Housing; Urban Design; and Upper Northeast Area Element. The application is also not inconsistent with the Plan’s Generalized Land Use Map or the

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<sup>9</sup> The total residential GFA for the Overall PUD is approximately 897,127 square feet (*see* FF Nos. \_\_\_ and Decision No. \_\_\_) due to revised GFA numbers submitted to the record that had not yet been updated prior to OP’s review. (Ex. 26A, Sheet 203.)

<sup>10</sup> The total affordable housing for the Overall PUD is approximately 98,684 square feet, equivalent to 11% of the residential GFA (*see* FF Nos. \_\_\_ and Decision No. \_\_\_) due to revised GFA numbers submitted to the record that had not yet been updated prior to OP’s review. (Ex. 26A, Sheet 203.) Additional IZ at 50% of the MFI would be provided within Buildings A2 and D generated by penthouse habitable space in those buildings. *See* Z.C. Order Nos. 15-27A and 15-27E, respectively.

Future Land Use Map. The proposal is also consistent with the Florida Avenue Small Area Plan and the Ward 5 Industrial Land Transformation Study. For a complete analysis of the project against relevant planning policies, please refer to the Office of Planning Setdown Report for Zoning Commission Case No. 15-27, dated April 18, 2016 at Exhibit 15 in the record for that case.” (Ex. 29, p. 9.)

70. The OP Hearing Report recommended approval of (i) the modification of the first-stage PUD and second-stage PUD for Building C2; (ii) the modification of the consolidated PUD for Building C1; and (iii) special exception relief to allow nightclub, bar, cocktail lounge, and restaurant uses in the habitable penthouses for Buildings C1 and C2. (Ex. 29, p. 1.) The OP Hearing Report evaluated the special exception relief requested to permit nightclub, bar, cocktail lounge, and restaurant uses in the penthouses. In doing so, OP found that the proposed penthouse uses “would be in harmony with the intent of the approved PUD to create an active, mixed use development that would attract residents and tourists and bring greater vitality to Florida Avenue Market.” OP also stated that the proposed uses are permitted within the underlying zone and would generate an affordable housing contribution. (Ex. 29, p. 15.) In addition, OP found that the proposed penthouses would not adversely affect the use of neighboring property and therefore “recommend[ed] approval of special exception use of the habitable penthouse space for Building C1 and Building C2 with flexibility to rent out the penthouse space to third parties for events not associated with the office use, which could include uses that fall within the ‘nightclub, bar, cocktail lounge or restaurant’ use category.” (Ex. 29, p. 16.)
71. The OP Hearing Report stated that it solicited comments from DHCD and DOEE on the Application, and that the Applicant met separately with DDOT to address transportation concerns. The OP Hearing Report included a chart summarizing the comments from the Zoning Commission at setdown and from OP and the other District agencies, and the Applicant’s responses thereto. (Ex. 29, pp. 3-7.)

### **OP’s Public Hearing Testimony**

72. At the public hearing, OP testified in support of the Application and otherwise rested on the record of its reports previously submitted to the case record.

### **Department of Transportation**

73. On June 22, 2020, DDOT submitted a report (“DDOT Report”) stating it had no objection to the Application subject to the following conditions (Ex. 27, p. 3.):
  - a. The Applicant implement the LMP as proposed in the Applicant’s May 20, 2020 transportation memorandum (Ex. 26C) for the life of the project, unless otherwise noted;
  - b. The Applicant implement the TDM plan as proposed in the Applicant’s May 20, 2020 transportation memorandum (Ex. 26C) for the life of the project, unless otherwise noted; and

- c. The Applicant revise the cycletrack design to pull back the concrete barrier on the south side of the private alley and Neal Place intersection to allow for a clear and accessible pedestrian path across the alley, with flexposts to be installed at the end of the concrete barrier.

(Ex. 27, p. 3.)

74. The DDOT Report's recommendation was based on the following conclusions:

- a. The TDM plan proposed in the May 20, 2020 transportation memorandum was sufficiently robust to encourage non-auto travel and offset the impacts of the parking supply and identified traffic impacts; and
- b. The LMP proposed in the May 20, 2020 transportation memorandum was sufficiently robust to manage conflicts with bicycles and pedestrians in the private alley, address the needs of the retail units, and to accommodate the potential for spillover loading activity to Building C1.

(Ex. 27, p. 3.)

75. The DDOT Report also requested that the Applicant coordinate the design of the cycle track to include special striping and markings at the parking garage and loading dock entrances, and noted that it would have no objection to the Applicant widening the cycle track adjacent to Building C2 from 8 feet to 10 feet. (Ex. 27, pp. 6 and 8.)

### **DDOT's Public Hearing Testimony**

76. At the public hearing, DDOT testified in support of the Application and otherwise rested on the record and acknowledged that the Applicant had agreed to the three conditions stated in the DDOT Report.

### **ANC 5D**

77. By letter dated January 23, 2019, ANC 5D stated that at a duly noticed, regularly scheduled meeting of ANC 5D, with a quorum of commissioners and the public present, the ANC voted 5-0-0 to support a related application that was previously filed for Buildings A2, C2 and D combined (the "Original ANC Report"). (Ex. 2F.) The ANC Report expressed its general support for the overall PUD and also stated its support for the proposal to develop Building C2 as an office building with ground floor retail and a first class design. However, the ANC's vote in the Original ANC Report was done prior to the filing of the subject Application on March 22, 2019.

78. By letter dated August 12, 2019, the ANC issued a second report after reviewing and voting on a presentation from the Applicant regarding the Application specifically (the "ANC Report") (Ex. 18.) The ANC Report stated that at a regularly scheduled monthly meeting with a quorum of commissioners and the public present, ANC 5D voted 6-0-0

to support the Application for a modification to Building C1’s penthouse and a second-stage PUD and modification to the first-stage PUD for Building C2.

79. The ANC Report stated its support for the proposed nightclub, bar, cocktail lounge or restaurant use in the Building C1 and C2 penthouses, confirming that the use would not create any adverse impacts to the neighborhood. With respect to the conversion of Building C2 from residential to office use, the ANC Report stated that “greater diversity of uses in the Union Market neighborhood will benefit the community. Several other large residential buildings are already approved for the PUD site, and several other residential buildings are being constructed in the immediate area. An additional office building use will help generate activity throughout the day, encourage daytime use of local retail and service establishments, and disperse traffic at peak hours. The ANC supports the thoughtful design of the building and urges the Zoning Commission to approve the office use.” (Ex. 18, p. 1.)
80. The ANC did not attend or testify at the public hearing.

### **Other Responses**

81. The Parties in Support did not file a response to the Application or testify at the Public Hearing, and no other written responses were received. No individuals or organizations testified at the public hearing.

### **CONCLUSIONS OF LAW**

1. Pursuant to the Zoning Regulations, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:
- a. Results in a project superior to what would result from the matter-of-right standards;
  - b. Offers a commendable number or quality of meaningful public benefits; and
  - c. Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.

(Subtitle X § 300.1.)

2. In evaluating a PUD, the Commission shall find that the proposed development:
- a. Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;
  - b. Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of



public benefits in the project; and

- c. Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.

(Subtitle X § 304.4.)

3. Pursuant to Subtitle X § 302.2, “[a] two-stage application has two (2) parts as follows:
  - a. The first-stage application involves general review of the site’s suitability as a PUD and any related map amendment; the appropriateness, character, scale, height, mixture of uses, and design of the uses proposed; and the compatibility of the proposed development with the Comprehensive Plan, and city-wide, ward, and area plans of the District of Columbia, and the other goals of the project; and
  - b. The second-stage application is a detailed site plan review to determine transportation management and mitigation, final building and landscape materials and compliance with the intent and purposes of the first-stage approval, and this title.” (emphasis added.)

### **First-Stage PUD Modification**

4. The scope of the hearing conducted pursuant to this section shall limited to the impact of the modification on the subject of the original application, and shall not permit the Commission to revisit its original decision. (Subtitle Z § 704.4.)
5. The Commission concludes that the Application’s proposed modifications to the first-stage PUD for Building C2, as approved by the Original Order, do not result in any material changes to the first-stage PUD or Overall PUD because the proposed modifications only shift density and uses within the Overall PUD Site while remaining compliant with the applicable height, bulk, and density standards of the Overall PUD and the Zoning Regulations, as well as within the approved range of residential GFA and affordable GFA approved in the Original Order. Specifically, the Commission concludes that the Application does not propose any changes that would:
  - a. Affect the CP analysis by changing the height or density of the Overall PUD;
  - b. Result in any potential adverse impacts other than the localized impacts that are capable of being mitigated as discussed below;
  - c. Require additional development incentives; or
  - d. Alter the proffered public benefits. However, the Applicant proffered an additional public benefit of a \$1,500,000 contribution to the Trust Fund.

**Second-Stage PUD Approval**

6. If the Zoning Commission finds the application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval, the Zoning Commission shall grant approval to the second-stage application, including any guidelines, conditions, and standards that are necessary to carry out the Zoning Commission's decision. (Subtitle X § 309.2.)
7. The scope of the hearing conducted pursuant to this section shall be limited to impact of the modification on the subject of the original application, and shall not permit the Commission to revisit its original decision. (Subtitle Z § 704.4.)

**In Accordance with the Zoning Regulations**

8. The Commission concludes that the Application is in accordance with the intent and purpose of the Zoning Regulations applicable to the Building C2 Site and the Overall PUD. (FF \_\_\_\_.)

**In Accordance with the PUD Process**

Not Inconsistent with the CP (Subtitle X § 304.4(a))

9. Consistent with Subtitle X §§ 302.2 and 309.2, the Commission concludes that the Application results in no changes to the Commission's determination in the Original Order that the Overall PUD is not inconsistent with the CP. (FF \_\_\_\_.)

Potential Adverse Impacts of the Second Stage PUD - How Mitigated or Outweighed (Subtitle X §§ 304.3 & 304.4(b))

10. The Commission concludes that the Application was distributed to all relevant District agencies, which were given an opportunity to provide feedback on the Application. As noted in the OP Reports and as testified to by OP and DDOT at the Public Hearing, the Applicant fully addressed all issues raised by District Agencies. (FF \_\_\_\_.)
11. The Commission notes that the only potential impacts that may result specifically from Building C2 are related to traffic. The Commission concludes that the Applicant's proposed TDM Plan, as amended and approved by DDOT, will sufficiently mitigate these potential impacts and will not result in a change to the potential adverse impacts of the Overall Project that the Commission considered in the Original Order. (FF \_\_\_\_.)

Requested Flexibility Balanced by Public Benefits (Subtitle X § 304.3)

12. The Commission concludes that the Application did not request any additional PUD flexibility that would require the Commission to rebalance the flexibility against the public benefits, or require additional public benefits. (FF \_\_\_\_.)
13. As part of any PUD, the applicant may request approval of any relief for which special

approval is required. The Zoning Commission shall apply the special exception standards applicable to that relief, unless the applicant requests flexibility from those standards. Any such flexibility shall be considered the type of development flexibility against which the Zoning Commission shall weigh the benefits of the PUD. (Subtitle X § 303.13.)

14. In this case, the Applicant requested special exception relief pursuant to Subtitle C § 1500.3 and Subtitle X § 901.2 to permit nightclub, bar, cocktail lounge, and restaurant uses in the penthouse. The Commission concluded that the Applicant met the special exception standards of Subtitle X § 901.2. (FF \_\_.) Thus, this request was properly considered special exception approval and not “development flexibility against which the Zoning Commission shall weigh the benefits of the PUD.”
15. To the extent that additional flexibility exists as a result of the modification to the first-stage PUD to convert the primary use of Building C2 from residential to office, then the Applicant has proffered an additional benefit of a \$1.5 million contribution to the Trust Fund, which would otherwise fully satisfy the balancing test required by Subtitle X § 304.3.

#### **In Accordance with the First-Stage Approval**

16. The Commission concludes that the second-stage PUD for Building C2 is consistent with the first-stage PUD for Building C2 based on the materials submitted by the Applicant in the case record, the OP and DDOT Reports, and the testimony provided at the public hearing as further discussed below.
17. The Application’s proposed development of the Building C2 Site carries out the purposes of Subtitle X, Chapter 3 to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right development. The Application is in accordance with the purposes and goals of the Commission’s approval in the first-stage PUD: the Application does not propose to change the approved PUD development incentives or public benefits other than to add a new public benefit of a \$1,500,000 contribution to the Trust Fund, and any potential adverse impacts created by the second-stage PUD for Building C2 are addressed by specific mitigations. (FF \_\_.)

#### **“Great Weight” to the Recommendations of OP**

18. The Commission is required to give “great weight” to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990. (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8.) (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
19. The Commission finds persuasive OP’s analysis of the Application and recommendation that the Commission approve the Application and therefore concurs

in that judgment.

### **“Great Weight” to the Written Report of the ANC**

20. The Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976. (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2.) To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)
21. The Commission finds the ANC Report persuasive in its support of the Application and recommendation for approval and concurs in that judgement.

### **DECISION**

In consideration of the record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and therefore APPROVES the Application for a second-stage PUD and modifications to the first-stage PUD for Building C2, subject to the applicable conditions of Z.C. Order No. 15-27, except as modified and supplemented by the following guidelines, conditions, and standards (whenever compliance is required prior to, on, or during a certain time, the timing of the obligation is noted in **bold and underlined text**):

#### **A. FIRST-STAGE MODIFICATIONS TO BUILDING C2**

The conditions of Z.C. Order No. 15-27, remain in force and effect, subject to the following changes:

1. Decision No. A.1. shall be modified to read as follows (text to be added in **bold and underscore**; deleted in **~~bold and strike out~~**):
  - A.1 The Project shall be developed in accordance with the Architectural Plans and Elevations dated December 23, 2016 (Ex. 61A1-61A15 **of Z.C. Case No. 15-27**), as supplemented by the revised sheets dated January 26, 2017 (Ex. 72A1-72A3 **of Z.C. Case No. 15-27**), **and** as revised and supplemented by the sheets dated March 13, 2017 (Ex. 75A1-75A2 **of Z.C. Case No. 15-27**), and as revised by the sheets dated April 7, 2017 (Ex. 76A **of Z.C. Case No. 15-27**), **all as further revised by the Architectural Plans and Elevations included in Z.C. Case No. 15-27B, Ex. 26A, as modified by Sheets C-2 206, C-2 502, and C-2 505 of the Applicant’s Hearing Presentation (Ex. 31A)** (the “Plans”) and as modified by the guidelines, conditions, and standards of this Order.

A.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 (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 (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~~ **897,127** square feet of total gross floor area will be devoted to residential use, approximately ~~52,968~~ **54,151** square feet of total gross floor area will be devoted to retail use (**including Maker Space**), and approximately ~~217,558~~ **444,008** 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~~ **719** off-street parking spaces.

A.8 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 of the 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, such that the refinements do not substantially change the external configuration or appearance of the building;

~~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. 72A1.)~~

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;

**j. For Building C2, flexibility to move the maker space to an alternate location, so long as a minimum of 1,125 square feet is maintained and so long as the maker space remains on the ground floor of Building C2 with visible frontage on Neal Place or 3rd Street;**

**k. For Building C2, flexibility on the exact location, design, and materials of the exterior penthouse terrace, so long as the overall design meets the intent of the landscape drawings shown at Sheets C-2 307 and C-2 501 of Exhibit 26A of Z.C. Case No. 15-27B; and**

**l. For Building C2, flexibility to increase or decrease the square footage of solar panels on Building C2 by approximately 10% so long as the solar panels are located in the same general location as shown on Sheets C-2 308 and C-2 501 of Exhibit 26A of Z.C. Case No. 15-27B.**

B.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~~ **approximately 897,127** 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~~ **98,684** square feet, as inclusionary units **as follows: pursuant to version of 11 DCMR Chapter 26 in effect as of September 5, 2016;**

- ~~Set aside no less than 62 units (50% of the inclusionary units) comprising at least 60,018 49,342~~ square feet of GFA as inclusionary units for households earning equal to or less than 50% of the Area Median Income (“AMI”) (50% AMI Units”); **and**
- ~~Set aside no less than 62 units (50% of the inclusionary units) comprising at least 60,018 49,342~~ square feet of GFA as inclusionary units for households earning equal to or less than 80% of the AMI (“80% AMI Units”); **and**
- **Additional GFA devoted to 50% AMI Units in Buildings A2 and D generated by habitable penthouse space, as required by Z.C. Order Nos. 15-27A and 15-27E, respectively.**<sup>11</sup>

b. The distribution of the affordable housing units shall be in accordance with Sheets 122-130 of the Plans dated March 13, 2017 (Ex. 75A2 **of Z.C. Case No. 15-27)**, ~~and in accordance with the following chart<sup>12</sup> as modified by approved architectural drawings for Buildings A2 and D in Z.C. Case Nos. 15-27A and 15-27E, respectively.~~

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: **and**

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<sup>11</sup> Total GFA numbers are based on the approved building permit plans for Buildings A1, B, and C1, and the approved second-stage PUD plans for Buildings A2, C2, and D. (Ex. 26A, Sheet 203.) The total affordable housing proffer assumes that Building A2 is developed as a rental residential building requiring 11% of the residential GFA to be set aside for IZ units, with half at 50% of the MFI and half at 80% of the MFI. (Z.C. Order No. 15-27A, Decision No. A.2.c.)

If Building A2 is developed as a for-sale residential building, then a minimum of 90,881 square feet of total IZ GFA and a corresponding reduction in the number of IZ units would be provided in the Overall PUD. (Z.C. Order No. 15-27A, FF 19, Decision No. A.2.c, requiring 8% of residential GFA to be set aside for 80% AMI Units in Building A2 as a for-sale product.) Additional IZ at 50% of the MFI would be provided within Buildings A2 and D generated by penthouse habitable space in those buildings. See Z.C. Order Nos. 15-27A and 15-27E, respectively

<sup>12</sup> The chart at Decision No. B.1.b of Z.C. Order No. 15-27 and the corresponding footnote 6 to be deleted in their entirety.

- d. **Prior to the issuance of the first certificate of occupancy for above-grade space in Building C2, the Applicant shall demonstrate to the Zoning Administrator that it has contributed \$1,500,000 to the Housing Production Trust Fund.**

**Decision No. B.2 of Z.C. Order No. 15-27 to be deleted in its entirety.**

B.14 **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% 90% of construction of the Neal Place Park in accordance with Sheets 20, L1.01-L1.02, and L1-20-L1.21 of the Plans A-2 502 and 507-533 in Exhibit 21A of Z.C. Case No. 15-27A, as supplemented by Sheets 31 and 34-52 in Exhibit 26A of Z.C. Case No. 15-27A, 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. (Ex. 61A) 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:**

B.15 **Prior to the issuance of a Certificate of Occupancy for Building C2 or D (whichever is first), the Applicant shall demonstrate to the Zoning Administrator that Neal Place Park is 100% complete.**

**B. BUILDING C2 PROJECT DEVELOPMENT**

1. Building C2 shall be developed in accordance with the approved plans described in Decision No. A.1. of Z.C. Order No. 15-27 to the extent that they apply to Building C2, and as modified by:
  - a. The Architectural Plans included in the Applicant's Supplemental Prehearing Submission (Ex. 26A) ("Architectural Plans"); and
  - b. As supplemented and updated by the Applicant's Hearing Presentation (Ex. 31A, Sheets C-2\_206, C-2\_502 and C-2\_505) showing additional information on building materials and updates to the landscape plan and alley section, respectively (collectively with the Architectural Plans, the "Approved Building C2 Plans"), except as modified by the other conditions herein.
2. In accordance with the Approved Building C2 Plans, Building C2 shall have:
  - a. A maximum building height of 130 feet;
  - b. Approximately 225,398 square feet of GFA devoted to office use and approximately 6,532 square feet of GFA devoted to retail use, of which a minimum of 1,125 square feet shall be devoted to Maker Space (10.89 FAR total for the Building C2 Site);



- c. 132 zoning-compliant parking spaces; and
- d. One 30-foot loading berth, one 200 square foot loading platform, and one 20-foot service/delivery space.

**C. TRANSPORTATION MITIGATION MEASURES AND LOADING MANAGEMENT PLAN**

1. **Prior to the issuance of the first above-grade Certificate of Occupancy for Building C2 and for the life of Building C2, or as otherwise noted below**, the Applicant shall implement the following TDM measures:

- a. Unbundle the cost of parking from the cost to lease an office unit and only hourly, daily, or weekly rates will be charged. Free parking, validation, or discounted rates will not be offered.
- b. Identify Transportation Coordinators for the planning, construction, and operations phases of development. There will be a Transportation Coordinator for each tenant and the entire site. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement.
- c. Will provide Transportation Coordinators' contact information to goDCgo, conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year. All employer tenants must survey their employees and report back to the Transportation Coordinator.
- d. Transportation Coordinators will develop, distribute, and market various transportation alternatives and options to the employees and customers, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications.
- e. Transportation Coordinators will receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan.
- f. Will notify goDCgo each time a new office tenant moves in and provide TDM information to each tenant as they move in.
- g. Will post "getting here" information in a visible and prominent location on the website with a focus on non-automotive travel modes. Also, links will be provided to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area, and instructions for discouraging parking on-street in Residential Permit Parking (RPP) zones.

- h. Transportation Coordinator will implement a carpooling system such that individuals working in the building who wish to carpool can easily locate other employees who live nearby.
- i. Distribute information on the Commuter Connections Guaranteed Ride Home (GRH) program, which provides commuters who regularly carpool, vanpool, bike, walk, or take transit to work with a free and reliable ride home in an emergency.
- j. Transportation Coordinator will demonstrate to goDCgo that tenants with 20 or more employees are in compliance with the DC Commuter Benefits Law and participate in at least one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer-paid direct benefit, or shuttle service), as well as any other commuter benefits related laws that may be implemented in the future.
- k. Provide employees who wish to carpool with detailed carpooling information and refer to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or other comparable service if MWCOG does not offer this in the future.
- l. Designate a minimum of two (2) preferential carpooling spaces and one (1) vanpooling spaces in a convenient location within the parking garage for employee use.
- m. Offer a free SmarTrip card and one (1) complimentary Capital Bikeshare coupon good for a free ride to each new employee for the first year.
- n. Will meet ZR16 requirements for showers and lockers for use by employees. The Applicant will provide shower and locker facilities that meet Zoning Regulations (6 showers and 42 lockers).
- o. Long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo and tandem bikes.
- p. Provide a minimum of six (6) electric vehicle parking spaces in the garage.
- q. Install a Transportation Information Center Display (electronic screen) within the office lobby containing information related to local transportation alternative.
- r. Offer an annual Capital Bikeshare membership to each employee for three (3) years after the building opens.

- s. Employers will participate in the Capital Bikeshare Corporate membership program and offer discounted annual memberships to employees.
  - t. Provide a free parking space for all vehicles that employees use to vanpool to work.
  - u. Additional short and long-term bicycle parking spaces above ZR16 requirements.
  - v. Will not lease unused surplus parking spaces to anyone aside from tenants of the building or Market Terminal PUD unless the other building is under parked or provides zero (0) on-site parking.
  - w. Provide a bicycle repair station in each long-term bicycle storage room.
  - x. Following the issuance of a certificate of occupancy for the Project, the Transportation Coordinator shall submit documentation from DCRA summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case.
  - y. Following the issuance of a certificate of occupancy for the Project, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo every five (5) years (as measured from the final certificate of occupancy for the Project) summarizing continued compliance with the transportation and TDM conditions in the Order.
  - z. Contribute \$25,000 to the DDOT Transportation Mitigation Fund in lieu of installing the turn lane and making traffic signal adjustments. This money will be used by DDOT within ANC 5D (the ANC of Union Market) to fund these roadway geometric changes, other traffic flow improvements, traffic calming, bike/ped improvements, and/or improved transit connections.
2. The Applicant will also honor the applicable TDM commitments as approved under the Original Order as follows:
- a. Prior to the issuance of COO for Building C2, the building owner shall have the individual obligation to demonstrate to the Zoning Administrator that it has constructed the interior bicycle parking within Building C2.
  - b. Prior to the issuance of COO 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.

- c. Prior to the issuance of a COO for Building C2, the Applicant shall demonstrate to the Zoning Administrator that it has exceeded the zoning requirements for bicycle parking for Building C2.
- d. Prior to the issuance of a COO for Building C2, the building owner shall have the individual obligation to demonstrate to the Zoning Administrator that it has installed a transit information screen in the lobby.
- e. Transportation Coordinators will develop, distribute, and market various transportation alternatives and options to the employees, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications

3. **Prior to the issuance of a Certificate of Occupancy for Building C2 and for the life of Building C2, or as otherwise noted below**, the Applicant shall implement the following Loading Management Plan:

- a. A loading dock manager will be designated by the building management who will be on duty during delivery hours. The dock manager will be responsible for coordinating with vendors and tenants to schedule deliveries and will work with the community and neighbors to resolve any conflicts should they arise.
- b. The dock manager will monitor inbound and outbound truck maneuvers and will ensure that trucks accessing the loading dock do not block vehicular, bike, or pedestrian traffic along the private alley except during those times when a truck is actively entering or exiting a loading berth.
- c. All tenants will be required to schedule deliveries that utilize the loading area (any loading operation conducted using a truck 20-feet in length or larger).
- d. Delivery trucks for the retail tenants will be prohibited from serving the site between the commuter peak hour times of 8:00 to 10:00 AM and 4:00 to 6:00 PM.
- e. Retail loading in the 30-foot berth will be restricted to times before 8:00 AM and after 6:00 PM to allow for deliveries to be accessed through the building lobby from the loading berth to the retail space.

- f. Outside of these hours, retail tenants may access the loading dock via the sidewalk along the private alley. This is projected to occur no more than five (5) times in a week.
- g. The dock manager will schedule deliveries using the berths such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to use the C1 loading facility or return at a later time when a berth will be available so as to not compromise safety or impede the private alley functionality.
- h. When needed, the dock manager will coordinate usage of Building C1's loading facilities with the Building C1 dock manager. Building C2 loading and delivery schedules will be coordinated to lessen the need of this overflow option.
- i. Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the goDCgo Motorcoach Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map ([godcgo.com/freight](http://godcgo.com/freight)).
- j. The dock manager will be responsible for disseminating suggested truck routing maps to the building's tenants and to drivers from delivery services that frequently utilize the development's loading dock as well as notifying all drivers of any access or egress restrictions (ex. No left turn onto Neal Place Extension). The dock manager will also distribute flyer materials, such as the MWCOG Turn Your Engine Off brochure, to drivers as needed to encourage compliance with idling laws. The dock manager will also post these materials and other relevant notices in a prominent location within the loading area.

**D. MISCELLANEOUS**

1. No building permit shall be issued for Building C2 until the Applicant has recorded a covenant in the land records of the District of Columbia, for the benefit of 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 Building C2 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. This second-stage PUD approved by the Commission shall be valid for a period of two years from the effective date of this Order. Within that time, the Applicant shall file for a building permit for Building C2 and shall begin construction of Building C2 within three years of the effective date of this Order.

**VOTE** (July \_\_\_\_, 2020): \_\_\_\_\_ (Anthony J. Hood, Robert E. Miller, Peter G. May, Peter A. Shapiro, and Michael G. Turnbull to APPROVE.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 15-27B shall become final and effective upon publication in the *D.C. Register*; that is, on \_\_\_\_\_