

Z.C. Case No. 19-29

1346 4th Street, NE and 1348 4th Street, NE



**Updated Application for Review and Approval of a
Consolidated Planned Unit Development and Zoning Map Amendment**

Square 3587, Lots 3 and 7

December 23, 2020

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DEVELOPMENT TEAM

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I. INTRODUCTION

A. Summary of Updated Application

UM 1348 4th Street NE LLC and 1250 4th ST EDENS LLC (collectively, the “**Applicant**”) hereby submit this updated application (“**Updated Application**”) to the District of Columbia Zoning Commission (“**Commission**”) for review and approval of a consolidated planned unit development (“**PUD**”) and an amendment to the Zoning Map (“**Map Amendment**”) and special exception relief for a penthouse eating and drinking establishment.¹ *For convenience, a one page summary of the Updated Application is included as Exhibit A-1.*

The property that is the subject of this Updated Application is commonly known as 1348 4th Street, NE (Square 3587, Lot 3, hereinafter known as “**1348 4th Street**”) and 1346 4th Street, NE and (Square 3587, Lot 7, hereinafter known as “**1346 4th Street**” and together with 1348 4th Street, the “**Property**”). The Property consists of approximately 1.01 acres (43,782 square feet) in the aggregate. The Property is located in the Northeast quadrant of the District between New York Avenue and 4th Street, NE, where 4th Street, NE intersects with Penn Street, NE and is within the boundaries of Advisory Neighborhood Commission (“**ANC**”) 5D.

This Updated Application seeks Commission review and approval of: (i) a consolidated PUD, which establishes the height and massing, program of uses, building design and materials, and a package of public benefits for a new mixed-use building on the Property; (ii) a Map Amendment, which seeks to rezone the entirety of the Property from the PDR-1 zone to the MU-9 zone;² and (iii) a special exception for a penthouse eating and drinking establishment (collectively the “**Project**”, plans for which are attached as Exhibit F, the “**Plans**”). The Updated Application procedurally and substantively simplifies the Project relative to the Initial Application.

The Project consists of (i) approximately 430,289 square feet of rental multifamily residential units and retail and commercial lower level uses; (ii) up to three levels of below-grade parking with up to 254 parking spaces; and (iii) a robust package of additional public benefits. The Project’s public benefits (“**Public Benefits**”) include: superior urban design and iconic architecture, and efficient planning; superior urban design; streetscape improvements along 4th Street, NE and New York Avenue, NE; approximately 379 new units of housing ($\pm 10\%$), which is in excess of the matter-of-right amount, including approximately 37 units of affordable housing and approximately ten (10) to fifteen (15) units of three-bedroom housing (three to four percent (3-4%) of the unit count) and approximately one-third with two or more bedrooms, several of which will be affordable; LEED v.4 Gold-level design; contributions to ANC 5D-

¹ This Statement in Support of the Updated Application and exhibits filed herewith update and restate the analogous materials (the “**Initial Application**”) filed November 22, 2019 in Z.C. Case No. 19-29. The Initial Application sought a consolidated PUD, Map Amendment, and approval of an airspace development with respect to 1348 4th Street as well as 401 New York Avenue, NE and the airspace above 4th Street, NE. The airspace and 401 New York Avenue, NE property have been removed from this Updated Application, and the Applicant no longer seeks Zoning Commission review of an airspace development under Subtitle X, Chapter 7. 1250 4th ST EDENS LLC has been added and EAJ 401 New York Ave LLC has been removed as an applicant in this Updated Application and in light the substitution of 1346 4th Street, NE in place of the 401 New York Avenue, NE property.

² The Initial Application sought a Map Amendment from the PDR-1 zone to the MU-30 zone.

requested bike system improvements and public space improvements and related events in Ivy City; and the PDR/Maker use package provided by affiliates of the Applicant in other recent PUD approvals in the Union Market District. In addition, the Project will retain the PNC Bank use on the Property. The PNC Bank is a community-serving institution, serving local businesses and residents alike, and will move to 1346 4th Street during construction and return into the 1348 4th Street component of the Project upon its completion.

The Project implements the goals and policies of the Florida Avenue Market Study Small Area Plan (“**Small Area Plan**”) and is not inconsistent with the District of Columbia Comprehensive Plan (“**Comprehensive Plan**”) nor any other adopted policy or program applicable to the Property. This Updated Application satisfies the requirements for a PUD, the Map Amendment, and penthouse special exception under the Zoning Regulations (“**ZR16**”).

B. The Applicant

The Applicant is comprised of affiliates of its parent company, EDENS. EDENS and its affiliates and partners lead the development efforts in the Union Market District and have been instrumental in the investment and revitalization in the Union Market District for more than a decade. EDENS has extensive experience working with community groups and other stakeholders to develop projects that enhance urban neighborhoods and harmonize with existing communities. EDENS has worked with the Office of Planning (“**OP**”) and District Department of Transportation (“**DDOT**”) to create the Union Market Streetscape Design Guidelines and will continue to work with these agencies on related public space design concepts. EDENS is also working with the Historic Preservation Office to establish historic building guidelines and worked with OP to develop and implement the “PDR/Maker use” definition and specifications.

EDENS develops, owns, and operates community-oriented shopping places in primary markets throughout the East Coast. Examples of the EDENS innovative and well-planned approach can be found in the Union Market District at 1309 5th Street, NE (“**The Market**” and “**Dock5**”), 1270 4th Street, NE (“**La Cosecha**”), Gateway Market at 340 Florida Avenue, NE (“**The Edison**” which includes a Trader Joe’s), 1300 4th Street, NE, and the rehabilitation of the historic buildings along 5th Street, NE into vibrant local and maker street retail and 2nd floor office uses, including EDENS’ national headquarters. EDENS has also developed the Mosaic District at Lee Highway and Gallows Road in Merrifield, Virginia, 530 First Street in North Old Town, Alexandria, Virginia, and numerous other first-class, placemaking, mixed-use developments in the region and beyond. EDENS prides itself in introducing pioneering, innovative concepts, creating the right merchandise and tenant mix, delivering seamless construction projects, and maintaining ownership and management, all while synthesizing the new with the existing and integrating in-place and surrounding communities, and has done so on numerous projects for over 50 years. EDENS has developed a strong reputation through its commitment to enriching the communities it serves and its focus on building key relationships with neighbors, retailer partners, and project development partners.

Within the Union Market District, EDENS and its affiliates and partners have joint ventured to (i) entitle, design, and construct The Edison (approved by Z.C. Order No. 06-40C), which is the first residential project within Union Market and includes a Trader Joe’s grocery store and a dedicated community room for the ANC, (ii) entitle, design and construct the

residential building and La Cosecha at 1270 4th Street, NE (approved by Z.C. Order Nos. 14-07 and 14-07A) and 1300 4th Street, NE (approved by Z.C. Order Nos. 14-07 and 14-07B), (iii) entitle and design the hotel and retail project at 400 Florida Avenue, NE (approved by Z.C. Order No. 16-10); (iv) entitle and design the residential and retail PUD at 500 Penn Street, NE (approved by Z.C. Order No. 17-14, “**Maurice Electric**”); (v) entitle and design the mixed-use “North Building” at the Union Market site in the heart of the Union Market District, which was approved by the Commission as a second-stage PUD in January 2020 (Z.C. Order No. 14-12E) and which is currently seeking a building permit; and (vi) entitle the mixed-use “South Building” to be constructed above The Market (approved by Z.C. Order Nos. 14-12, 14-12C, 14-12C(1) and 14-12D(1)).

II. THE PROPERTY

A. Location and Existing Uses

The Property is located within Ward 5 and ANC 5D01 in the Northeast quadrant of the District. The Property is irregularly-shaped and bounded to the north by New York Avenue, NE, to the east by 4th Street, NE, to the south by 1344 4th Street, NE, which contains a single-story commercial building, and to the west by the District-owned Lot 819 in Square 3587 (“**Lot 819**”). The Property consists of approximately 43,782 square feet total, all contiguous.

The Property is currently improved with two structures: on 1348 4th Street is a single-story bank building with surface parking and drive-through lane and on 1346 4th Street is also a single-story commercial building with surface parking. The existing building on 1348 4th Street will be demolished in order to construct the Project. The existing building on 1346 4th Street will be renovated and incorporated into the Project in order to accommodate the on-site retention of the PNC bank, and its continued operation during the construction of the Project.

Situated within the eastern portion of the Union Market District, the Property is less than a half-mile from the NoMA-Gallaudet University Metrorail station, which is served by WMATA’s Red Line. The D.C. Council recently approved a capital project to enhance pedestrian access between the Union Market District and the Metrorail station.

B. Characteristics of the Union Market District and the Surrounding Area

Union Market District. The Property is at the northern border of the Union Market District, which is also known as the “Florida Avenue Market,” a mercantile and warehouse district that has historically been a hub for the District’s food services, wholesalers and retailers. EDENS has played a significant role in ensuring that the ongoing redevelopment of the Union Market District accommodates many of the long-time existing DC and Union Market District food wholesalers and both respects and reinforces its food-based mercantile heritage and its surrounding neighborhoods. As a result, today the Union Market District retains a conglomeration of wholesalers and retailers of meats, produce, and dry goods, as well as local and artisanal maker products such as jewelry, tourist souvenir items, hair care products, home goods, and general merchandise. The product and service mix in the Union Market District is intended to serve long-time customers, nearby residents, and members of the Gallaudet University community, and to draw visitors from across DC and beyond to help realize the full

economic potential of the District. This new and ongoing development activity has begun to transform the Union Market District in accordance with the Small Area Plan.

EDENS has always maintained a long-term vision for the Union Market District and believes that its retailers will withstand the current economic conditions and will emerge poised to thrive on the other side of the pandemic.

The Union Market District is surrounded by a mix of neighborhoods and land uses. Immediately east of the Union Market District is Gallaudet University. To the north and west are New York Avenue, NE and the wide rail corridor that leads to Union Station, which is just a few blocks to the southwest of the Union Market District. Florida Avenue, NE serves as the southern boundary of the neighborhood, beyond which is the largely-residential Atlas District. The Union Station Train Yard lines crosses into portions of the Union Market District at points behind the Property. One rail line in the Union Market District is planned to be re-activated by VRE for daytime commuter train storage. To the north, bisected by New York Avenue, NE is the mixed-use Ivy City, and beyond Gallaudet University to the east is the primarily-residential Trinidad neighborhood. Eckington is located to the west across the regional rail corridor.

Transit and Vehicular Access. The Union Market District enjoys convenient vehicular access to the District's traditional downtown core and the Baltimore/Washington corridor via New York Avenue, NE, a six-lane arterial that provides immediate access to Route 50 and points east, to the Baltimore-Washington Parkway to Howard County and Baltimore, and to the Capital Beltway.

As noted above, the NoMA-Gallaudet University Metrorail Station is located at the southern edge of Union Market across Florida Avenue, NE from the Union Market District and within easy walking distance, which will become even easier with the recently-funded capital improvements. The NoMA-Gallaudet Station is one stop (2-3 minutes) from Union Station with connections to MARC, VRE, Amtrak, and intercity bus service on the Red Line and just three stops (5-7 minutes) from Metro Center. In the opposite direction, the Red Line runs to Silver Spring, another major employment center in the region. Multiple local Metrobus lines directly serve Florida Avenue, NE and the nearby Brentwood Parkway, NE, which bus lines also provide important intracity vehicular access. The Metropolitan Branch Trail ("MBT") runs along the eastern side of the rail corridor bounding Union Market. The MBT provides an important bicycle connection to other District neighborhoods. The Union Market District itself is increasingly bicycle friendly, and substantial bicycle-related improvements are planned for surrounding neighborhood, including along Florida Avenue, NE to the south of the Union Market District, West Virginia Avenue, NE east of the Union Market District, and 6th Street, NE within the District itself. The Project will continue the evolution of the surrounding cycling infrastructure as part of the Public Benefits.

Nearby Recreation and Amenities. The Property is within walking distance of Mt. Olivet Cemetery, and as mentioned above, the MBT, which serves recreational cycling as well as commuters. The Joseph Cole Community Recreation Center is approximate one-half mile away.

Recently, EDENS installed interim park and recreation improvements on the top level of The Market. These improvements serve the Union Market District until permanent urban plaza improvements are constructed at the ground level as part of the construction of the new "North

Building” adjacent to The Market. The new improvements atop The Market contribute an outdoor gathering space for residents, workers, and visitors to the Union Market District.

In recent years, commercial uses have emerged in and around the Union Market District. Trader Joe’s is open in The Edison, an EDENS-partner-developed building, south of the Property along 4th Street, NE. New EDENS-owned retail is also open on 5th Street, NE between Morse Street and Neal Place, NE in the Union Market Historic District. EDENS owns La Cosecha in The Batley building on 4th Street, NE, and several new pop-ups in the EDENS-owned spaces along 4th Street and Neal Place, NE. An assortment of commercial uses line Florida Avenue, NE in the vicinity of the Union Market District, and The Market and Dock 5 are activity centers for retail uses, mercantile activity, shopping needs, and neighborhood gathering spaces and an incubator space for new, locally-based small businesses.

Nearby Development. Multiple PUDs have been approved within or immediately adjacent to the Union Market District in accordance with the development framework set forth in the Small Area Plan. Likewise, southwest of Union Market, the NoMA Business Improvement District has seen development and investment activity also in accordance with the Comprehensive Plan. Nearby neighborhoods of Eckington and Ivy City neighborhoods also each have multiple new or planned developments. Together these new developments provide a significant contribution of new housing, new affordable housing, and new job and economic opportunities as well as opportunities for District residents and workers to remain in the District.

Across 4th Street, NE from the 1348 4th Street portion of the Property is 500 Penn Street, NE, which is the subject of an approved consolidated PUD and related Zoning Map amendment approved in Z.C. Order No. 17-14 (the “**Maurice Electric PUD**”). The Maurice Electric PUD allows a 12-story, mixed-use building with ground floor retail and PDR/Maker uses and upper story multifamily residential uses and authorizes a rezoning from the underlying PDR-1 zone to the MU-9. The building approved as part of the Maurice Electric PUD has a maximum floor area ratio (“**FAR**”) of 8.4, and like this Project, also has a maximum height of 130 feet.

Other significant recent and pending developments within a half-mile radius of the Property include: (i) the Constitution Square complex, which includes 2.5 million square feet of mixed-used space including office, hotel, residential, and retail in NoMA; (ii) JBGSmith’s 200-room Hyatt Place at 33 New York Avenue, NE; (iii) the 218-room Courtyard by Marriott at 1325 Second Street, NE; (iv) the roughly 1 million square foot Washington Gateway project, which includes residential, retail, and office space on the triangular lot to the north and east of the intersection of Florida and New York Avenues; (v) The Edison by affiliates of LCOR and EDENS (mentioned above), which includes Union Market’s first residential units, a Trader Joe’s and a community room; (vi) mixed use retail and residential PUD projects at 1270 4th Street, NE and 1300 4th Street, NE by affiliates of EDENS and several development partners approved by Z.C. Order Nos. 14-07, 14-07A, and 14-07B (mentioned above); (vii) a mixed use, multiple building PUD at the east of the Union Market District subject to Z.C. Order Nos. 15-27, and 15-27A through 15-27F, (viii) a hotel and retail project at 400 Florida Avenue, NE by EDENS and other development partners (approved by Z.C. Order No. 16-10) (mentioned above); (ix) a mixed-use office, multifamily residential and retail/PDR/Maker use building at The Market and the adjacent North Building (approved by Z.C. Order Nos. 14-12 and 14-12E) (mentioned above); (x)

JBGSmith and Gallaudet’s multi-block PUD within Union Market (Z.C. Order No. 15-24); and (xi) a an approximately 220-room hotel at 501 New York Avenue, NE (Z.C. Order No. 11-26).

Nearby Zoning, Economic, and Demographic Characteristics. The 45-acre Union Market area is generally in the PDR-1 zone (previously the C-M-1 Zone District), but several sites have been rezoned C-3-C (now MU-9 under ZR16) and MU-9 in accordance with the recommendations of the Small Area Plan. *See, for example*, Z.C. Order Nos. 06-40 through 06-40C, 11-25, 14-07, 14-12, 15-01, 15-19, 15-24, 16-10, and 17-14. The Union Market District, and The Market itself, have been hubs of economic activity for entrepreneurial and local DC-based start-up businesses including food-based industries, technology, media, mixed-media, and “maker” uses, all of which have found niches in near Northeast, with the Union Market District a hub for such economic activity.

Lot 819. Lot 819 is an irregularly-shaped, District-owned lot to the immediate west of the Property and currently serves as a vehicular/pedestrian access and alley network for a number of lots adjacent to and in the vicinity of that lot. Although the District owns Lot 819, it is not a public right of way or alley. Instead a private covenant agreement of record governs use of and access over Lot 819, and the Applicant intends to use Lot 819 for vehicular and related infrastructure purposes pursuant to such covenant. Lot 819 narrows to a point at its northern end, which is the portion of Lot 819 adjacent to 1348 4th Street. At the northernmost portion of Lot 819 a steep grade separates that lot from the Property, allowing vehicular access to the Property via Lot 819 to occur below the grade of 4th Street, NE.

III. THE PROJECT

The Project contains a single, mixed-use building. The Project contains: (i) a mix of ground floor retail, PDR/Maker, service, and related commercial uses, (ii) twelve stories of multifamily rental residential uses, (iii) below-grade parking, (iv) penthouse commercial and/or residential space, and (v) streetscape improvements along the surrounding streets.

A. Project Description

Project Goals: The primary design and placemaking objective of the Project is to provide iconic architecture and urban design that celebrates DC and provides a unique and memorable marker or gateway as one arrives into the downtown core. The Project is also a threshold moment into the Union Market District. *See* pages 20-21 of the Plans. New York Avenue, NE, the primary vehicular entry into the downtown core from the northeast corridor demands a significant urban design gesture and an iconic building, cementing the District as a thriving hub of innovation, art, culture, and economy. The Union Market District’s 4th Street, NE entrance—the only connection from New York Avenue, NE directly into Union Market—is the appropriate place for a significant urban design gesture. Taking advantage of a topographical high point in the District without interfering with the L’Enfant Plan or other prominent escarpment viewsheds, the Project adds a signature building in the neighborhood and also yields uninterrupted views from the Project to many of the District’s iconic architectural and monumental moments such as the Capitol and Washington Monument. *See* page 5 of the Plans. Massing features such as chamfered corners at key locations maximize views from New York Avenue, NE into the neighborhood by carving the corners of the building. Further, the Project intentionally “pulls

back” from its southern property line to allow for an element of relief between building forms and an east-west view along with open space, as encouraged in the Small Area Plan.

In addition, the Project foreshadows grander development possibly to come to New York Avenue, NE.

The Project also achieves other desirable public policy objectives: in furtherance of the Mayor’s housing production goals, the Project adds approximately 379 new residential units ($\pm 10\%$), of which approximately ten percent (10%) will be affordable and three to four percent (3-4%) will be family-sized. In addition, the Project reinforces the Union Market District’s mercantile heritage by reserving the ground floor for commercial uses, including PDR/Maker uses. The street space improvements enhance and substantially advance the collective vision for the Union Market District as set forth in the Small Area Plan and Union Market Streetscape Design Guidelines. Lastly, the Project advances numerous policy objectives of the Comprehensive Plan. The Project’s relationship to these objectives are detailed below and in the exhibits attached.

Existing PNC Bank: The Applicant has received consistent feedback that the existing PNC Bank branch on the 1348 4th Street portion of the Property is an important community-serving institution, serving local businesses and residents alike. Many of the small businesses nearby rely heavily on cash exchanges, and a local bank is an essential part of the local business ecosystem. It also serves nearby residents. As a result, the Applicant has reached an arrangement with PNC to renovate the existing building at 1346 4th Street and relocate the PNC branch there during construction of the Project. Once the Project is complete, the PNC bank branch will return to the ground floor of the 1348 4th Street NE portion of the Project.

Program: The Project has a total floor area of up to approximately 430,289 square feet of gross floor area (“GFA”), including the flexibility requested below, resulting in an FAR of up to approximately 9.83 with an overall lot coverage of approximately 86.2 percent (below the 100 percent permitted in the MU-9 zone). The maximum height of the Project is 130 feet. The Project ultimately includes a mix: (i) up to approximately 375,387 square feet of residential GFA; (ii) up to approximately 54,902 square feet of retail, commercial, and service/back-of-house GFA on the ground, mezzanine, and partially below-grade levels; and (iii) up to approximately 15,807 square feet of penthouse habitable space to be allocated among a mix of amenity space for the building’s residents (including a pool, lounge, grilling areas, work areas, and game rooms), and/or residential units, and/or rooftop commercial uses (such as a restaurant, bar, fitness, event, outdoor theater space, and/or other allowed uses). Below grade, the Project includes up to three levels of parking for up to 254 parking spaces vehicle spaces and approximately 410 bicycle spaces. Loading is integrated at ground level from the Lot 819 side of the Project.

Site Plan: The Project’s intent is to create a dramatic design gesture announcing the entry into the Union Market District from New York Avenue, NE. The Project’s site plan highlights its important context, activates the surrounding public realm, responds to an existing change of grade, and relegates all vehicular and loading access to alleys. *See* pages 11 and 16 of the Plans.

The design rationale for the Project is to vertically extrude on 1348 4th Street the density allowable on the Property. Chamfering sculpts the appearance of the building, creating a rich

depth especially while viewing the building at oblique angles. The bulk, density, and orientation of the Project are each consistent with the vision for the Union Market District articulated in the Small Area Plan. The Project is essentially a bar-shaped building. The width of the bar at grade is narrower at the northern end and at the southern end expands to 120 feet, taking advantage of the greater dimensions of the 1348 4th Street lot to accommodate south-facing windows. The Project's shape and orientation provide sweeping views to the Capitol dome and Washington Monument and across the District's skyline generally. Furthermore, the chamfered massing opens up unique sight lines from the street level and other nearby buildings, enhancing the overall experience for both residents and visitors to the neighborhood.

The Project's design intentionally maintains 1346 4th Street as an area for vertical relief. The immediately adjacent buildings to the south are one story retail buildings with no plans for vertical expansion. Those three consecutive lots—1340, 1344, and 1346 4th Street, NE—together provide a necessary moment of openness and lower height and massing as other portions of 4th Street, NE are developed. Such urban design is in specific observation of the Small Area Plan.

The ground floor articulation and orientation of the Project prioritizes pedestrian activity along 4th Street, NE and attempts to continue that prioritization to the portion of New York Avenue, NE adjacent to the Project. The Project places multiple retail entrances as well as the lobby entrance to the residential units along 4th Street, NE. These entrances animate such portion of the street system. The Project carries around to New York Avenue, NE the rhythm of retail entrances and generous, transparent storefronts. The New York Avenue side of the building intends to also be dynamic and active at the scale of the busier street as the “front-door” to the Union Market neighborhood. The façade of the Project facing Lot 819 and therefore highly visible from New York Avenue is intentionally constructed of the same materiality as the other facades of the building, such that the structure has no true “back”. The existing grade of 4th Street, NE rises from south to north adjacent to the Property and is a significant design factor that the Project deftly addresses.

All of the Project's parking and loading access is concentrated at one location accessible only from the Lot 819 alley. The Project does not include any new curb cuts and indeed proposes to close the four existing curb cuts serving 1348 4th Street. Existing curb cuts serving 1346 4th Street will remain.

Building Layout: The Project is vertically segmented, with a commercial ground floor and multifamily residential uses above. The Applicant also anticipates potentially utilizing up to 9,770 square feet of area in the penthouse for one or more commercial uses.

Level 1 contains approximately 34,412 square feet of retail/commercial space (plus approximately 1,550 square feet of additional outdoor areas under cover and additional back-of-house/service areas). Due to the change in grade from south to north along 4th Street, NE, the ground floor of the Project has the appearance of a double-height elevation for the southern half of the Project at the ground floor level as shown on page 16 of the Plans. That double-height volume creates the potential for a mezzanine of up to 8,000 additional square feet depending upon the ultimate retail/restaurant tenant(s). The retail/commercial areas include large spaces accessible from 4th Street and New York Avenue, NE and will be able to be further divided as

necessary to accommodate individual tenants. The residential lobby is centrally located along the Project's frontage on 1348 4th Street.

The upper levels of the Project (i.e., levels 2-13; not including the penthouse) include residential and amenity uses. *See* page 28-34 of the Plans. The penthouse level will include approximately 15,807 square feet of amenity space serving needs plus a rooftop terrace and pool and which may also include up to 8,330 square feet of commercial uses and/or residential units. (Accounting for service areas and outdoor areas under roof the penthouse could include up to 9,770 square feet of GFA attributable to non-residential uses.) The roof is also designed to accommodate mechanical equipment, green roofs and vegetation.

Parking and Loading: Non-automotive modes of transportation are a priority for the Project and the Project includes a focus on bicycle parking spaces. The Project contains up to 254 vehicle parking spaces on up to three levels of below-grade parking to serve the residential and retail/commercial uses. The residential spaces will be access-controlled, but the retail/commercial spaces will be available to the public generally. Expectations around parking are currently difficult to anticipate in light of challenges with public transit during the ongoing pandemic. As a result, the Applicant seeks design flexibility to build one fewer level of parking than shown on the Plans depending upon anticipated demand at the time of construction.

The first below-grade level of the garage includes secure bicycle storage rooms with capacity for approximately 410 long-term bicycle spaces. *See* page 24 of the Plans. Residential occupants of the Project will have separate bicycle storage from the retail users, and all bicycle parking is located conveniently within the top level of the garage. An additional approximately 32 short-term bicycle parking spaces are provided in public areas around the Property. Showers and lockers are provided for cyclists who are commuting to the Project for work.

The Project contains a total of three loading berths and delivery spaces, along with additional ancillary loading areas. The loading areas are accessible via Lot 819, behind the 1348 4th Street portion of the Project on the P1 level.

As noted above, all of the Project's parking and loading access require access only from the existing alley, so all existing curb cuts on 1348 4th Street and New York Avenue will be closed.

Residential Unit Mix: The Project's residential program contains a mix of studio, junior 1-bedroom, 1-bedroom, 1-bedroom plus den, 2-bedroom, 2-bedroom plus den, and 3-bedroom units. Significantly, approximately three to four percent (3-4%) of the Project's units will have 3-bedrooms and approximately a third of the units will have two bedrooms or more. The Project has dedicated amenity space for resident recreation and events.

The Project exceeds the Inclusionary Zoning ("IZ") requirements of ZR16 by dedicating ten percent (10%) percent of the residential GFA to affordable units, which translates to approximately 37,539 gross square feet of affordable units. Of such affordable units, 90% percent are proposed to be set aside for households earning no more than 60% of the Washington DC Median Family Income ("MFI") while the remainder of such affordable housing units are to be set aside for households earning no more than 50% MFI for the life of the Project, a ratio that

exceeds the IZ requirements. The Project will also supply an additional component of affordable housing within the building for those portions of the penthouse used for commercial use or for residential units.

Maker/PDR uses. Half of the non-residential area on the ground floor of the Project will be constructed to “PDR/Maker” use specifications³. Moreover, the Applicant will reserve five percent (5%) of such space for PDR/Maker uses⁴ for a period of five (5) years. These PDR/Maker commitments and enhanced Public Benefits are consistent with the package proffered by an affiliate of EDENS and accepted by the Commission in the consolidated PUD for 500 Penn Street, NE and 1329 5th Street, NE. *See* Z.C. Order Nos. 17-14 at Decision ¶¶ B.9-11 and 14-12E at Decision ¶ B.5.

Architecture, Façade Details, and Materials: The Project’s architectural design and detailing are intended to be bold, iconic, and distinctive while taking cues from the patina of the surrounding neighborhood’s existing fabric. Given the Project’s prominent location and ambitious urban design objectives, it has a four-sided design that is intended to set it apart from, yet complement, the other buildings within the Union Market District. The proposed massing has been designed with the streetscape experience and neighboring buildings in mind, with a carved form that allows for greater penetration of light and air to the ground plane and surrounding context. The Project takes advantage of its edge condition at the margin between New York Avenue, NE to the north and the Union Market District to the south, and offers a bold resolution to the challenge of its context.

From New York Avenue, NE, the Project is intended to become a gateway building to the Union Market District and downtown DC alike. The Project’s overall form, chamfering, prominent balconies, and materiality all work in service of this objective. On 4th Street, NE the Project proposes to keep 1346 4th Street as a single-story building to provide relief from the taller building to the south, allow light and air to the ground plane, and increase access to views from within the building and from and to surrounding buildings as well.

³ PDR Maker construction specifications shall mean construction to include “(a) a structural slab load (ground floor) live load of 125 pounds per square inch; (b) clear height of approximately 16 feet from ground-floor slab to bottom of structure above; (c) an electrical supply of 50 watts per square foot; (d) a loading dock that includes a 48-inch raised loading dock and/or levelers; (e) an open floor plan layout; (f) a sound attenuation for mixed-use that satisfies NC-25 minimum noise criteria and includes seven-inch-thick minimum concrete podium slab; (g) HVAC designed for one ton per 300 square feet; and (h) ventilation (Fresh Air / Make-Up Air) louvers at façade.”

⁴ PDR Maker uses shall include: “(a) production, sale, and/or distribution of food and beverages (provided that the onsite consumption of food and beverages shall only be permitted when associated with such production, sale, and/or distribution user); (b) food incubators and food hubs; (c) robotics and 3-D manufacturing; (d) small-scale production, distribution or repair of goods and related accessory sales; (e) curation and sale of small-scale production goods; (f) new and locally-owned small businesses as certified with the Department of Small & Local Business Development; (g) “creative economy” uses including incubators, graphic design, product or industrial design, engineering and design, technology design and production, design and product curation, fashion design, horticultural design, green businesses and sustainable design, specialty sports and recreation uses, media/communications production and distribution; and (h) “arts” uses including arts, design and creation uses as defined in Subtitle B § 200.2(e) of the Zoning Regulations and entertainment, assembly and performing arts as defined in Subtitle B § 200.2(n) of the Zoning Regulations.”

The Project employs a series of unique geometries to create an iconic form that also enhances the primary architectural and urban design objectives. Strategically located chamfered balconies sculpt the Project, provide texture, and open up important sightlines. The chamfering helps to break down the scale of the building, offering additional open space at the street level and giving the building a more dynamic appearance to distinguish it from other architecture in the Union Market District. This chamfering design approach represents a significant financial investment to create a building worthy of this prominent location.

The Project's detailing and materiality underscore its bold statements. At the street level, where pedestrians interact with the building, it has a rich texturing of materials intended to create a tactile connection between passersby and the building itself. Masonry construction with a hand-made quality and patina are complemented by expanses of glass that allow the life and color of retailers to activate the streetscape and courtyards adjacent. A significant investment in greenery at the ground floor streetscape, façade, and canopy above helps to soften the ground plane and encourage pedestrians to linger. At the upper levels, a dominant expression of glass and its reflective quality will dematerialize the mass, while at the same time helping to emphasize the dynamic nature of the chamfered edges. The Project's balconies and terraces are a prominent design feature and an important amenity for residents that also help to dematerialize the mass at its edges. Approximately seventeen percent (17%) of the Project's units have direct balcony/terrace access.

In other ways, the Project's details recall and reinforce dominant forms of the Union Market District's mercantile design heritage. For instance, between the pedestrian-scaled retail level and the more sculptural upper levels is a canopy that offers a modern interpretation of the prevailing canopies fronting many of the Union Market District's historical mercantile buildings. On the 4th Street, NE side of the Project, the canopies serve the dual purposes of providing shading for pedestrians below and a surface for potentially occupiable greenspace above. The canopies also provide horizontal surfaces for greenery and related sustainability measures. Additionally, the canopy elements are intended to be consistent with the Union Market Streetscape Design Guidelines and reinforce the datum defined by this unique, signature feature of the core of the Union Market Historic District.

The existing building at 1346 4th Street, NE is proposed to be renovated and refreshed as part of the Project. It will receive new storefront glazing, awning and painted façade, in addition to new paving and landscaping at the 4th Street frontage.

Signage and Lighting: The Project's retail/commercial and building signage is intended to reflect the Project's prominent location along New York Avenue, NE as an entrance to the District and the Union Market District. The Plans still reflect a conceptual notion of the signage and lighting but demonstrate the extent to which the Applicant intends for the signage to be bold and expressive, consistent with the Project's overall design expression and the opportunity in the Union Market District to incorporate design components not possible elsewhere in the District. The Project includes two notable signage and lighting components:

- i. **Building Signage/District Identifier:** As shown on pages 72 and 73 of the Plans, the Applicant intends to install a translucent fritting occupying a broad swath of the windows on the west façade of the Project. The fritting would likely include,

without limitation, a “Union Market” identifier for the District as a whole, similar to the signage approved on the New York Avenue, NE-facing side of the “North Building” at Union Market (Z.C. Case No. 14-12E), other types of markers for the Project or Union Market District, art and artistic installations, or other signage and branding. This identifier would be an iconic “gateway” or entry marker, intended as both art and architecture. The Applicant views the long west elevation of the Project, currently unobstructed from New York Avenue, NE as a large “urban easel” and an opportune location for a bold visual indicator announcing the arrival of the Union Market District both as a geographic place and as a maturing center of commercial activity. This identifier also has the benefit of providing visual relief along the Project’s long western façade.

- ii. LED Trim: As shown on pages 74 and 75 of the Plans, the Applicant intends to incorporate dynamic LED lighting into the Project. This lighting will give the Project form and texture in the evening hours, signifying the Union Market District as an important destination for evening activities (e.g., dining, special events, and community gathering). The lighting would be dynamic, with colors changing to reflect important events locally, nationally, and worldwide (e.g., multicolored for Pride, pink for the Komen breast cancer walk, red-white-and-blue for inauguration, etc.). The Project and its lighting would help further establish the Union Market District as an important civic node, drawing residents of and visitors to gather and commemorate or celebrate together. Similar to the signage mentioned above, this lighting would allow for a bold accent to an already strong, dynamic design, capitalizing on an opportunity uniquely available in the Union Market District.

Landscaping: The Project features a variety of landscaping improvements at street level, at the second-story canopy level, on the balconies and on both the “main” rooftop and the upper roof. The rooftop and canopy level are the dominant landscaped elements of the Project and are meant to expand upon and complement the urban park concepts approved for The Market and the plaza between The Market and its sibling building to the north at 1325-1329 5th Street, NE (as described in Z.C. Order Nos. 14-12, 14-12C, 14-12C(1), and 14-12E). The landscaping on the balconies is both a design and a sustainability feature and will be maintained by an integrated irrigation system and regular monthly upkeep and semi-annual maintenance conducted by property management in a coordinated fashion.

The Project makes a significant investment in the streetscape improvements around the site, as shown with particularity on page 46 of the Plans. The setbacks of the building allow for open areas on the private space to be integrated with the public space in order to augment the pedestrian and visitor experience and create an interesting, dynamic, and unique sequence of plazas and features. The streetscape elements allow for flexibility to accommodate sidewalk events and daily use for residents, visitors, and patrons of the Project’s retail spaces. The sidewalks surrounding the Property are wide and allow for seating (where permissible by the Union Market Streetscape Guidelines and grade), bicycle parking, circulation, trees, stormwater controls, and other elements. The New York Avenue, NE streetscape is heavily landscaped to soften that edge condition.

The design of 4th Street, NE adjacent to the Project is in accordance with Union Market Streetscape Guidelines, which the Applicant’s affiliates have previously finalized with DDOT. One design feature that emerges from the Streetscape Guidelines is the inclusion of the Project’s large canopies. As mentioned above, the Project’s canopies feature green roofs as a sustainability measure. Canopies, rather than street trees, are emphasized as the streetscape level “greening” and shading element, particularly on the exposed south-facing side of the Project. Canopies reflect the mercantile character of the Union Market District, which historically has had few, if any, street trees. However, some street trees are strategically included in order to contribute to the District’s wider tree canopy goals.

Sustainability: The Project is designed to be certified at the level of LEED Gold v4. The Project’s level of sustainability is further evidence of its superior design and reflective of the Applicant’s commitment to advance the District’s sustainable development goals. Specific sustainable design features include: energy modeling for the residential portion of the Project in order to optimize energy use and recovery and implement a number of efficiency strategies; careful selection of materials—both interior and exterior—that are environmentally preferred; and inclusion of green roof and bio-retention with native plantings—including green canopies; access to and infrastructure to support the use of alternative forms of transportation.

B. Public Benefits

The Project includes a robust package of Public Benefits and related project amenities. As described in more detail below, this package of Public Benefits was developed in close coordination with ANC 5D.

- Superior urban design and architecture, as described above, including distinctive forms and building configuration, balconies, high-quality materials, detailing, and a modernization of the Union Market District canopy vernacular;
- Site planning and efficient and economical land utilization, including removing surface parking, closing four existing curb cuts, and locating all parking and loading below grade with access only from a private alley and no new curb cuts;
- Extensive streetscaping along of 4th Street and New York Avenue, NE in accordance with the Union Market Streetscape Guidelines;
- Housing that exceeds the amount that would have been required through matter-of-right development under existing zoning (i.e., none of the residential uses on the Property are permitted under the existing PDR-1 zoning, so all 375,387 square feet of residential GFA is a public benefit);
- Affordable housing (10 percent of residential GFA) in excess of the amount that would have been required through matter-of-right development;
- Affordable housing at lower levels of affordability than is required under the Zoning Regulations (i.e., 10 percent of such units at 50% MFI and the balance at 60% MFI);
- Three to four percent (3-4%) of the units (approximately ten (10) to fifteen (15) units) as three-bedroom housing;

- Environmental and sustainable benefits including LEED v.4 Gold design;
- A commitment to study adding bicycle infrastructure along Mt. Olivet Road, NE from 9th Street, NE into the Carver-Langston neighborhood;
- A \$25,000 contribution for projects requested by ANC 5D⁵, including
 - \$10,000 for lighting, landscaping, cleanup, and related improvements at Lewis Crowe Park (located at the corner of West Virginia Avenue and Mt Olivet Road, NE);
 - \$10,000 for establishing a seasonal farmers’ market at Lewis Crowe Park;
 - \$2,500 for murals and public art in Lewis Crowe Park; and
 - \$2,500 for an ANC 5D neighborhood art project to design and install flags for the Single Member Districts within ANC 5D.
- PDR/Maker use and design package on the lower floors of the Project similar to that included by affiliates of the Applicant in recent approvals.

C. Zoning Development Standards

The Applicant seeks the Map Amendment to rezone the Property to the MU-9 zone. Detailed zoning tabulations for the Project are included in the Plans, and a summary is provided below. The Project complies with each of the applicable MU-9 requirements of ZR16.

The underlying zoning for the Property is the PDR-1 zone, which for reference provides for a maximum building height of 50 feet and a maximum FAR of 3.5 absent a PUD.

Parameter	Required/Allowed in the MU-9 zone under a PUD	Project
Height (11-G DCMR § 403.1; 11-X DCMR § 303.7)	130 feet ⁶	130 feet
FAR (11-G DCMR § 402.1; 11-X DCMR §§ 303.3, 303.1)	9.36 with IZ and PUD bonuses + 5% additional density per 11-X DCMR § 303.10	9.83 (9.36 + 5%)
GFA	409,799 sf with IZ and PUD bonuses 430,289 sf per 11-X DCMR § 303.10	Up to 430,289 sf
Residential Units	No min. or max.	approx. 379
Lot Occupancy (11-G DCMR §§ 404.1)	100%	86.2%
GAR (§ 407.3)	0.2	0.2

⁵ Note that these funds will be matched by ANC 5D to create an even more robust budget for the above programs.

⁶ The maximum height under the Height Act is 130 feet by virtue of the Property’s frontage on New York Ave., NE.

Rear Yard (§§ 405.3, 405.6)	2.5 in./ft. (12 ft. min.) ⁷ = 27 ft., 1 in.	45 ft.
Side Yard (§ 406.1)	Not required	Not provided
Court Width (§ 202.1)	Res.: 4.0 in./ft. (10 ft. min. for an open court; 15 ft. min. for a closed court) Non-res.: 2.5 in./ft. (6 ft. min. for an open court; 12 ft. min. for a closed court)	See page 14 of Plans: Most courts comply, but some court flexibility required
Court Area (§ 202.1)	Res.: 350 sf or 2 x width ² Non-res.: 250 sf or 2 x width ²	
Penthouse (§§ 203.1, 403.3; 11-C DCMR ch. 15)	As set forth in ZR16	Compliant
Parking (<i>Id.</i> § 701.6)	minimum of 220 spaces	up to 254 spaces
Loading (<i>Id.</i> §§ 901.2; 902.2)	2 x 30-foot loading berths 1 x 20-foot delivery spaces	2 x 30-foot 1 x 20-foot
Bicycle Parking (<i>Id.</i> § 802.1)	145 long-term	410 long-term
	39 short-term	39 short-term

D. Requested Design and Zoning Flexibility

The PUD process expressly allows greater flexibility in planning and design than is possible under strict application of the Zoning Regulations. Under Subtitle X, Sections 303.1, 303.11, and 303.13, the Commission retains discretion to grant flexibility with respect to development standards, to grant the Map Amendment, and to approve any relief requiring a special exception under the Zoning Regulations. The Zoning Regulations also allow the Commission to approve design flexibility in the final approved plans of a PUD. Finally, the Zoning Commission has the authority to grant up to five percent (5%) more density than ordinarily permitted when such additional density is required for the essential function of the Project. This Updated Application seeks the following flexibility:

1. Design Flexibility. The Applicant also seeks design flexibility as a part of the PUD process, which flexibility is consistent with the design flexibility that the Commission has granted in recent PUDs and in accordance with the flexibility in the pending amendment, all as listed on Appendix A attached to this statement. The Applicant may set forth limited additional design flexibility requested in a future filing in this proceeding.
2. Zoning Flexibility Requested. As noted above, the Applicant requests two areas of zoning flexibility: a special exception to allow penthouse eating and drinking uses and relief relating to the Project's courts, OC-1 (as to court width) and OC-3 (as to both width and area) as shown on page 14 of the Plans.

⁷ The rear yard is measured from the center line of 4th Street, NE. See 11-B DCMR § 318.8.

3. Additional Density. As indicated above, the Applicant also seeks an additional five percent (5%) density above the 409,799 square feet authorized pursuant to the IZ and PUD bonuses. This additional density is permitted pursuant to Subtitle X, Section 303.10(b). This additional GFA is essential to the successful functioning of the Project because it accounts for GFA that is partially below-grade, outdoor areas under canopy, mezzanine-level retail, and other essential back-of-house/service uses. The challenging grade changes across the Property create conditions for the ground floor retail level that will require some retail or other commercial tenants to install a mezzanine level to function successfully. Similarly, the change in grade results in a significant amount of the largely-below grade garage and service space counting as GFA even though such level has no street-level access. See page 16 of the Plans.

All flexibility under a PUD, together with the Map Amendment, must be balanced against the PUD's public benefits. The package of Public Benefits set forth herein more than suffices to justify the Project's flexibility, including the requested relief and Map Amendment.

E. Project Goals and Objectives and Benefits of Using the PUD Process

The Project's proposed uses, public realm-activating site planning, and location reinforce the vision for Union Market and advance the District's goals for housing, family-sized housing, and affordable housing as articulated in the Mayor's Housing Order.⁸ The PUD process is the appropriate means in order to realize the Project. The PUD process provides the community and the District the tools to ensure that the Project is well-designed and best meets the needs of the many interested parties. It further allows the public to provide its input on whether the proposed uses, density, height and design are complementary to the existing community. The Applicant has already received unanimous support from ANC 5D following working sessions and meetings with the SMD Commissioner for the Union Market District, a public meeting for all interested community members, and a virtual presentation of the Project to the full ANC 5D.

The Applicant met with the community to inform and refine the Project and the updated package of Public Benefits ahead of filing this Updated Application. The Applicant believed it was essential to have ANC support in order to proceed with this updated filing. As has been the case with all of the EDENS-related Union Market PUDs, the Applicant plans to work closely with the ANC and other community stakeholders as this Project proceeds.

The Property is an important site for promoting the sustainability of the Union Market District. The Applicant believes that through the PUD process, it creates an exemplary mixed-use development on the Property. The Project provides a well-designed building at a highly-visible and prominent location along New York Avenue, NE. This Project furthers the District's, the community's, and the Applicant's vision for the Union Market District while continuing to implement the Small Area Plan. The Project adds multifamily residential, commercial, and PDR/Maker uses while preserving important retail/commercial and community-serving uses. The Project adds destination public spaces and signature architecture to the Union Market District and DC as a whole.

⁸ See Office of the Mayor, HOUSING INITIATIVE, Mayor's Order 2019-036 (May 10, 2019) (the "**Housing Order**").

In addition to meeting the ANC's objectives, the Project advances important District goals. On May 10, 2019, Mayor Bowser issued the Housing Order which outlined her administration's aggressive and commendable goals for increasing housing production, and particularly affordable housing production, in the District. The Mayor's Housing Order noted that "Increased housing production and preservation is required to address growth and ensure the District lives up to its values of being diverse and inclusive. To do this, *the District must create 36,000 new residential units by 2025.*" The information provided in this statement describes how the Project is entirely consistent with, and significantly advances, the Mayor's goal of creating 36,000 new residential units, including 12,000 affordable residential units, by 2025. The Project is exactly the type of new development necessary to achieve the laudable housing goals of the Mayor's Housing Order. The Project alone achieves more than 1 percent of the Mayor's goal and helps address the District's compelling need for new housing and in particular, new permanently affordable housing and family-sized housing, in a transit-oriented location.

The PUD process provides the framework for realizing the potential of the Property, and capturing benefits and amenities that enhance the surrounding community. The Project, by virtue of proceeding as a PUD, contributes the Public Benefits and results in a superior outcome relative to any matter-of-right development on the Property.

F. Outreach Efforts

As noted above, the Applicant has undertaken extensive outreach as part of all of its past and ongoing development efforts in the Union Market District, and that outreach will continue for this Updated Application and future ones as Union Market comes to fruition as a fully-realized neighborhood. The ownership team has continued to meet with the community, as well as with representatives from District agencies. Following such dialogue, on November 10, 2020, ANC 5D voted unanimously to support the Project. The Applicant has also reached out to ANC 5C because the Property is opposite a public right-of-way from ANC 5C and will continue its engagement with that ANC. The Applicant but has not yet been able to schedule a time with that ANC, but will continue to reach out throughout the process.

The Applicant has met with OP and DDOT and will continue to meet with the community and with other DC agencies throughout this PUD and Map Amendment process.

G. Development Timetable

The Applicant's goal is to begin construction of the Property by 2022-2023 and anticipates that that building will take approximately 36 months to build. The Applicant notes that it intends to build the Project in an expedited manner, if approved, so the above timeline could be shortened.

IV. THIS UPDATED APPLICATION SATISFIES THE REQUIREMENTS FOR A CONSOLIDATED PUD, MAP AMENDMENT, AND SPECIAL EXCEPTION

The Project and this Updated Application satisfy and exceed the requirements of ZR16 for review and approval of the consolidated PUD, Map Amendment, and the requested special exception. The Commission should set this Updated Application down for a public hearing, and ultimately, approve the Project.

This application satisfies: (a) the set down and approval criteria applicable to a consolidated PUD and to a PUD generally;⁹ (b) the requirements for a Map Amendment;¹⁰ and (c) the standards for special exception relief for penthouse eating and drinking establishment use.¹¹

A. This Updated Application Complies with the Consolidated PUD Set Down Criteria and all Other Prerequisites for a PUD

The Commission should set down this Updated Application for a public hearing, and ultimately approve it, because this application satisfies the standards for a consolidated PUD. The procedural regulations applicable to a consolidated PUD provide (i) for the Commission to undertake a detailed review;¹² and (ii) that the application must contain all required information for the Commission to allow a consolidated PUD to proceed to a public hearing.¹³

In addition, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, provided that the project that is the subject of the PUD (iii) results in a project superior to what would result from the matter-of-right standards; (iv) offers a commendable number or quality of meaningful public benefits; (v) protects and advances the public health, safety, welfare, and convenience, does not circumvent the intent and purposes of ZR16, is not inconsistent with the Comprehensive Plan, and does not result in action inconsistent therewith; and (vi) undergoes a comprehensive public review by the Commission in accordance with the procedural requirements for a PUD in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits.¹⁴ The Project satisfies each of the above PUD requirements.

In addition to the foregoing requirements, the minimum area included within a proposed PUD must be no less than 15,000 square feet, and all such area must be contiguous.¹⁵ The Property, at 43,782 square feet, satisfies the area and contiguity requirements for a PUD.

i. This Updated Application Complies with All of the Requirements for a Consolidated PUD and Should Be Set Down for Public Hearing

The Plans and this statement allow the Commission to conduct a consolidated PUD review of “the site’s suitability as a PUD and ... [M]ap [A]mendment” and the “appropriateness,

⁹ See 11-X DCMR §§ 302.1, 302.2, 302.3, 302.4, 308.2, 300.1, 300.2, 300.5, 301.1, 301.5, and 307.1.

¹⁰ *Id.* §§ 300.4, 500.3 and 501.1; *see also* 11-Z DCMR § 304.

¹¹ See 11-C DCMR § 1500.3(c) and 11-X DCMR §§ 900.1, 901.2, 901.3, and 902.1.

¹² *Id.* §§ 302.1 and 302.2 (Requiring a “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” plus a “detailed site plan review to determine transportation management and mitigation, final building and landscape materials” and review).

¹³ 11-Z DCMR § 300.11 and 300.12, *id.* §§ 302.3 and 307.1 (identifying the information and material required for both a first- and second-stage PUD application) and 11-X DCMR § 302.4 (regarding set down standards for a Consolidated PUD).

¹⁴ *Id.* §§ 300.1, 300.2, and 300.5.

¹⁵ *Id.* §§ 301.1 and 301.5.

character, scale, height, mixture of uses, and design” of the mix of uses proposed. The Plans also include “a detailed site plan [and] proposed building and landscape materials” for the Commission to conduct its review. The Applicant will submit a transportation analysis (“CTR”) and mitigation plan (“TDM”) and additional details on final building and landscape materials following the Commission’s hearing action on this Updated Application and prior to any public hearing and will work with DDOT to produce such documentation. As set forth below in Section V, the proposed Project is not inconsistent with the Comprehensive Plan, the Small Area Plan, and other District-wide and Ward 5-specific goals and plans.

ii. This Application Provides the Information Required for a Consolidated PUD

As set forth on the certificate attached as Exhibit C, this Updated Application includes all of the materials required of a first- and second-stage PUD application. 11-Z DCMR §§ 300.11 and 300.12. The filed materials are sufficient for the Commission to consider the Updated Application as one proceeding. The application consists of a contiguous site that has already achieved an advanced stage of design. This Updated Application should proceed to a public hearing before the Commission on a consolidated basis.

iii. The Project Is Superior to the Development of the Property under the Matter-of-Right Standards.

The Project’s mix of uses, Public Benefits, and the community engagement process that the Applicant has already begun and that will accompany the remainder of this Updated Application all exceed what would be provided under matter-of-right standards. Specific aspects of the Project demonstrating its superiority to a matter-of-right development include:

- Housing/Affordable Housing – The Project provides more housing than what could be constructed on the Property without a PUD because the underlying zone entirely prohibits any residential use. In addition, the amount of housing included in the Project and the amount of affordable housing in the Project exceed the amount and depth of affordability that would be required in a matter-of-right development pursuant to ZR16’s IZ requirements. The Project also includes a significant degree of family-sized three-bedroom units (plus many more two-bedroom or larger units).
- Public Benefits – The Project’s construction supports the significant package of Public Benefits, which exceed what would be provided in any matter-of-right development, including the exemplary design and urban planning of the selected building envelope.
- Community Engagement – Finally, the Project is undergoing a comprehensive public review process with multiple opportunities for neighbor, community group, and public agency participation. Those opportunities, and future ones, would not exist for a matter-of-right development of the Property.

iv. The Public Benefits Are Commendable in Number and Quality.

As detailed in this statement, the Project advances the Public Benefits and other project amenities. These Public Benefits fulfill goals set forth in the Comprehensive Plan and the Small Area Plan, the priorities of District agencies and stakeholders, and the preferences, needs, and concerns of the ANC and community residents identified during Applicant's community engagement process. Accordingly, the Public Benefits package is a meaningful series of commitments that satisfy the intent and purposes of the PUD process.

v. The Project Protects and Advances Public Health, Safety, Welfare, and Convenience and Does Not Circumvent the Purposes of the Zoning Regulations.

The Project advances and protects the intent and purposes of the Zoning Regulations, which are set forth in Subtitle A, Section 101 of the Zoning Regulations. Through the development of an underutilized parcel within walking distance of a Metrorail station, the Project affirmatively improves major public interests and priorities such as housing and affordable housing, additional ground level activating uses and streetscape and urban design improvements relative to existing conditions on and around the Property. The Project's redevelopment of an underutilized lot with new housing and retail/non-residential ground floor uses along the eastern gateway road into the District's core advances the public health, safety, and welfare goals of the District by converting surface parking lots and low-density commercial buildings to more productive use, avoiding the health and safety problems often associated with vacant industrial spaces, and providing uses that promote public welfare and convenience. The Project does not displace or convert any existing housing.

The Project also advances the general purposes of the MU zones. The requested MU zone provides "for mixed-use developments that permit a broad range of commercial, institutional, and multiple dwelling unit residential development at varying densities." 11-G DCMR § 100.1. The Project is a mixed-use development with commercial and multiple dwelling unit uses at a high density near the Downtown core that comprises the retail and office centers for both the District of Columbia and the metropolitan area, as contemplated in the MU-9 zone. *Id.* § 400.8.

In addition, the Project advances the specific purposes of the MU zones.¹⁶ The Project is an orderly development with a mix of uses at an appropriate scale and density for its location. It reflects the type of mixed-use building type contemplated for the MU zone. The Project encourages safe conditions for pedestrians by locating all vehicular entrances on alleys, closing several existing curb cuts, and enhancing the safety of public spaces. The Project is compatible

¹⁶ 11-G DCMR § 100.3: "(a) Provide for the orderly development and use of land and structures in the MU zones, characterized by a mixture of land uses; (b) Provide for a varied mix of residential, employment, retail, service, and other related uses at appropriate densities and scale throughout the city; (c) Reflect a variety of building types, including, but not limited to, shop-front buildings which may include a vertical mixture of residential and non-residential uses . . . ; (d) Encourage safe and efficient conditions for pedestrian and motor vehicle movement; (e) Ensure that infill development is compatible with the prevailing development pattern within the zone and surrounding areas; (f) Preserve and enhance existing commercial nodes and surroundings by providing an appropriate scale of development and range of shopping and service opportunities; and (g) Ensure that buildings and developments around . . . transit hubs. . . support active use of public transportation and safety of public spaces."

with the densifying Union Market District and New York Avenue, NE corridor and also enhances an existing transit-oriented commercial node.

- vi. The Project Will Undergo a Comprehensive Public Review that Evaluates the Project's Flexibility and Incentives in Proportion to the Project Public Benefits.

Finally, any PUD must undergo a comprehensive public review by the Commission to evaluate the flexibility or incentives requested in proportion to the proposed public benefits. This Application will undergo such a review. Accordingly, the Applicant requests that the Commission proceed to undertake a comprehensive public review of and upon completion set down this Updated Application for public hearing in accordance with the foregoing standard.

B. This Updated Application Satisfies the Requirements for Commission review of a Map Amendment

The Commission should grant the requested Map Amendment to change the zone designation for the Property from PDR-1 to MU-9 because this Applicant satisfies the filing requirements for a Map Amendment and all substantive criteria relevant to the Map Amendment, which will be valid only in combination with and contingent upon the development of the Project being built and operated under the conditions of the PUD approval. As set forth below in Section V, the proposed Map Amendment is not inconsistent with the Comprehensive Plan, Small Area Plan, or other adopted public policies and active programs related to the Property.

C. The Project Satisfies the Evaluation Criteria Required for Approval of a Special Exception for Penthouse Eating and Drinking Establishments

Finally, the Commission should approve the requested special exception for penthouse eating and drinking establishment uses in the Project.¹⁷ Under Subtitle C, Section 1500.3(c), any nightclub, bar, cocktail lounge, or restaurant use in a penthouse may be permitted only as a special exception. The Commission may grant such special exception as part of a PUD proceeding. 11-X DCMR § 303.13. Pursuant to Subtitle X, Section 901.2, the requested exception must (a) “be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps” and (b) “not tend to affect adversely, the use of neighboring property.” The Project satisfies such criteria.

Penthouse eating and drinking establishment uses in the Project would be in harmony with the general purpose and intent of the Zoning Regulations, which permit a mix of uses, including commercial uses, in the MU-9 zone. The penthouse eating and drinking uses, if included in the Project, would advance other purposes of the MU zones as listed above and would require no dimensional relief from the Zoning Regulations’ development standards.

In addition, the penthouse eating and drinking establishment uses would not tend to affect adversely the use of any neighboring property. Other nearby properties, for instance, the single-story self-storage property at 301 New York Avenue, NE, and the undeveloped Lot 819, are

¹⁷ As noted above, the Applicant is still evaluating the final mix of uses for the penthouse but seeks this special exception in order to have the option to include eating and drinking establishment uses in the penthouse.

highly unlikely to be adversely affected by the eating and drinking establishment uses in the Project's penthouse given the existing or possible uses of those lots. The Maurice Electric PUD on 4th Street, NE does include residential uses at heights approximating those of the Project. However, the Project's rooftop is higher than the maximum height for the Maurice Electric PUD because of natural topographic conditions, and that greater height will avoid any impacts on the lower residential building. Further, the common ownership of the two projects (EDENS-affiliates control the Maurice Electric PUD) allows the two buildings to be managed in a way to ensure no adverse effects from any penthouse eating and drinking establishments in the Project.

V. THE PROJECT SATISFIES THE APPLICABLE PUD EVALUATION CRITERIA

The Project satisfies the criteria by which the Commission must evaluate a PUD and balance the public benefits against the development incentives and potential adverse effects. The Commission's evaluation should include the Map Amendment (as a development incentive) as part of the PUD. *See* 11-X DCMR §§ 300.4.

First, in reviewing this Updated Application, the Commission must find, based on the Applicant's evidence, that the Project satisfies the three elements of the PUD evaluation standard; that is, that the Project (a) is not inconsistent with the Comprehensive Plan and other relevant public policies, (b) does not result in any unacceptable impacts on the surrounding area or on the operation of District services and facilities, and (c) includes specific public benefits that satisfy the relevant requirements. 11-X DCMR §§ 304.2, 304.4, and 305.

Second, if the Commission finds that the Project satisfies those three criteria, then the Commission must judge, balance, and reconcile the relative value of the Public Benefits against the development incentives and flexibility requested as part of the Project and any potential adverse effects of the Project. *Id.* §§ 304.1 and 304.3.

A. The Project Is Not Inconsistent with the Comprehensive Plan

In order to approve the Consolidated PUD and the Map Amendment, the Commission must find that such PUD and related Map Amendment are "not inconsistent with the Comprehensive Plan and with other adopted public policies . . . related to the subject site." 11-X DCMR §§ 304.4(a), 500.3. The Project is not inconsistent with the Comprehensive Plan or other adopted public policies, *viz.*, the Small Area Plan and the Housing Order.

The District of Columbia Court of Appeals has consistently directed the Commission to review a PUD application against the Comprehensive Plan and other adopted public policies "*as a whole*" under this prong of the PUD evaluation standard. That is, the Commission may find that a PUD application is not inconsistent with the Comprehensive Plan even if the application presents actual or potential inconsistencies with individual objectives or elements of the Comprehensive Plan.¹⁸ Rather, the Commission must weigh and balance competing policy

¹⁸ *Friends of McMillan Park v. District of Columbia Zoning Comm'n.*, No. 18-AA-698 and 18-AA-706 (D.C. Jul. 3, 2019) ("The Commission may approve a PUD that is inconsistent with one or more non-mandatory policies in the Comprehensive Plan as long as it recognizes these conflicting policies and explains why they are outweighed by other, competing considerations.") (internal quotations marks and citations omitted).

objectives and explain its analysis.¹⁹ Finally, the Court has determined that small area plans, such as the Small Area Plan, must be read “in conjunction with the Comprehensive Plan, which is itself a non-binding “interpretive guide” unless otherwise provided.”²⁰

In sum, the Project is not inconsistent with the Comprehensive Plan and other adopted public policies or active programs related to the subject site, including the Small Area Plan and Housing Order, when reviewed as a whole. Attached as Exhibit E is a detailed analysis of the Project reviewing certain portions of the Comprehensive Plan and the Small Area Plan. Of particular note:

- Future Land Use Map: The Comprehensive Plan’s “Future Land Use Map” designates the Property as “Mixed Use” “High-Density Residential,” “High-Density Commercial,” and “PDR” which allows for mixed office/retail buildings and high-density residential uses, all with FARs above 6.0. The mixed-use Project with an FAR in excess of 9.0 is not inconsistent with this designation, especially given its proximity to the Metro and its proceeding as a PUD. Moreover, the Project accommodates PDR/Maker uses consistent with the PDR designation for the Property. *See* 10-A DCMR §§ 227.8, 227.13, and 227.14.
- Generalized Policy Map: The Comprehensive Plan’s “Generalized Policy Map” designates the Property as a “Multi-Neighborhood Center” which “include a greater depth and variety” of uses relative to Neighborhood Commercial Centers and “might include supermarkets, general merchandise stores, drug stores, restaurants, specialty shops, apparel stores, and a variety of service-oriented businesses. These centers also may include residential and office space for small businesses, although their primary function remains retail trade.” *Id.* § 225.17. The Project is not inconsistent with the objectives for a Multi-Neighborhood Center given the proposed commercial uses within the Project. The Property is also within a “Future Planning Analysis Area” along New York Avenue, NE on the Generalized Policy Map proposed by OP as part of the pending Comprehensive Plan amendment. Such an Area is “anticipated for a change in density and intensity of use, or for the introduction of a major use group not previously permitted (such as residential in a [PDR] area)”.²¹
- District Wide and Area Elements: The Project advances numerous individual objectives of the District Wide and Area Elements, which will be detailed more

¹⁹ *Id.* (“Even if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole. The Comprehensive Plan reflects numerous occasionally competing policies and goals and, except where specifically provided, the Plan is not binding. Thus, the Commission may balance competing priorities in determining whether a PUD is consistent with the Comprehensive Plan as a whole.”) (internal quotations marks and citations omitted).

²⁰ *Union Market Neighbors v. District of Columbia Zoning Comm’n.*, No. 17-AA-780 (D.C. Mar. 28, 2019).

²¹ This Map is not yet effective and is unlikely to be effective prior to set down in this proceeding. However, the Applicant provides this note for context. Additionally, pending amendments to the Comprehensive Plan would locate the Property within the Central Employment Area (“CEA”), furthering the consistency between the Comprehensive Plan and the proposed the Map Amendment to the MU-9 zone. *See* 11-G DCMR § 400.8(b)(noting that the MU-9 zone is intended to be located in or near the CEA as well as on arterial streets).

completely in a future filing in order to provide the most up-to-date analysis in light of the pending amendments currently before the D.C. Council. In sum, the Project is not inconsistent with the Comprehensive Plan as a whole. Numerous objectives of the District Wide and Area Elements encourage the development of additional housing and affordable housing, especially near transit. The Comprehensive Plan also encourages the types of retail, PDR/Maker uses, and other economic development drivers that are included in the Project. In addition, the Project advances urban design and other objectives of the Comprehensive Plan.

- Small Area Plan: The Project is generally consistent with the objectives of the Small Area Plan, which are summarized on Exhibit E.
- Mayor's Housing Order: The Mayor's Housing Order sets a goal of creating 36,000 new residential units in DC by 2025. The Project alone represents approximately 1% of that goal, a significant contribution from a single site and an opportunity for the District at large. The Project is more than just consistent with the Mayor's Housing Order: the Project is precisely the type of transit-oriented, contextually-designed, mixed-income new development with permanent affordable housing units that will be essential to achieving the Mayor's housing objectives. The Project also furthers the District's progress towards the affordability goals of the Housing Order, whereby 12,000 new affordable residential units are to be constructed in DC by 2025.

To the extent the Project introduces any inconsistencies, the Commission should balance those inconsistencies against the competing objectives of producing additional housing and affordable housing near transit as encouraged elsewhere in the Comprehensive Plan and as strongly urged in the Mayor's Housing Order. The housing production goals, taken in the context of the Project's design allow the Commission to find that the Project satisfies the first prong of the three-part PUD evaluation standard as being not inconsistent with the Comprehensive Plan and related public policies *as a whole*.

B. The Project Does Not Result in Any Unacceptable Impacts on the Surrounding Area or on the Operation of District Services or Facilities

In reviewing a PUD application, the Commission must evaluate whether the subject project would result in any unacceptable impacts on the surrounding area or on the operation of District services and facilities and whether any potential impacts are capable of being mitigated or acceptable in light of the project's public benefits. 11-X DCMR § 304.4(b). The Commission's review of potential impacts must be based on substantial evidence. *Id.* § 304.2.²²

The Applicant has carefully studied the Project's potential impacts and offers the evidence below and attached that the Project has no unacceptable adverse impacts on the surrounding area or on the operation of District services or facilities that cannot be mitigated or that are not acceptable in light of the Public Benefits. The Applicant prepared the following impact review based on input from its team of expert consultants, including its architects,

²² See also *Wheatley v. Zoning Commission*, No. 18-AA-217 (D.C. June 25, 2020).

engineers, and planners. This impact review satisfies the foregoing evidentiary standard, and the Applicant will provide supplemental information to address any questions or concerns that are raised during the PUD process.

i. The Project Has No Adverse Impacts on the Surrounding Area

Zoning and Land Use. The Project has no unacceptable zoning or land use impacts on the surrounding area and any impacts are instead either favorable, capable of being mitigated, or acceptable given the quality of Public Benefits in the Project.

This Updated Application proposes to change the Property's existing zone from PDR-1 to MU-9. The MU-9 zone is consistent with the Comprehensive Plan's Future Land Use Map Mixed Use/High-Density designations for the Property. The change in zoning alone is unlikely to have any adverse impacts on the surrounding area. The area surrounding the Property already allows very intense PDR uses or is subject to PUDs allowing heights and densities as great or nearly as great as those allowed under the MU-9. Furthermore, New York Avenue, NE is anticipated to be an area that is appropriate for changes in intensity and uses as noted by OP in the pending Comprehensive Plan amendments.

From a land use perspective, the Project creates no unacceptable impacts on the surrounding area. Any impacts from the Project's proposed land use are either favorable, capable of being mitigated, or acceptable given the quality of the significant Public Benefits included as part of the Project and the design of the Project which contemplates impacts on surrounding properties into the building's configuration and form. The Project's mix of retail/commercial/PDR Maker and multifamily residential uses is entirely appropriate given the Property's proximity to transit and highway access, the ongoing development efforts in the neighborhood, and the extensive planning and community support for the Small Area Plan. The Project's mix of uses, height, and mass are appropriate given the planning objectives for Union Market.

The Project's contribution of a critical mass of commercial and multifamily uses to the neighborhood is a favorable land use impact. These proposed uses create economic opportunities and contribute to the emergence of job opportunities in the neighborhood and provide new, high-quality multifamily housing units to Ward 5. Moreover, the Project's creation of a thoughtfully-designed public space also has favorable land use impacts. To the extent there are any ancillary unfavorable impacts arising out of the Project's land uses, such impacts are either mitigated by the Project's design or offset by the quality of the Public Benefits.

Housing Market Impacts. The Project's addition of new housing is a favorable impact. The Project continues the trend of creating new, high-quality, transit-accessible housing units. Such units are in high demand across the District. The addition of new housing also has favorable impacts by adding residents to support the proposed commercial uses in this Project and nearby. The Project's inclusion of enhanced permanently-affordable units has favorable impacts because it helps establish the Union Market District as an inclusive, mixed-income community and not one that overly concentrates affordable housing in one location. The Project does not displace any existing residents and is unlikely to create any adverse impacts on the surrounding housing market. Instead, the addition of the Project's new housing units helps buffer increasing housing costs, as

increases in supply are widely understood to dampen rent increases. In addition, the Court of Appeals has concluded that the presence of the IZ program itself mitigates potential negative housing market impacts.²³

Historic District Impacts. Although the Property is not within a historic district, the blocks east and south of the Property are within the Union Market Historic District. Accordingly, this Updated Application analyzes the Project's potential impacts on those resources. The Project has no unacceptable impacts on the nearby Historic District. The Project is designed to harmonize with the contributing structures on 4th Street and 5th Street, NE and includes interpretative elements (e.g., canopies) and materials that recall characteristic elements of the contributing structures.

The Project's overall height and density are of a different scale than the lower density, existing historic structures. In terms of height and density, the Project is much more akin to the other new buildings in the Union Market District and not imitative of the scale of the contributing structures. However, the Commission has consistently found that the height and density of the Union Market District PUDs do not have adverse effects on the Union Market Historic District, and there is no reason to believe the Project will be any different insofar as it is north of the contributing structures (and therefore unlikely to have shadow or light impacts) and does not disturb the rhythm or context for those contributing structures and, in fact, it will assist to frame those resources.

From a site plan perspective, the Project avoids placing any vehicular entrances across from historic structures and the Project is compatible with the pedestrian scale of the Historic District and with the Streetscape Guidelines.

Construction-Period Impacts on Neighbors. During the development period for the Project, impacts on the surrounding area are capable of being mitigated. The Applicant has significant experience successfully completing construction projects in infill locations without disturbing neighbors. There are no existing residential units on the Property or on any adjacent blocks. In addition, the PNC Bank will remain open during construction on the 1348 4th Street portion of the site, minimizing impacts on neighbors and businesses who currently rely on that service.

Open Space, Urban Design and Massing Impacts. The Project favorably improves upon the existing conditions with respect to the relationship between the proposed building, proposed and existing open spaces, and the urban design of the Project. The Project has favorable impacts on the public realm through the construction of improved streetscaping in accordance with the Streetscape Guidelines and the provision of ground level uses and new residents to activate the public realm.

²³ *Cole v. District of Columbia Zoning Comm'n.*, No. 17-AA-360 (D.C. Jun. 27, 2019) (“In short, mitigation of the potential displacement of low-income residents through gentrification and market pressures is taken into account in the Zoning Commission’s IZ regulations” and “the proposed PUD’s compatibility with the [Area Element] development policy and with the [Small Area Plan] enable us to discern the agency’s path: a recognition that the pressures of gentrification are inevitable, but can be mitigated through inclusionary zoning and through the types of programs discussed in [the Small Area Plan], rather than avoided by having underutilized property remain as it is.”).

In addition, the Project creates a strong presence along both 4th Street and New York Avenue, NE, avoiding blank walls and surface parking, providing high quality landscaping and streetscaping, and creating pedestrian-first porosity in the street network. Finally, the Project has favorable impacts on the surrounding area as a keystone linking the emerging projects elsewhere in the neighborhood and establishing the context for the future, higher-density phases and design.

The Project's urban design and massing produce favorable impacts. Those elements of the Project are a grand gesture framing the entrance to the Union Market District and heralding its arrival as a significantly emerging economic hub in the District and the greater region.

Design and Aesthetic Impacts. The Applicant anticipates the Project's design and architecture having a significantly favorable outcome, no unacceptable impacts, and becoming a destination for visitors from the region and beyond. The Project architect, STUDIOS, is renowned for its superior architecture, and the Project furthers that reputation. The Project incorporates world-class architecture and exemplary design. Upon completion of the Project, the new building will appear contemporary and emblematic of new investment without appearing out-of-place among the more rugged industrial buildings and newly-approved PUD projects surrounding the site. The Project continues the contemporary architectural vocabulary that is emerging in the Union Market District and that establishes a high baseline of quality of design and finishes expected for projects in the vicinity. The Project's landscaping and public realm detailing are laudable and have a strongly favorable impact on surrounding areas, as they further contribute to the sense of place in the neighborhood. The Project's overall design and its details strongly reinforce and strengthen the character of the surrounding residential areas and are favorable for the neighborhood.

Transportation and Mobility Impacts. The proposed Project does not have any unacceptable impacts on the public transportation facilities or roadways that it relies on for service. Instead the Project's transportation impacts are either capable of being mitigated or acceptable given the quality of Public Benefits arising from the Project. The Project's vehicular traffic impacts are strongly mitigated by its transit options and the forthcoming TDM plan. The Project achieves the right balance of mobility.

The Property is well-served by transit and vehicular infrastructure, and the Project does not introduce adverse impacts on either system. A Metrorail station is approximately a one-half of a mile walk from the Property. Numerous Metrobus lines also service the Union Market District and Florida Avenue, NE, and it is expected that many of the Project's residents will use public transit.

The Property has a WalkScore of 90, a TransitScore of 71, and a BikeScore of 90.²⁴ The Project's favorable pedestrian, bicycle, and transit access help mitigate any expected traffic concerns.

²⁴ The TransitScore and BikeScore are based on an algorithm using geographic data to rank a neighborhood's non-vehicular mobility. See WALKSCORE, <http://www.walkscore.com> (last visited November 2, 2020) [1348 4th Street, NE].

Bicycle usage is thoughtfully integrated into the design of the Project, with long-term spaces in two, separate dedicated storage rooms (for both residential and non-residential users of the building), with ample short-term spaces provided in public space and showers and changing areas for employees who choose to cycle to work at the Project. Up to 254 below-grade parking spaces accommodate the parking demand of residents, retail patrons, and other visitors to the Project.

The Project's physical form mitigates traffic impacts by promoting and encouraging active mobility over driving, with all of the existing curb cuts being closed. At the same time, the Project makes reasonable accommodations for those who choose to or must drive, and ensures that parking demand does not adversely interfere with the on-street parking supply. The Project provides sufficient new off-street parking to serve new residents (especially in light of what may be heightened demand for vehicle parking post-pandemic), but not so much parking as to induce unnecessary driving.

The Applicant has again engaged Gorove/Slade as transportation analyst for the Project. Gorove/Slade prepared a detailed transportation impact study as part of other PUDs in the Union Market District and proposed transportation mitigation measures incorporated into those approvals. Gorove/Slade will prepare a CTR for the Project, which will include TDM measures, as part of this Updated Application. The team will work with DDOT throughout this process.

Economic Impacts. As with the Applicant's development of Union Market otherwise, the Project has favorable economic impacts on Union Market and the District more generally. The Applicant's investments in Union Market go far beyond physical and capital improvements, and EDENS has undertaken a robust incubation and economic development effort focused on small businesses and long-time vendors in the Union Market District. The Project will continue to attract patrons and outside investment to the Union Market District, add transit-accessible job opportunities as well as construction period jobs, and have a stabilizing and positive effect on the economy of Ward 5 and the District as a whole. The introduction of new residential uses in the Union Market District contributes patrons for the existing businesses. The retention of the existing PNC Bank service benefits the existing community members and businesses that rely on that bank and offsets concerns about adverse economic impacts or changes to the neighborhood's retail and service mix in a way that does not serve long-time businesses and residents.

The intensification of land use on the Property has positive tax revenue effects for the District. To the extent there are any adverse effects from the Project, such effects are more than offset by the aforementioned mitigating factors and the Project's Public Benefits.

Cultural and Public Safety Impacts. The Project has favorable impacts on the culture of the surrounding area. The Project will provide uses that will contribute to the emergence of the Union Market District as an important Ward 5 "third space," i.e., a space beyond a place merely to live or work.

The Project's important contributions to the public realm provide neighborhood gathering and event spaces, celebrations, performance opportunities, and opportunities for social interactions and engagement. The addition of residents to the neighborhood and the Project's balconies and other design elements add street activity, "eyes on the street", quality lighting, and

other improvements all of which have positive effects on crime deterrence. In addition, the Project replaces underutilized commercial lots with well-designed, more intense uses that support the broader cultural build-out and significance of the Union Market District generally.

ii. The Project Has No Adverse Impacts on the Environment, Public Facilities or District Services

Water Demand. The proposed project contains up to approximately 430,289 square feet of new GFA. The average daily water demand for this project can be met by the existing District water system. The proposed connection for the fire and residential water supply is from within the existing distribution system and will be coordinated with DC Water. The Applicant anticipates the components of the Project having individual water meters. Additional information regarding water demand is included in the Plans or will be included in future iterations thereof.

Sanitary Sewer Demand. The proposed sanitary sewer connections for the Project are from within the existing distribution system and will be coordinated with DC Water during the permitting process. Additional information regarding sewer generation is included in the Plans or will be included in future iterations thereof.

Stormwater Management. The Project has been designed to achieve high levels of on-site stormwater retention. The proposed bio-retention basin planters, green roofs, and permeable pavement are designed to meet or exceed District Department of Energy and Environment (“DOEE”) stormwater management retention and detention requirements. The requisite inlets and closed pipe system are designed and constructed to comply with the standards set by DOEE, DC Water, and DDOT. More information is included in the Plans.

Solid Waste Services. Solid waste and recycling materials generated by the Project will be collected regularly by a private trash collection contractor and will not have any adverse effect on the District’s municipal waste collection services.

Electrical Services. Electricity for the new Buildings will be provided by the Potomac Electric Power Company (“PEPCO”) in accordance with its usual terms and conditions of service. All electrical systems are designed to comply with the D.C. Energy Code. Transformers will be installed on the Property or covered in the adjacent public space (or on Lot 819) in accordance with PEPCO’s and DDOT’s design guidelines.

Energy Conservation. The Project is designed in compliance with the Energy Conservation requirements of the District of Columbia Building Code. Conformance to code standards minimizes the amounts of energy needed for the heat, ventilation, hot water, electrical distribution, and lighting systems contained in the building.

Erosion Control. During excavation and construction, erosion on the Property will be controlled in accordance with District of Columbia law and there will no adverse impacts on the environment or the surrounding area.

Environmental Impacts. The Project does not have any unacceptable impacts on the environment, and instead has favorable impacts. The Project is designed to achieve high levels of environmental performance as evidenced by its satisfaction of the LEED v.4 Gold design

standards. The location of the Project is a heavily-urbanized and entirely impervious commercial site. The Project's delivery of high-quality environmental design as well as usable outdoor spaces is a net improvement and superior to what would be achievable via a matter of right development. The Project's environmental impacts may be further evaluated if questions arise during the course of this proceeding.

Public Schools. The Project is highly unlikely to have an unacceptable impact on schools in the District given the size of the Project, its mix and type of units, and the capacity for the District's nearby schools to take on additional students. The Project is within the boundaries of Wheatley Education Campus at 1299 Neal Street, NE and Dunbar Senior High School at 101 N Street, NW.²⁵ DCPS data show that all of the nearby neighborhood public schools are below capacity.²⁶ In addition, several private and charter schools are near the Project, offering educational options to residents who may seek alternatives to the neighborhood public schools. The Applicant expects that the school network will be able to accommodate, without any unfavorable impacts, the school-age children that may reside at the Project.

Parks/Recreation Centers/Library Services/Emergency and Health Services. The Project has no adverse impacts on District services, such as parks, recreation centers, public library, and emergency and health services. To the extent the Project's future residents are new to the District, they will be contributing new tax dollars, both in the form of income taxes and through the indirect payment of property taxes associated with the Project, that facilitate the provision of District-run services. To the extent the Project's future residents are existing District residents, they have no net new impact.

Affiliates of the Applicant have added an interim park use to the top story of The Market which fills an important need in the Union Market District. More broadly, the National Arboretum is an easy bike ride, stroll or jog from the Project, and is one of the most significant park and recreation resources in all of Northeast. On balance, the Project is unlikely to have any adverse impacts on the District's park services, and is instead likely to be a net positive contributor of park services.

Ward 5 has a balanced mix of state of the art and new recreation facilities and libraries. Trinidad Recreation Center, Joe Cole Recreation Center, and Rosedale Recreation Center are all within walking distance of the Project, and all have been updated, renovated, or added as new centers within the past few years. The Project will include resident amenity areas, so it is unlikely that the Project's residents will have any adverse impacts on District-run recreation centers. Likewise, nearby library branches include Rosedale, Northeast, and Woodridge, all of which have been renovated or constructed in recent years. There are approximately thirty public library branches or other public facilities in the District.²⁷ That works out to approximately one library branch per 23,500 residents.²⁸ It is highly unlikely that an additional approximately 379

²⁵ Enrollment Boundary Information System, D.C. PUBLIC SCHOOLS, <http://dcatlas.dcgis.dc.gov/schools>

²⁶ See Z.C. Case No. 19-29, Exhibit 3E for references.

²⁷ See DC Public Library, *Hours and Locations*, <https://www.dclibrary.org/hours-locations> (last visited May 27, 2019).

²⁸ According to a December 2018 report from the Office of the Chief Financial Officer, there were 702,455 District residents as of July 2018. See Office of the Chief Financial Officer, DISTRICT OF COLUMBIA ECONOMIC AND

(±10%) residential units (i.e., potentially up to approximately 600 additional residents, some of whom may already be District residents thereby reducing the net demand generated by such units) would result in any adverse over-use or other adverse impacts on the District’s library resources. The calculus for recreation centers is similar. There are approximately 65 public recreation centers in the District, for a ratio of approximately one center per 11,000 residents.²⁹ It is similarly inconceivable that the Project’s addition of approximately 379 residential units would result in any adverse over-use or other adverse impacts on the District’s recreation centers, especially when the Project includes private recreation amenities. The District has approximately 30 engine companies spread around the District.³⁰ As stated above, the Project alone does not require any increase in the number of stations or Fire and Emergency Services (“FEMS”) personnel. The Applicant intends to engage in outreach with FEMS and the Metro Police Department during the PUD process to obtain any relevant feedback from those agencies and to confirm that those agencies do not anticipate any adverse impacts arising from the Project.

C. The Project Includes Specific Public Benefits

The Project provides a commendable package of Public Benefits, which satisfy the requirements for a PUD. The PUD evaluation standards, at Subtitle X, Section 304.4(c), require the Commission to find that the proposed development “[i]ncludes 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.” Section 305.2 requires that “Public benefits [be] superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions of this title,” and Section 305.4 requires that a majority of the public benefits of the proposed PUD relate to the geographic area of the ANC in which the application is proposed.

A description of the Project’s Public Benefits is provided below. The Project’s Public Benefits are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs because such benefits and amenities are integral parts of the Project, which itself is not inconsistent with the Comprehensive Plan or related policies, as described above. The Public Benefits also satisfy the requirements of Sections 305.2 and 305.4 (together with the requirement that public benefits be not inconsistent with the Comprehensive Plan, the “**Public Benefits Criteria**”).

i. Identification of Specific Public Benefits and Project Amenities

This Updated Application achieves the goals of the PUD process by providing high quality development with significant Public Benefits to the neighborhood and the District as a

REVENUE TRENDS: DECEMBER 2018 at 1 https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/Economic%20and%20Revenue%20Trends%20Report_December%202018.pdf

²⁹ See Dep’t. of Parks and Recreation, *Recreation Centers* <https://dpr.dc.gov/page/recreation-centers-00> (last visited May 27, 2019).

³⁰ See Fire and EMS Department, *Fire and EMS Locations* <http://geospatial.dcgis.dc.gov/FEMSLocator/> (last visited May 27, 2019).

whole. Most of the Public Benefits relate primarily to the geographic area of the ANC in which the Project is located, except the housing-related Public Benefits accrue to the District as a whole. The objective of the PUD process is to encourage high quality development that provides public benefits and project amenities by allowing applicants greater flexibility in planning and design than may be possible under matter-of-right zoning. This Updated Application satisfies that objective. The specific Public Benefits are identified below.

The Project includes seven categories of substantive Public Benefits as defined according to the public benefits categories set forth in Subtitle X, Section 305 of the Zoning Regulations.

1. Superior urban design, architecture, and landscaping (11-X DCMR § 305.5(a) and (b)). Urban design, architecture and landscaping are categories of public benefits and project amenities for a project proceeding under a PUD, and the Project's urban design, architecture, landscaping, and provision of open space are superior public benefits.

- Urban Design: The Project incorporates numerous design precepts that guide superior urban design in the District and that represent significant improvements over the existing aesthetic and functional conditions of the Property. For instance, the Project's urban design creates a gateway from New York Avenue, NE into the Union Market District, while preserving important views. The Project also allows for penetration of light and air onto 4th Street, NE by preserving a "gap" in elevation on the 1346 4th Street portion of the Property and by chamfering the building to allow for viewsheds around the building by neighboring residents.
- Architecture: The Project similarly includes elements of superior architectural design. For example, the Project presents a thoughtful ground floor design that integrates into the surrounding context and utilizes high quality façade materials and finishes. The Project's differentiated massing, balconies, articulation and design responds to its context on all sides, while its materials palette creates a cohesive design.
- Landscaping: The Project's landscape and site improvements create a range of vegetation and outdoor spaces that "green" the Property while also providing functional services to building residents.

2. Site planning, and efficient and economical land utilization (id. § 305.5(c)). The Project's site plan is another superior benefit of the Project. The benefits of the Project's site plan and efficient land utilization are reflected in the Project's overall density, introduction of residential uses on underutilized lots located near transit, the absolute number of new residential units provided, and introduction of income-restricted housing. The Project's greater heights and density near a transit node exemplifies economical land utilization. The Project also improves land that has been underdeveloped relative to the surrounding transportation and other infrastructure, and its development makes it a significant contribution to establishing a community within Union Market. At an FAR of up to 9.83, the proposed density is appropriate for the Property given its location at the edge of the Union Market District along New York Avenue, NE, its proximity to transit options, and the scarcity of nearby low-density residential uses. Further, the Applicant proposes an efficient, economical land utilization strategy with respect to parking. That is, given the limited number of parcels within Union Market that are

large enough to facilitate efficient parking garage layouts due to the fractured ownership throughout the Union Market historic areas and existing structures that may be maintained, constructing additional parking on this site illustrates the strategic macro-perspective called for in the Small Area Plan. Finally, the Project removes surface parking, closes four existing curb cuts, and locates all parking and loading below grade with access only from a private alley and no new curb cuts.

3. Housing, affordable housing, and three-bedroom housing (*id.* § 305.5(f)(1), (f)(2), and (g)). The Project includes a greater number of housing units than could be developed on the site as a matter-of-right plus permanently affordable housing and three-bedroom units. Pursuant to ZR16, Subtitle X, Subsections 305.3(f) and (g), the production of housing that exceeds the amount that would have been required through matter-of-right development under existing zoning, three-bedroom units, and affordable housing above what is required under the IZ provisions are each separate public benefits.

The Project includes a greater number of housing units than could be developed on the site as a matter-of-right. Pursuant to ZR16, Subtitle X, Subsections 305.3(f) and (g), the production of housing that exceeds the amount that would have been required through matter-of-right development under existing zoning and affordable housing above what is required under the IZ provisions is a public benefit. The District faces a shortage of virtually every kind of housing product, but the need is particularly severe for housing near transit. The Project produces a significant amount of new residential units on a site that is transit-accessible, part of an exciting mixed-income development, and well-positioned to take advantage of economic opportunities that emerge in the Union Market neighborhood in the future. The housing proposed as part of the Project exceeds the amount possible through a matter-of-right redevelopment pursuant to the applicable limits in the underlying zone (i.e., the PDR-1 zone) by approximately 375,387 square feet. Under the underlying zoning residential use is not permitted at all. Accordingly, *all* new residential uses in the Project qualify as housing benefits.

Units with three or more bedrooms are also a public benefit. The Project includes three to four percent (3-4%) (approximately ten (10) to fifteen (15)) of such three-bedroom units, of which ten percent (10%) will be affordable to households earning no more than 60% MFI.

The Project also reserves ten percent (10%) percent of its residential GFA for affordable housing units, all of which represents affordable housing above what could be constructed through a matter-of-right development on the Property. Accordingly, the affordable housing of the Project is a public benefit as well. Finally, ten percent (10%) of such affordable component will be set aside for households earning no more than 50% MFI and the remainder will be set aside for households earning no more than 60% MFI. Further, the Project will either contribute to the Housing Production Trust Fund due to the existence of commercial use in the roof structure (if approved) or produce additional affordable housing based on the size of the residential units located in the roof structure instead of any such commercial use (if any).

4. Environmental and sustainable benefits (*id.* § 305.5(k)). The Project includes innovative sustainable design elements and achieves appropriate levels of environmental certification, given the mix of multiple uses. The Project has been designed to exceed environmental design standards at the LEED v.4 Gold level. Specific sustainable benefits in the

Project include energy modeling, use of environmentally-preferred materials, and the inclusion of green roof and bio-retention.

5. Streetscaping (id. § 305.5(l)). The Project includes significant streetscaping improvements along 4th Street and New York Avenue, NE all of which the Applicant will seek approval for through the public space permitting process and are designed pursuant to the Union Market Streetscape Design Guidelines, which the Applicant's affiliates previously developed and had approved.

6. Uses of Special Value to the Neighborhood (id. § 305.5(q)).

- Bicycle Study: The Applicant has agreed to commission a study to install bicycle lanes along Mt. Olivet Road, NE from 9th Street, NE into the Carver-Langston neighborhood. This was a request of ANC 5D.
- Uses of Special Value to the Neighborhood: Lewis Crowe Park: The Applicant has also agreed to fund improvements and programming at Lewis Crowe Park, which is located at the corner of West Virginia Avenue and Mt Olivet Road, NE, approximately 0.9 miles from the Property. These improvements include \$10,000 for lighting, landscaping, cleanup, and related improvements at Lewis Crowe Park; \$10,000 for establishing a seasonal farmers' market at Lewis Crowe Park; \$2,500 for murals and public art in Lewis Crowe Park; and \$2,500 for an ANC 5D neighborhood art project to be determined in conjunction with ANC 5D for the design and installation of flags for the Single Member Districts within ANC 5D.

7. Other Public Benefits Which Substantially Advance the Comprehensive Plan (id. § 305.5(r)): PDR/Maker Uses. The Project provides the PDR/Maker use package on the lower floors of the Project similar to that included by affiliates of the Applicant in recent approvals. Further, the Project is consistent with many of the District's policy goals and objectives. The Zoning Regulations provide that elements of a project that advance the Comprehensive Plan and related policies are public benefits. Exhibit E identifies many specific Small Area Plan policy goals and objectives advanced by the Project along with the Project's consistency with the Comprehensive Plan maps.

ii. The Approved Public Benefits Satisfy the Public Benefits Criteria

The "Public Benefits Criteria" at Subtitle X, Sections 304.4(c), 305.2 and 305.4 require that the public benefits proposed as part of a PUD application (a) be not inconsistent with the Comprehensive Plan and other adopted public policies, (b) benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from a matter-of-right development of the Property, (c) be tangible, quantifiable, measurable, and able to be completed prior to issuance of a certificate of occupancy, and (d) relate to the geographic area of the ANC(s) in which the Project is located. The Project's Public Benefits satisfy each of these Public Benefits Criteria.

The Public Benefits are not inconsistent with the Comprehensive Plan or other adopted public policies because the benefits are integral parts of the Project, which itself is not

inconsistent with the Comprehensive Plan or other adopted public policies, all as described above.

With respect to the second criterion above, the Public Benefits would not be required and likely would not be economically feasible under a matter-of-right development of the Property. Only a project the scale of the one proposed here could contribute the high quality urban design, architecture, landscaping, planning, amount of housing and level of affordability, and the environmental, and other special benefits proposed.

Additionally, each of the Public Benefits applicable to the construction of the Project is tangible, quantifiable, measurable, and able to be completed prior to issuance of a certificate of occupancy. Finally, the majority of the benefits relate to the geographic area of the ANC, except for the housing and affordable housing related Public Benefits which benefit the District as a whole. Accordingly, the Public Benefits satisfy the Public Benefits Criteria.

D. The Project Satisfies the Evaluation and Balancing Criteria Required for Commission review of a PUD

Pursuant to Subtitle X, Sections 303.12 and 304.3, in deciding on this Updated Application, the Commission must, according to the specific circumstances of the instant application, judge, balance, and reconcile the relative value of: (i) the Public Benefits, (ii) the development incentives, including the Map Amendment and zoning and other flexibility requested as part of the Project, and (iii) any potential adverse effects of the Project.

The Project satisfies the foregoing PUD balancing test. The Project's Public Benefits, primarily its contribution of additional market rate and affordable housing justify the Map Amendment, which is the primary development incentive of this Updated Application. Without the Map Amendment no housing would be allowed on the site. The Project's additional affordable housing and three-bedroom units justify the density requested. The Project's publicly-accessible mix of uses and special ground floor uses justify the flexibility afforded through the special exception for penthouse eating and drinking establishment because those eating and drinking establishments complement the Project's overall mix of uses. The requested design flexibility is warranted by the Project's superior architecture and design. The Project's modest potential adverse effects—all further outlined above—are more than justified by the Project's provision of such a significant amount of new and new affordable housing, environmental benefits, and the streetscape improvements.

The relative value of the Project and its Public Benefits warrant granting the requested PUD approval.

VI. CONCLUSION

For the foregoing reasons, the Applicant submits that this Updated Application for review and approval of a consolidated PUD, Map Amendment, and special exception meets the standards of the Zoning Regulations; is consistent with the purposes and intent of the Zoning Regulations and Zoning Map; enhances the health, welfare, and safety and convenience of the citizens of the District of Columbia; satisfies the requirements for approval of a PUD; provides significant public benefits; and advances important goals and policies of the District.

Accordingly, the Applicant respectfully requests the Commission set this Updated Application down for a public hearing at the earliest possible date.

Respectfully submitted,

Goulston & Storrs

/s/ Jeffrey C. Utz

Jeffrey C. Utz

/s/ David A. Lewis

David A. Lewis

December 23, 2020

Appendix A

Design Flexibility

- a. Interior Components: To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, and mechanical rooms, provided that the variations do not change the exterior configuration of the building as shown on the plans approved by the order;
- b. Exterior Materials – Color: To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges shown on the plans approved by the order;
- c. Exterior Details – Location and Dimension: To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the building or design shown on the plans approved by the order. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
- d. Number of Units: To provide a range in the approved number of residential dwelling units of plus or minus ten percent (10%);
- e. Parking Layout: To make modifications to the parking configuration, including layout and number of parking spaces and the size and number of garage levels constructed, including the removal of up to one whole or partial level of parking from the number of levels shown in the Plans and/or to convert such whole and/or partial level to mechanical, amenity, and/or other permitted uses, so long as the number of automobile and bicycle parking spaces is at least the minimum number of spaces required by the Zoning Regulations;
- f. Streetscape Design: To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Review Division or the Public Space Committee;
- g. Signage: To vary the font, message, logo, and color of the approved signage, provided that the maximum overall dimensions and signage materials are consistent with the signage on the plans approved by the order and are compliant with the DC signage regulations;
- h. Sustainable Features: To vary the approved sustainable features of the project, provided the total number of LEED points achievable for the project does not decrease below the minimum required for the LEED standard specified by the order;
- i. Commercial Uses: To vary the uses of the spaces the ground floor and penthouse levels of the Project to be used for any use allowed in the MU-9 zone subject to condition (a); and
- j. Roof structure: To install residential units within the penthouse level of the Project.