2016106067-40

PLANNED UNIT DEVELOPMENT COVENANT

THIS COVENANT, made as of this 6th day of October, 2016, by and between Comstock Sixth Street, L.L.C., a Virginia limited liability company (hereinafter referred to as "Developer") and the DISTRICT OF COLUMBIA, a municipal corporation (hereinafter referred to as the "District").

W I T N E S S E T H:

WHEREAS, the Developer is the owner of those certain parcels of land known for assessment and taxation purposes as Lots 893 through 933 in Square 3788, as shown on Assessment and Taxation Plat No. 3868-Y filed in the Office of the Surveyor of the District of Columbia, said lots formerly known as Lot 814 in Square 3788 and more fully described in Zoning Commission Case No. 15-04 (hereinafter referred to as the "Subject Site"); and

WHEREAS, Developer intends to develop the Subject Site for use as a Planned Unit Development (hereinafter referred to as the "Project") under Chapter 24 of the Zoning Regulations of the District of Columbia (11 DCMR) in accordance with Zoning Commission Order No. 15-04, effective January 15, 2016[1]; and

WHEREAS, said Chapter 24 further requires that Developer as owner of the Subject Site to enter into this Covenant with the District of Columbia assuring Developer's (and its respective successors in title) development and use of the Project as

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[1] These and all subsequent citations to 11 DCMR refer to provisions that were repealed on September 6 , 2016 (the "1958 Regulations"), and replaced by similar but re-codified provisions. All such citations are therefore deemed to be to those provisions set forth in the version of 11 DCMR in effect as of the date this covenant is recorded (the "2016 Regulations"), as those provisions may subsequently be amended.

Pursuant to Subtitle A § 102.1 of the 2016 Regulations, the construction authorized and use permissions authorized by the Order are vested subject to the provisions and requirements of the 1958 Regulations as of September 5, 2016.

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approved by the Zoning Commission for the District of Columbia (hereinafter referred to as the "Zoning Commission") in Order No. 15-04 and all modifications, alterations or amendments thereto.

NOW, THEREFORE, in consideration of the foregoing recitals, which are a material part hereof, it is agreed among the parties hereto as follows:

1. Approved Plans. The terms and conditions of the Zoning Commission's approval of the consolidated Planned Unit Development and Amendment to the Zoning Map under Order No. 15-04, effective January 15, 2016, (as the same may be amended and/or modified from time to time, the "Order"), are incorporated herein by reference and made a part hereof as Exhibit A and shall be considered a part of this Covenant. The Subject Site will be developed and used in accordance with the plans approved by said Order and in accordance with the conditions and restrictions contained in said Order, subject to such changes thereto as the Zoning Administrator and/or the Zoning Commission for the District of Columbia may authorize pursuant to 11 DCMR §§ 2409.6 and 2409.9, respectively. Developer covenants that it will use the Subject Site only in accordance with the terms of the Order, as the same may be further amended and/or modified from time to time by the Zoning Commission, subject to the terms and conditions contained herein and the provisions of Chapter 24 of the Zoning Regulations.

2. Additional Time To Construct Planned Unit Development. If Developer, or its successors or assigns should fail to file for a building permit within two years of the effective date of the Order and to commence construction of the approved

Planned Unit Development within three years of the Effective Date of the Order, or such later dated as authorized by 11 DCMR § 2408.13, the Zoning Commission may duly consider an application for an extension of time in accordance with 11 DCMR § 2408.10.

3. Default. In the event that Developer, its successors or assigns fail to file for a building permit within two years of the effective date of the Order and to commence construction of the approved Planned Unit Development within three years of the Effective Date of the Order, or such later dated as authorized by 11 DCMR § 2408.13, or within any extension of time granted by the Zoning Commission for good cause shown pursuant to 11 DCMR § 2408.10, the benefits granted by the Order shall terminate pursuant to 11 DCMR§ 2400.7, and this covenant shall be deemed null and void.

4. Future Conveyance. Developer covenants that if any conveyance of all or any part of the Subject Site takes place, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns to develop and use the Subject Site in accordance with the terms and conditions of this Covenant.

5. Successors and Assigns. The covenants and restrictions contained herein shall be deemed real covenants running with the land, and shall bind the parties hereto, their successors and assigns, and shall inure to the benefit of the parties hereto, their successors and assigns. Such covenants are not binding upon any party who no longer has a property interest in the Subject Site. The District shall have the right to enforce all covenants, conditions and restrictions contained herein.

6. Recordation. Developer shall record this Covenant, as fully executed by the parties hereto, among the Land Records of the District of Columbia, and shall file a certified copy of this Covenant with the Zoning Administrator and the Zoning Commission.

7. Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

8. Rescission/Alteration of this Covenant. If the Order is modified or amended by the Zoning Commission, no formal amendment of this Covenant shall be required, provided that the Developer, or its successors or assigns, records a notice of modification in the Land Records of the District of Columbia together with a copy of the written order authorizing the modification or amendment. No other amendment of the obligations created by this Covenant is permitted without the written consent of the District and the Developer and, if determined by the Office of the Attorney General to be necessary, without the prior approval of the Zoning Commission.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, Comstock Sixth Street, LLC, a Virginia limited liability company, has, as of the day and year first above written, caused this Covenant to be signed by Dennis Kelleher (name), manager's Division President (title), its duly authorized representative, to acknowledge and deliver this Covenant according to law.

Comstock Sixth Street, L.L.C.
a Virginia limited liability company
By: Comstock Holding Companies, Inc.,
Manager

By: DK
Name: Dennis Kelleher
Title: Division President

Commonwealth of Virginia
County of Fairfax, ss:

I, Kelly L. Wyche, a Notary Public in and for the Commonwealth of Virginia, do hereby certify that Dennis Kelleher (name), Division President of Comstock Holding Companies, Inc., manager of Comstock Sixth Street, LLC party to the foregoing Covenant, personally appeared before me and acknowledged said Covenant to be the act and deed of said limited liability company and that he delivered the same as such.

GIVEN under my hand and seal this 23 day of August, 2016.

Kelly L Wyche
Notary Public

My Commission expires: 11-30-16

KELLY L. WYCHE NOTARY PUBLIC MY COMMISSION NUMBER 240587 COMMONWEALTH OF VIRGINIA

IN WITNESS WHEREOF, the Mayor of the DISTRICT OF COLUMBIA, having first considered and approved the foregoing Covenant, has directed the execution thereof in the name of said DISTRICT OF COLUMBIA, by the Secretary of the District of Columbia, who has hereunto set her hand and affixed the seal of the District of Columbia hereto under authority of the Act of Congress entitled "An Act to Relieve the Commissioners of the District of Columbia of Certain Ministerial Duties," approved February 11, 1932.

DISTRICT OF COLUMBIA
a Municipal Corporation

By: _____
Secretary of the District of Columbia
Lauren C. Vaughan

(Corporate Seal)

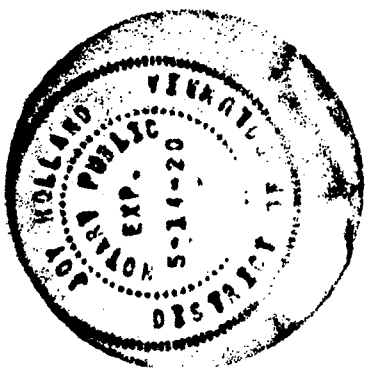
DISTRICT OF COLUMBIA, ss:

I, Joy Holland, a Notary Public in and for the District of Columbia, do hereby certify that Lauren Vaughan who is personally well known to me as the person named as Secretary of the DISTRICT OF COLUMBIA in the foregoing Covenant bearing date of the 6 day of October, 2016, and hereunto annexed, personally appeared before me in said District and, as Secretary of the DISTRICT OF COLUMBIA aforesaid, and by virtue of the authority in her vested, acknowledged the same to be the act and deed of the Mayor of the DISTRICT OF COLUMBIA.

GIVEN under my hand and seal this 6 day of October, 2016.

_____
Notary Public, D.C.

My commission expires: 5/14/2020



APPROVED:

Matthew Le Grant 8-29-16

District of Columbia Zoning Administrator

APPROVED AS TO LEGAL SUFFICIENCY:

Office of Attorney General for the District of Columbia

APPROVED:

Matthew Le Grant 8-29-16

District of Columbia Zoning Administrator

APPROVED AS TO LEGAL SUFFICIENCY:

Alan Bergstein

Office of Attorney General for the District of Columbia

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

August 25, 2016

Re: Z.C. Case No. 15-04 (Comstock Sixth Street, LLC)

To Whom It May Concern:

I hereby certify that attached hereto, and bearing my initials in red ink in the lower right corner of each page, is a true copy of Z.C. Order No. 15-04 (Exhibit 66) – consisting of 31 pages – of the official record of the Zoning Commission for the District of Columbia in Z.C. Case No. 15-04.

Sharon S. Schellin

SHARON S. SCHELLIN
SECRETARY TO THE ZONING COMMISSION

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-04
Z.C. Case No. 15-04
Comstock Sixth Street, LLC
(Consolidated PUD and Related Map Amendment @ Square 3788, Lot 814)
December 14, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on July 30, 2015, to consider applications for a consolidated planned unit development ("PUD") and related zoning map amendment filed by Comstock Sixth Street, LLC ("Applicant"). The Commission considered the applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the applications.

FINDINGS OF FACT

The Applications, Parties, Hearings, and Post-Hearing Filings

1. On March 4, 2015, the Applicant filed an application with the Commission for consolidated review of a PUD and related zoning map amendment to rezone Lot 814 in Square 3788 ("Property") from the R-2 and FT/C-M-1 Zone Districts to the R-4 Zone District.

2. The application provides for the development of a new residential use for the Property, in the form of 40 one-family row dwellings ("Project"). Each dwelling will contain three bedrooms and approximately 2,205 to 2,282 square feet of gross floor area, including a garage for one vehicle. Additional surface parking for approximately 17 vehicles will be provided throughout the Property. The Project's density will be 0.49 floor area ratio ("FAR"); the lot occupancy will be approximately 17%; and the maximum building height will not exceed three stories or 40 feet. The Property will be extensively landscaped and will provide various outdoor amenities for residents, including a landscaped mews, seating areas, and a small playground. The Property will be accessed by a private road owned by and maintained by a future Homeowners Association ("HOA"). The project also includes a paved and lighted pedestrian and bicycle path across the northern portion of the Property ("Pedestrian Path"), which will allow access from the Property and points south to the Fort Totten Metrorail station,

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Metrobus stops along South Dakota Avenue, and other residential neighborhoods to the north.

3. By report dated April 3, 2015, the District of Columbia's Office of Planning ("OP") recommended that the application be set down for a hearing. At its public meeting held on April 15, 2015, the Commission voted to schedule a public hearing on the application.

4. The Applicant submitted a prehearing statement for the Project on May 22, 2015 (Exhibit ["Ex."] 16-16K) and a hearing was timely scheduled for the matter. A description of the Project and the notice of public hearing in this matter were published in the *D.C. Register* on June 12, 2015. The notice of the public hearing was mailed or emailed to all property owners within 200 feet of the Property and to Advisory Neighborhood Commission ("ANC") 5A, the ANC in which the Property is located, on June 5, 2015.

5. The parties to the case were the Applicant, ANC 5A, and the Concerned Citizens of North Michigan Park ("Concerned Citizens").

6. The Commission convened a hearing on July 30, 2015, which was concluded that same evening. As a preliminary matter, the Commission evaluated the party status request filed by the Concerned Citizens, and granted the request. (Ex. 25, 29.) Ms. Belinda Bell, Ms. Andrea Moore, and Mr. Clarence Moore testified on behalf of the Concerned Citizens.

7. At the hearing, the Applicant presented the following witnesses in support of its application: Mr. John Dapogny on behalf of the Applicant, Mr. Daniel Van Pelt of Gorove/Slade Associates, Inc., and Mr. Jeremy Potter of W.C. Ralston Architects. Mr. Van Pelt was recognized as an expert in the field of transportation analysis.

8. Karen Thomas, Development Review Specialist at OP, and Ryan Westrom and Anna Chamberlin of the District Department of Transportation ("DDOT") testified in support of the application with certain comments and conditions.

9. Five persons testified at the public hearing in support of the application, and six persons testified in opposition to specific components of the application, specifically regarding the use of the proposed Pedestrian Path.

10. The record was closed at the conclusion of the hearing, except to receive additional submissions from ANC 5A (a list of specific projects to which the Applicant's proffered financial contributions would be dedicated), DDOT (minimum street dimensions), and the Applicant. The Commission also requested proposed findings of fact and conclusions of law from the Applicant.

11. On September 4, 2015, the Applicant submitted a post-hearing filing in response to comments and questions from the Commission made at the public hearing. (Ex. 48-48D.) The post-hearing filing included the following: (i) revised and additional drawings showing revised end-unit side elevations and plans showing relocated windows, rear elevations with revised garage doors, playground details, downspout plan and images and updated plan for the Pedestrian Path showing visibility from end to end; (ii) relevant materials from the hearing record of Z.C. Case No. 04-11 regarding the private roads in that development; (iii) a construction management agreement; (iv) a proposed memorandum of understanding ("MOU") with the homeowner's association for the Emerson Park townhouse development regarding maintenance, landscaping and construction-related issues; (v) information on garbage cans at the Property; and (vi) information regarding the Applicant's commitment to install a security camera along the Pedestrian Path in coordination with the public-private "Capital Shield" program.

12. On September 4, 2015, the Applicant also submitted its draft findings of fact and conclusions of law. (Ex. 49.)

13. On September 14, 2015, the Concerned Citizens submitted their response to the Applicant's post-hearing filing. (Ex. 50.)

14. On September 15, 2015, ANC 5A submitted a copy of the agreement it reached with the University of the District of Columbia Foundation. (Ex. 51.)

15. At its public meeting held on September 21, 2015, the Commission took proposed action to approve with conditions the PUD and related map amendment. By rule, the record was left open to receive the Applicant's list of proffers and draft conditions, and the parties' responses thereto. The Commission also left the record open to receive further analysis from the Applicant regarding circulation for the project to mitigate impacts of vehicle traffic on the existing transportation network. The Commission also requested further clarification regarding certain of the financial contributions proposed as public benefits.

16. On September 28, 2015, the Applicant submitted its list of proffered public benefits and draft conditions. (Ex. 53.)

17. On October 5, 2015, the Applicant submitted its analysis of traffic impacts and alternatives regarding circulation to mitigate potential traffic impacts, and additional information regarding community benefits. Attached to the submission was a letter from the Emerson Park HO, Inc. stating that it was opposed to vehicular traffic on the project's bike and pedestrian path. (Ex. 54.)

18. On October 7, 2015, ANC 5A submitted a report providing further information regarding the proposed distribution of funds through the Friends of Fort Totten Mews organization. (Ex. 55).

19. On October 13, 2015, the Concerned Citizens requested a 60-day time extension to submit a response to the Applicant's October 5th post-hearing submission. (Ex. 56.)

20. On October 13, 2015, the Applicant submitted its final list of proffers and draft conditions. (Ex. 57.)

21. On October 13, 2015, ANC 5A requested an extension to submit a response to the Applicant's October 5, 2015 post-hearing submission. (Ex. 58.) The request was granted by the Chairman and the time was extended until October 19th.

22. On October 20, 2015, the Applicant submitted a statement opposing the Concerned Citizens' request for a 60-day extension. (Ex. 59.)

23. On October 29, 2015, the Applicant submitted an update regarding its dialogue with the parties regarding the pedestrian/bike path and adding vehicular access to it. (Ex. 60.)

24. On November 5, 2015, the Concerned Citizens submitted a response to the Applicant's update regarding its dialogue with the parties. (Ex. 61.)

25. On November 6, 2015, the Applicant submitted an update regarding its meeting with the Department of Energy and Environment ("DOEE"). (Ex. 62.)

26. The application was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District of Columbia Home Rule Act. Through a delegated action taken on October 30, 2015, the Executive Director of the NCPC found that the PUD would not be inconsistent with the Comprehensive Plan for the National Capital nor other federal interests.

27. At a public meeting held on November 9, 2015, the Commission partially granted the Concerned Citizens' request for a time extension to respond to the Applicant's October 5, 2015, post-hearing submission. The Commission granted an extension of 57 days from Concerned Citizens' initial request, on October 13th, so that the Concerned Citizens response was due on December 11th, the Applicant's response was due December 14th, and the Commission would consider the filings at its December 14th meeting.

28. On December 11, 2015, the Applicant and the Concerned Citizens submitted a joint statement that contained a revised benefits and amenities package that included an

escrow agreement. The statement requested that the Commission re-open the record to receive the submission, explicitly authorize the escrow agreement as is required by 11 DCMR § 2409.2, and approve the changes to the benefits and amenities package. The submission also included as Attachment B, supplemental terms added to the Construction Management Plan originally submitted as Exhibit 48C. (Ex. 64.)

29. The Commission took final action to approve the application on December 14, 2015. The Commission re-opened the record to receive the joint statement submitted by the Applicant and the Concerned Citizens, authorized the escrow arrangement contained therein, and approved the revised benefits and amenities package.

The Property and Surrounding Area

30. The Property consists of approximately 182,600 square feet of land area and is irregularly shaped with frontage of approximately 60 feet on 6th Street, N.E. to the south. The Property was formerly used for outdoor storage by the Thos. Somerville plumbing supply company, and is now primarily vacant, with one brick and metal warehouse building at the southwest corner. The Property's topography includes a 30-foot difference in elevation from the east property line to the leveled area where the proposed residential development will be located. A wooded area with significant grade changes surrounds the Property's northern and eastern boundaries. The Property is located at the end of a north-south portion of 6th Street, N.E., just east of the rail and Metrorail lines. A private extension of 6th Street, N.E., has been constructed along the Property's western edge.

31. The Property is located in the northeast quadrant of the District and is bounded to the north by the Emerson Park townhouse development, to the west by the Capital Area Food Bank, and to the south and east by semi-detached dwellings fronting on 6th Place, N.E. and 7th Street, N.E. The Emerson Park development was approved as a PUD and zoning map amendment by the Commission in Z.C. Order No. 04-11, dated April 11, 2005, and effective on May 20, 2005, and includes 75 individually-owned row dwellings. Farther northeast, east, and southeast of the Property are detached and semi-detached one-family residences in the R-2 Zone District.

32. The Property is located in Fort Totten, an established neighborhood in the northeast quadrant of the District with a solid housing stock and direct access to the Metrorail's Green, Red, and Yellow lines at the Fort Totten Metrorail station, which is located approximately a half mile north of the Property. Fort Totten and the surrounding area contain a housing mix of single-family homes, duplexes, and multi-family dwellings.

Previous Zoning Commission Approval

33. The Commission approved a similar row dwelling project for the Property pursuant to Z.C. Order No. 06-26, dated February 12, 2007, and effective on October 12, 2007. The approval granted in Z.C. Order No. 06-26 lapsed in 2009. The present application proposes development of the Property with a residential development similar to the previously approved project in terms of residential use, density, and neo-traditional development principles, but with a more efficient layout and improved architectural treatments.

Existing and Proposed Zoning

34. The Property is presently split-zoned, with the western portion of the Property located in the FT/C-M-1 Zone District and the eastern portion of the Property located in the R-2 Zone District. Residential uses are not permitted in the C-M Zone Districts; therefore, a rezoning of the Property is necessary to permit residential use.

35. The R-2 Zone District consists of those areas that have been developed with one-family semi-detached dwellings, and is designed to protect them from encroachment by denser types of residential development. (11 DCMR § 300.1.) The maximum permitted height in the R-2 Zone District is 40 feet and three stories. (11 DCMR § 400.1.) There is no maximum density imposed in R-2 Zone Districts; however, lot occupancy is limited to 40% for residential uses, which can result in a building density of up to 1.2 FAR. (*See* 11 DCMR §§ 402.4 and 403.2.) Calculated at a permitted density of 1.2 FAR, the R-2 portion of the Property alone would permit a density of approximately 131,602 square feet.

36. The C-M Zone Districts are "intended to provide sites for heavy commercial and light manufacturing activities employing large numbers of people and requiring some heavy machinery under controls that minimize any adverse effect on other nearby, more restrictive districts." (11 DCMR § 800.1.) The Zoning Regulations note that "heavy truck traffic and loading and unloading operations are expected to be characteristic of C-M Districts." (11 DCMR § 800.2.) The C-M-1 Zone District prohibits residential development except as otherwise specifically provided. (11 DCMR § 800.4.) As a matter-of-right, property in the C-M-1 Zone District can be developed with a maximum density of 3.0 FAR. (11 DCMR § 841.1.) The maximum permitted building height in the C-M-1 Zone District is 40 feet and three stories. (11 DCMR § 840.1.) Overall, the C-M-1 portion of the Property alone allows for approximately 218,796 square feet of non-residential uses, at 40 feet in height.

37. Pursuant to 11 DCMR § 2101.1, parking for one-family dwellings in all districts is one parking space for each residential dwelling unit. The project includes 40 parking spaces

(one for each residential dwelling) plus 17 additional parking spaces located throughout the Property, and therefore complies with the parking requirements of the Zoning Regulations. The individual driveways for the row dwellings are dimensioned to allow for parking of one additional vehicle without projecting into the private access road. Loading facilities are not required for the proposed residential use and are not provided.

38. The Applicant proposes to rezone the Property to the R-4 Zone District in connection with this application. The R-4 Zone District is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for one or two more families. Little vacant land is included within the R-4 Zone District, since its primary purpose is the stabilization of remaining one-family dwellings. (11 DCMR §§ 330.1-330.2.)

39. The maximum permitted matter-of-right height in the R-4 Zone District is 40 feet and three stories and 60 feet as a PUD. (11 DCMR §§ 400.1 and 2405.1.) There is no maximum density imposed for matter-of-right projects in the R-4 Zone District, but density is limited to 1.0 FAR as a PUD. (11 DCMR §§ 402.4 and 2405.2.) Lot occupancy is limited to 60% for residential use. (11 DCMR § 403.2.) Row dwellings are a permitted use as a matter of right.

Description of the PUD Project

40. The Applicant proposes to remove the debris and residue that presently cover the Property and construct a new residential row dwelling development that includes ample parking and new landscaped areas. The row dwellings will be situated in three rows fronting upon landscaped areas with a private road providing vehicular access to the rear of the dwellings where the individual garage entrances are located. New sidewalks with pedestrian amenities will be provided at the front of the row dwellings, and significant new green spaces and outdoor amenities will be provided throughout the Property. Consistent with Chapter 26 of the Zoning Regulations, the Project will dedicate 10% of the residential gross area (a total of four dwellings as Inclusionary Zoning ("IZ") units, two of which will be set aside for eligible low income households earning up to 50% of the Metropolitan Washington, DC, area median income ("AMI") and two of which will be set aside for eligible moderate-income households earning up to 80% of the AMI. In addition, the Applicant will dedicate a fifth dwelling to be set aside in perpetuity as affordable for eligible moderate income households earning up to 80% of the AMI.

41. The row dwellings will be grouped in three lines organized in an east-west configuration in the center of the Property in order to minimize visual impacts to surrounding properties and disturbance of the existing grades on the Property. Each dwelling will front on a landscaped common area and will have a rear-loaded, integrated one-car garage, plus a driveway in front of the garage capable of accommodating a second

vehicle. Each dwelling will contain between approximately 2,205 square feet and 2,282 square feet of gross floor area, and will rise to a height of three stories and not more than 40 feet. Seventeen additional surface parking spaces will be provided throughout the Project on the perimeter of the Property.

42. The Project will be fully integrated into the experience and appearance of the existing residential community surrounding the Property. The architectural treatment will be neo-traditional in style, similar to the Emerson Park development bordering the Property to the north, and the recently constructed duplexes bordering the Property to the east. As with those developments, the materials palette for the Project will consist generally of masonry and siding; however, the Project will contain cementitious siding as opposed to vinyl, and significantly more masonry throughout, including the entire ground level belt coursing on all elevations, the entirety of several front elevations, and the entirety of the side-facing units fronting the Capital Area Food Bank.

43. Central to the Project is the extensive use of landscaping, particularly since the Property is presently occupied by concrete slab given its past use for heavy storage. The southern two lines of row dwellings will front on a heavily landscaped mews, which will also be a primary location for the Project's storm water management filtering and retention systems. The northernmost of the three lines of row dwellings will front to the north and upon additional landscaped areas, including a small playground and storm water filtration systems. Lighting will be provided throughout the Project in the form of wall-mounted fixtures on each dwelling unit and as pole-mounted lights, all provided in a traditional design consistent with the Project's architectural motif. The Project will be subject to an HOA, which will ensure consistency of design and upkeep of the dwellings, and will actively maintain the landscaping, open space, and private road.

44. Vehicular access into the Property will be provided from two entrances off of the private extension of 6th Street. A private circular internal road will connect these entrances to provide direct access to the row dwellings. The Pedestrian Path will connect the northern dead-end portion of 6th Street across the Property to the private extension of 6th Street within the Emerson Park development and Emerson Street to the north, so that Project residents and residents to the south can more easily access the Fort Totten Metrorail station and bus stops along South Dakota Avenue.

45. The Project provides a number of environmental benefits and sustainability features, including tree planting and maintenance, extensive landscaping, methods to reduce storm water runoff, and green engineering practices. All of the dwelling units will include water-conserving fixtures; Energy Star lighting, appliances, and exhaust fans; Manual J sizing of HVAC systems; low-VOC paints, primers, adhesives, and sealants; "Green Label" rated carpet; and mold prevention measures. The Project incorporates an infiltration trench, allowing storm water from the Property to be discharged directly

back into the water table, achieving one of the primary goals of low impact development design. The Project will also provide approximately 91,300 square feet of pervious surface area, which is five times the pervious surface area of 18,260 square feet that is required by the green area ratio ("GAR") regulations.

Zoning Flexibility Requested

46. The Applicant requests flexibility to permit multiple buildings on a single record lot, pursuant to 11 DCMR § 2516. The Commission is permitted to grant any zoning relief that would normally require a special exception from the Board of Zoning Adjustment and in doing so need not apply the applicable special exception criteria. (11 DCMR §§ 24054.7 and 2405.8.)

47. The Applicant also proposes subdivision into theoretical lots based on the lack of public street frontage for the row dwellings, pursuant to 11 DCMR§ 2516.5. Because the proposed row dwellings will not have public street frontage, the Applicant must divide the lots into theoretical building sites. Due to the configuration and topography of the Property, including the extensive slopes along the Property's northern and eastern edges, the development footprint for the overall 4.2-acre site is comparatively tight. The Project incorporates an efficient and clearly organized site plan given these constraints, with the units' front elevations facing toward landscaped areas and their rear/service elevations facing a circular private access road.

48. Pursuant to 11 DCMR § 2405.8, the Applicant requests flexibility from 11 DCMR § 2516.5(b), which requires that the open space in front of the entrance to be equivalent either to the required rear yard or to the distance between the building restriction line recorded on the records of the Surveyor of the District of Columbia for the subdivided lot and the public space upon which the subdivided lot fronts, whichever is greater. In this case, the open space in front of the entrances to the dwellings are less than the minimum requirement for a rear yard. However, the distance between the fronts of facing dwellings is 42 feet, which is more than twice the minimum required rear yard. Therefore, the Commission finds that the proposed open space at the front of the dwellings will not result in an adverse impact.

49. The Applicant requests flexibility from 11 DCMR § 2516.6(a), which requires that the area of land forming a covenanted means of ingress or egress shall not be included in the area for any theoretical lot or in any required yard. The Applicant excluded areas of ingress and egress in the area of the theoretical lots, resulting in a density of 0.57 FAR. However, a width of two feet of the private access road crosses portions of some of the required rear yards, resulting in a two-foot reduction for those rear yards, which are required to be 20 feet in depth, pursuant to 11 DCMR § 404.1. The Commission finds that this requested relief can be granted without adverse effects on the surrounding

neighborhood, since terraces and decks will be provided for each row dwelling for passive recreation, and because the private road will facilitate two-way vehicular movement for residential vehicles and trash services.

50. In addition, the Applicant requests flexibility from 11 DCMR § 2516.6(b), which requires that vehicular ingress or egress to any principal building shall be 25 feet in width. The lots for the proposed dwellings are only 18 feet in width, and therefore it would be impossible for vehicular access to be 25 feet in width. The Commission finds that flexibility from the 25-foot width requirement will not have an adverse impact on the character and future development of the neighborhood, since the common private drive will be 20 feet wide at each curb cut, and because the proposed dimensions are common for alley widths in the District. Moreover, the 18-foot-wide dwellings will adequately support the rear-loaded garages, which is also typical of homes in the R-4 Zone District.

51. In all other respects, the Applicant complies with the general special exception standard of § 3104.1 and the specific requirements of § 2516.

Development Flexibility Requested

52. The Applicant also requests flexibility in the following areas:

a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configurations of the buildings;

b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of materials;

c. To make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit;

d. To vary the location and arrangement of parking spaces, so long as the number of spaces is not reduced; and

e. To vary the final selection of landscaping materials to provide equivalent plant material, depending on market availability.

Project Benefits and Amenities

53. Urban Design, Architecture, Landscaping, and Open Space – § 2403.9(a). The Project will have a positive impact on the visual and aesthetic character of the immediate neighborhood and will advance the goals of urban design while enhancing the streetscape. The Project involves sensitive residential infill development of the vacant industrial storage site, which will create a buffer between the residential developments to the north, east, and south of the Property and the Food Bank warehouse and rail tracks to the west. The Property will be developed with 40 new three-bedroom row dwellings of traditional architectural design with varied elevation types, extensive use of masonry, cementitious siding, and articulation. The Project will be pedestrian-focused, with extensive sidewalks, community gathering areas, a playground, landscaping, and the preservation of the Property's existing slopes and topography. Moreover, the Project includes the Pedestrian Path, which will connect the dead-end portion of 6th Street at the northwest corner of the Property to the continuation of 6th Street and Emerson Street to the north, providing a pedestrian and bicycle connection to the Fort Totten Metrorail station, Metrobus routes, and other residential neighborhoods to the north. The combination of these features is significant in their breadth, quality, and value in comparison to what is typically achieved in a matter-of-right project.

54. Site Planning and Efficient and Economical Land Utilization – § 2403.9(b). The Project will replace the vacant, heavy-industrial storage site with 40 new residential units, including affordable units that preserve the Property's existing slopes and contours. The Property will be a high-quality, transit-oriented residential development, given its proximity to the Fort Totten Metrorail station, numerous Metrobus routes, and the meaningful pedestrian and bicycle connection. The new occupants of the 40 units will also add to the market demand for existing neighborhood retail uses and amenities, further invigorating the surrounding community.

55. Housing and Affordable Housing – § 2403.9(f). The Project involves infill construction of 40 new three-bedroom row dwellings with garage parking on a long vacant mixed-zoned site abutting residential uses to the north, east, and south. The row dwellings will be for-sale units subject to an HOA. In compliance with Chapter 26 of the Zoning Regulations, 10% of the residential gross area (a total of four of the row dwellings) will be IZ units, two of which will be reserved for households earning up to 50% of the AMI, and two of which will be reserved for households earning up to 80% of the AMI. The Project also includes a fifth affordable unit, which will be reserved pursuant to § 2409.10 in perpetuity for households earning up to 80% of the AMI. The housing and affordable housing qualify as public benefits of the project because the existing CM matter of right zoning does not permit residential development; thus, but for the project and its PUD-related map amendment, no housing or affordable housing would be provided on the site. The additional affordable unit represents a significant increase in

affordability above and beyond the amount required by Chapter 26. Figure 1 indicates the Applicant's affordable housing proffer.

Figure 1

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	89,124 sf GFA (100%)	40	Market, IZ, Affordable	N/A	N/A
Market Rate	78,099 sf GFA (87.5%)	35	Market Rate	N/A	N/A
IZ	4,410 sf GFA (5%)	2	50% AMI	For the life of the project	Ownership
IZ	4,410 sf GFA (5%)	2	80% AMI	For the life of the project	Ownership
Affordable/Non-IZ	2,205 sf GFA (2.5%)	1	80% AMI	For the life of the project	Ownership

56. Environmental Benefits – § 2403.9(h). The Applicant will ensure environmental sustainability through the implementation of design features and strategies to enhance the sustainable nature of the Property's transit-oriented location and to promote a healthy lifestyle for residents. The Project provides a host of environmental benefits consistent with the recommendations of 11 DCMR § 2403.9(h), including extensive preservation of the Property's existing slopes and vegetation; implementation of on-site stormwater runoff controls; soil composition that allows for the infiltration trench to discharge storm water directly to the water table; the provision of 1.68 acres of pervious surface area; and water-conserving Energy Star fixtures, appliances, and lighting in each of the row dwellings. The Applicant also proposes to provide off-site stormwater control maintenance for the Emerson Park development for a period of two years.

57. Transportation Benefits – § 2403.9(c). The Applicant incorporated a number of elements designed to promote effective and safe multi-modal access to and within the Property, convenient connections to public transit services, and on-site amenities. The Project includes an integrated one-car garage for each row dwelling, a driveway in front of each garage capable of accommodating a second vehicle, and 17 additional parking spaces dispersed on the Property for visitors and guests. The row dwellings are efficiently served by an on-site private access road, extensive sidewalks, ADA-accessible ramps, and crosswalks. In addition, the Pedestrian Path will provide a paved, landscaped, and lighted pedestrian and bicycle connection, including installation of a security camera, to points north of the Property, which will facilitate non-vehicular traffic and improve multi-modal access. In addition, the DC Fire and EMS Department

("FEMS") has confirmed that access to and through the Property is compliant with the DC Fire Code for emergency access and that the Project as proposed will not create any operational concerns. Finally, the Applicant will construct off-site public space improvements in coordination with DDOT. The improvements will include four new crosswalks, seven new or modified curb ramps, and one missing sidewalk link, and will be located along Emerson Street, 6th Place, and Gallatin Street.

58. Use of Special Value to the Neighborhood or the District as a Whole - § 2403.9(i): The new single-family, for-sale residential infill construction will revitalize the long-vacant industrial storage facility in a manner consistent with the Comprehensive Plan for the National Capital (the "Comprehensive Plan") and surrounding development patterns. The Applicant will monitor for any vibration caused by construction activities for a period of eight months and offer pre- and post-construction inspections for 10 houses adjacent to the Property's southern boundary, as detailed in Applicant's Construction Management Agreement included in the record. The Applicant will also engage a vibration consultant, at a cost not to exceed $4,000, to work directly with neighboring residents within SMD 5A08, to undertake a vibration monitoring study, as detailed in Exhibit 60. The Applicant will provide funding in the amount of $40,000 for repairs to the homes of senior citizens residing in the North Michigan Park neighborhood. The funding shall be provided through an escrow agreement, with the repair projects to be selected and funds to be administered by Concerned Citizens, as detailed in Exhibit 64. Of the $40,000, at least $10,000 will be utilized for repairs to seniors' homes along the 4700/4800 block of 6th Street, N.E. In addition, the Applicant will make the following financial contributions:

a. Contribute $35,000 to the University of the District of Columbia Foundation, Inc. for the renovation of the Bertie Backus campus on South Dakota Avenue, N.E., which shall also include a provision by the University for use of space by ANC 5A and the community represented by ANC 5A08 within the Backus Campus for at least 60 occasions over a two-year period;

b. Contribute $12,500 to help establish the Friends of Totten Mews ("FTM"), which will consist of a board acceptable to the ANC Single Member District ("SMD") Commissioner 5A08. In establishing FTM, the SMD 5A08 Commissioner, a resident of Totten Mews, a resident of Emerson Park, a resident of 6th Street, a resident of 6th Place, a resident of 7th Street, and a resident of Emerson Street will serve to issue block grants via grant application to the community. The grant money will be used to support educational projects, community athletic activities, training, community clean ups, beautifications, and events;

c. Contribute $5,000 to the North Michigan Park Civic Association, which will provide support over the next five years to their annual Scholarship Program and Back to School Supply Give-A-Way; and

d. Contribute $10,000 to the Capital Area Food Bank to service providers operating within Ward 5 and ANC 5A specifically.

59. The Commission finds that the proposed benefits and amenities are more than commensurate with the modest level of flexibility requested for the Project. The Commission further finds that the impacts of the Project are favorable and capable of being mitigated or acceptable, in compliance with 11 DCMR § 2403. Construction of the Project provides efficient use of land compatible with uses of the surrounding properties. Given the extensive transportation benefits, the Commission also finds that the Project will not cause adverse traffic impacts and will provide sufficient parking to meet demand, as confirmed by the reports of Gorove/Slade Associates and DDOT.

Comprehensive Plan

60. The Future Land Use Map of the Comprehensive Plan designates the Property for Moderate-Density Residential. The Project is consistent with that designation, particularly because the proposed R-4 zoning classification is specifically identified as a Moderate-Density Residential zone district. In addition, the R-4 Zone District contemplates that little vacant land shall be included within the R-4 Zone District, since its primary purpose shall be the stabilization of remaining one-family dwellings. (11 DCMR § 330.2.) The Project is located in close proximity to a Metrorail station and numerous Metrobus lines. Given the District's stated policy of channeling new residential growth into areas near transit stations and along bus routes, the PUD and map amendment are consistent with the Comprehensive Plan's designation for the Property.

61. The eastern portion of the Property is designated as Neighborhood Conservation Area and the western portion of the Property is designated as a Land Use Change Area on the Comprehensive Plan Generalized Policy Map. The proposed rezoning and PUD redevelopment of the Property is consistent with the policies indicated for Neighborhood Conservation and Land Use Change Areas. The Project will enhance the established semi-detached and rowhouse neighborhood by developing the vacant Property with new for-sale, three-story one-family row dwellings that are compatible with the existing scale and character of the area. The Project will implement dynamic site and architectural design by creating a high-quality new development that supports existing land uses and respects the surrounding community.

62. The Project is consistent with the guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, and building green and healthy communities. The Project also furthers numerous policies and objectives of the Comprehensive Plan, as follows below.

a. *Policy LU-1.3.2: Development Around Metrorail Stations.* The Fort Totten Metrorail station offers a great opportunity for infill development and growth. Consistent with Policy LU-1.3.2, the project will be located in close proximity to the Metrorail station and will redevelop a poorly utilized infill site. By virtue of its transit-oriented location, the project will minimize the necessity for automobile use and will maximize transit ridership while respecting the needs of the surrounding area;

b. *Policy LU-1.3.3: Design to Encourage Transit Use.* The Project's architecture and site planning will support pedestrian and bicycle access to the Fort Totten Metrorail station and will enhance the safety, comfort, and convenience of passengers walking to the station or transferring to and from local busses;

c. *Policy LU-1.4.1: Infill Development.* The Project is consistent with the goal of encouraging infill development on vacant land within the city, particularly in areas where there are vacant or underutilized lots that create gaps in the urban fabric and detract from the character of a commercial or residential street. The proposed project complements the established character of the area by building on a large underutilized lot without creating sharp changes in existing development patterns;

d. *Policy LU-2.1.5: Conservation of Single Family Neighborhoods.* Consistent with Policy LU-2.1.5, the PUD will conserve the District's stable residential neighborhood and will reflect the established character of the one-family dwellings. The Applicant will carefully manage the development of the PUD Site in a manner that preserves open space and maintains the neighborhood scale;

e. *Policy LU-2.1.11: Residential Parking Requirements.* The Project's proposed parking is responsive to the varying levels of demand associated with the row dwellings and the location of the Property near transit. Parking will be accommodated on the Property in a manner that maintains an attractive environment at the street level and minimizes interference with traffic flow;

f. *Policy LU-2.2.4: Neighborhood Beautification.* This policy encourages projects to improve the visual quality of the District's neighborhoods. As shown on the project drawings, the project architect designed the dwellings to improve the

visual aesthetic of the neighborhood. The design and materials proposed are of a high quality, and the project is focused in the interior of the site to provide a landscaped buffer from surrounding properties. Moreover, the development of the Property will be an improvement to the current site condition and will help to revitalize the area. The Project also includes a significant amount of landscaped and open space that will greatly enhance the streetscape and improve the pedestrian experience;

g. *Policy T-1.4.1: Transit-Oriented Development.* The proposed Project is a textbook example of transit-oriented infill development due to its location near the Fort Totten Metrorail station and nearby Metrobus corridors. It also includes various transportation improvements, such as the construction of new sidewalks, public space improvements, and a direct pedestrian/bicycle connection from the Property to the continuation of 6th Street, Emerson Street and the Metrorail station to the north. The Applicant also proposes to invest in pedestrian-oriented improvements leading from the PUD Site to the Fort Totten Metrorail station and along major bus corridors to encourage transit use by neighborhood residents;

h. *Policy T-2.3.1: Better Integration of Pedestrian and Bicycle Planning.* As shown on the architectural drawings, the Applicant has carefully considered integrated pedestrian and bicycle safety considerations into the design of the Project and to the development of new roads and sidewalks;

i. *Policy T-2.4.1: Pedestrian Network and Policy T-2.4.2: Pedestrian Safety.* Consistent with these policies, the Applicant will develop, maintain, and improve pedestrian facilities within the Property and will connect these facilities into the District's sidewalk network. The Project will improve safety and security of pedestrian travel by implementing a variety of techniques including new lighting, crosswalks, sidewalks, and clear lines of sight;

j. *Policy H-1.1.1: Private Sector Support.* The Project helps meet the needs of present and future District residents at locations consistent with District land use policies and objectives. Specifically, the project will contain 40 new single-family dwellings, five of which will be designated as affordable units. This represents a substantial contribution to the District's housing supply, and the provision of new affordable units at this location is fully consistent with the District's land use policies;

k. *Policy H-1.1.3: Balanced Growth.* Consistent with this policy, the Applicant will develop new housing on underutilized land, helping to ensure that the city

will meet its long-term housing needs, including the need for low- and moderate-density single-family homes;

l. *Policy H-1.1.5: Housing Quality and Policy H-1.2.1: Affordable Housing as a Civic Priority.* As shown on the architectural drawings, the Project is designed to include high-quality materials and design elements. Moreover, five of the residential dwellings will be affordable to households earning up to 50% and 80% of the AMI. Consistent with Policies H-1.1.5 and H-1.2.1, the affordable units will meet the same high-quality architectural standards provided for the market-rate units and will be indistinguishable from the market-rate housing in their exterior appearance. The project also addresses the need for open space and recreational amenities, and respects the design integrity of adjacent properties and the surrounding neighborhood;

m. *Policy H-1.2.3: Mixed Income Housing.* The proposed development is mixed-income in that it includes a number of affordable housing units dedicated to families earning not more than 50% and 80% of the AMI. Thus, the Project will support the District's policy of dispersing affordable housing throughout the city to mixed-income communities, rather than concentrating such units in economically depressed neighborhoods;

n. *Policy H-1.3.1: Housing for Families.* The Project will support this policy by constructing a large number of new single-family row dwellings that can accommodate families with children;

o. *Policy UD-2.2.1: Neighborhood Character and Identity and Policy UD-2.2.5: Creating Attractive Facades.* Consistent with Policies UD-2.2.1 and UD-2.2.5, the Project will strengthen the defining visual qualities of the Fort Totten neighborhood by relating the scale of the infill development to the existing neighborhood context. In addition, as shown on the architectural drawings, the project includes elegant, visually-interesting, and well-designed building facades that eschew monolithic or box-like forms and long blank walls that detract from the quality of the streetscape;

p. *Policy UD-2.2.7: Infill Development and Policy UD-2.2.8: Large Site Development.* In furtherance of these policies, the Project will avoid overpowering contrasts of scale, height, and density as the infill development occurs. The Applicant will also ensure that the Project is carefully integrated with adjacent sites;

q. *Policy UD-3.1.1: Improving Streetscape Design and Policy UD-3.1.2: Management of Sidewalk Space.* The Project will improve the appearance and

identity of the District's streets through providing new street lights, paved surfaces, landscaped areas, and adjacent building facades. Sidewalks within the Property will promote pedestrian safety, efficiency, and comfort, and will enhance the visual character of the streets within the Property with landscaping and buffer plantings to reduce the impacts of vehicular traffic;

r. *Policy UD-3.2.4: Security Through Streetscape Design and Policy UD-3.2.5: Reducing Crime Through Design.* Consistent with these policies, the Applicant will ensure attractive, context-sensitive security measures in the design of the streets, and public spaces within the Property. These measures will include an appropriate mix of bollards, planters, landscaping, and vegetation, rather than incorporating barriers and other approaches that detract from the aesthetic quality of the street. Furthermore, the design of the Property will minimize the potential for criminal activity through the provision of preventative measures such as adequate lighting, clear lines of sight, installation of a security camera along the Pedestrian Path and ready visual access; and

s. The Project is also consistent with numerous policies set forth in the Environmental Protection Element, including the following:

- *Policy E-1.1.1: Street Tree Planting and Maintenance* – Encourages the planting and maintenance of street trees in all parts of the city;
- *Policy E-1.1.3: Landscaping* – Encourages the use of landscaping to beautify the city, enhance streets and public spaces, reduce storm water runoff, and create a stronger sense of character and identity;
- *Policy E-2.2.1: Energy Efficiency* – Promotes the efficient use of energy and a reduction of unnecessary energy expenses;
- *Policy E-3.1.2: Using Landscaping and Green Roofs to Reduce Runoff* – Calls for the promotion of tree planting and landscaping to reduce storm water runoff, including the expanded use of green roofs in new construction; and
- *Policy E-3.1.3: Green Engineering* – Has a stated goal of promoting green engineering practices for water and wastewater systems.

63. The Project is consistent with numerous policies set forth in the Economic Development Element, which addresses the future of the District's economy and the creation of economic opportunity for current and future District residents. This element places a high priority on stimulating and facilitating a variety of commercial, retail, and

residential development investments appropriate to selected Metrorail station areas outside of the Central Employment Area. Consistent with policies in this Element, the Project will attract and retain residents who desire a moderate density residential neighborhood with direct access to public transportation and safe pedestrian and bicycle facilities. Attracting and retaining residents will further increase the District's tax base and will create additional revenue for the city.

64. The Property is located within the boundaries of the Upper Northeast Area Element. Section 2407 of the Comprehensive Plan explains the Upper Northeast Area Element's planning and development priorities. One stated priority is to encourage future development around the Fort Totten Metrorail station, which development to date has not taken full advantage of proximity to the Metro, and provide opportunities for diverse housing types of moderate- and medium-density housing. (*See* 10A DCMR § 2407.2(i).) The Upper Northeast Area Element also encourages compatible infill development (*Policy UNE-1.1.2*), Metro station development (Policy UNE-1.1.3), streetscape improvements (*Policy UNE-1.2.1*), and environmental quality (*Policy UNE-1.2.8*), all of which are policies and goals that the Project will support.

65. In addition, the Upper Northeast Area Element specifically states that the Fort Totten Metrorail station area has strategic importance in plans for the District's growth. (*See* 10A DCMR § 2417.1.) *Policy UNE-2.7.1* envisions underutilized property in the immediate vicinity of the Fort Totten Metrorail station as a "transit village" combining medium-density housing, ground-floor retail, local-serving office space, new parkland and civic uses, and structured parking. *Policy UNE-2.7.1* states that redevelopment should protect the lower density residences nearby and address traffic congestion and other development impacts. Furthermore, *Policy UNE-2.7.2* calls for improvements to pedestrian access to the Fort Totten Metrorail station. The Commission finds that the Project is consistent with the infill, and transit-oriented development objectives that are part of the Upper Northeast Area Element, and will provide much needed new housing opportunities that protect the nearby lower density residences and increase pedestrian accessibility and safety in the area.

Office of Planning Report

66. By report dated July 20, 2015 (Ex. 26), OP recommended approval of the PUD and related Zoning Map amendment. In its report, OP stated that the Project is "consistent with the goals and objectives of the Comprehensive Plan" and that the "new housing would further the stability of the neighborhood." OP also found that the proposed map amendment to the R-4 Zone District was consistent with the Property's designation on the Future Land Use and Generalized Policy Maps, and that the Project was consistent with a number of policies in the Upper Northeast Area Element of the Comprehensive

Plan and with the Ward 5 Works: Ward 5 Industrial Land Transformation Study. The Commission concurs with OP's findings.

DDOT Report

67. By report dated July 20, 2015 (Ex. 27), DDOT stated that it had no objection to the Applicant's request for a PUD and related map amendment, so long as the Applicant incorporate the following mitigation measures:

    a. Provide a full bicycle and pedestrian connection between the 6th Street, N.E. ends, meeting DDOT design standards; and

    b. Upgrade at least six sidewalk ramps, four crosswalks, and some missing sidewalk links along the path to the Metrorail station.

    At the public hearing, the Applicant agreed to both of DDOT's conditions to approval.

68. On August 21, 2015, DDOT submitted a supplemental memorandum (Ex. 47) in response to the Commission's request at the public hearing for DDOT to provide minimum street dimension requirements. DDOT's memorandum indicated the minimum dimensions for private streets, the desirable widths for private streets, and the DDOT standard width needed for streets to be accepted as public rights-of-way. DDOT's memorandum also noted that the Applicant was not proposing to construct a new roadway (public or private) in the location proposed for the Pedestrian Path.

DDOE Report

69. By report dated July 14, 2015 (Ex. 28), DDOE summarized items related to the Property and common issues related to many development projects. The report included DDOE's comments on the Project, provided additional guidance on regulations and other DDOE areas of interest, and recommended areas where the Applicant could exceed guidelines as a public benefit or amenity. At the public hearing, the Commission requested that the Applicant meet with DDOE prior to final action to clarify and confirm the sustainable elements of the Project. The Applicant met with DDOE representatives on November 5, 2015.

ANC Reports

70. On July 30, 2015, ANC 5A submitted a report recommending approval of the PUD and related map amendment. (Ex. 39.) The report noted that at its duly noticed, special meeting, with all six commissioners and the public present, ANC 5A voted 6-0 to support the application and to approve the community benefits package. At the public

hearing, Commissioner Angel Alston, the SMD commissioner for ANC 5A08, testified on behalf of the ANC and in support of the Project.

Persons in Support

71. Five persons testified in support of the Project at the public hearing. The Commission also received four letters of support for the Project. (Ex. 31, 35, 44, 45.) The oral and written testimony primarily focused on the Pedestrian Path. Individuals asserted that the area proposed for the Pedestrian Path is currently a "breeding ground for illicit activity," and needed to be lit, paved, and cleared of debris, as proposed by the Applicant. Individuals testified against vehicular use of the Pedestrian Path or opening the Pedestrian Path as a public or private street, since doing so would increase traffic and parking congestion, noise pollution, and pedestrian accidents, and would decrease property values in the "quiet and peaceful cul-de-sac community." (Ex. 44, 45.) Individuals also stated that vehicular use of the Pedestrian Path would result in unwanted maintenance costs for lighting, plowing, trash pick-up, and insurance liability. Moreover, project supporters testified generally that the proposed residential redevelopment of the vacant industrial site would be a major improvement to the Property's current condition.

Persons and Parties in Opposition

72. Ms. Belinda Bell represented the Concerned Citizens as the party in opposition to the application.

73. At the public hearing, Ms. Bell, Ms. Andrea Moore, and Mr. Clarence Moore testified on behalf of the Concerned Citizens in opposition to portions of the Project, specifically regarding the Pedestrian Path. Six individuals also testified at the hearing, specifically regarding the Pedestrian Path. The Commission also received two letters in opposition to the Project. (Ex. 32, 33.)

74. At the public hearing, the Concerned Citizens noted that it was not concerned with the Applicant's overall proposal to redevelop the Property with 40 new for-sale row dwellings. The Concerned Citizens' testimony was primarily limited to discussion regarding the development and use of the proposed Pedestrian Path. The Concerned Citizens stated that the Pedestrian Path would have a negative social and economic impact on the neighborhood because it would increase traffic, invite criminal activity, disconnect the street grid, and create unsafe conditions with inadequate access for emergency vehicles to access or evacuate the nearby properties.

75. The Concerned Citizens and other individuals in opposition to the Pedestrian Path claimed that traffic on the streets surrounding the Property was already congested, and

that maintaining the Pedestrian Path for foot and bicycle traffic only would significantly worsen the problem. In the alternative, opponents surmised that if the path was open to vehicles as a public or private road, the existing north-south traffic could flow uninterrupted through a connected street grid, creating convenient access to surrounding streets and alleviating traffic on other small connector streets.

76. In addition, the Concerned Citizens and other opponents argued that the Pedestrian Path would invite criminal activity since it would be isolated from neighborhood activity, and would lack clear lines of sight, creating a "haven for criminals... to hide and attack residents as they use the path." (Ex. 29, p. 3.) Other persons in opposition expressed concerns over potential property damage and increased traffic that would result from construction activities and vehicles associated with the proposed development.

77. The Concerned Citizens questioned the accuracy of the Applicant's Transportation Impact Study ("TIS"), prepared by Gorove/Slade Associates and provided to DDOT in compliance with 11 DCMR § 3113.10. (Ex. 24A.) The Concerned Citizens stated that the TIS was "biased and flawed" because it did not reflect the existing traffic flow in the neighborhood, did not accurately demonstrate the impact that the Project would have on the surrounding streets, and was generally inconsistent with a TIS completed for the Property in 2006 as it related to the previously approved PUD. The Concerned Citizens asserted that the Applicant's TIS did not identify the locations where it measured peak traffic, did not cover the same streets as the 2006 TIS, did not adequately evaluate the impact of vehicular traffic from the Capital Area Food Bank, which did not exist in 2006 and which generates additional and frequent vehicular deliveries, and only evaluated existing conditions and not how the community is changing as a result of other new development.

78. Despite the Concerned Citizen's claims, the Commission finds that the Project will not have a detrimental impact to the surrounding transportation network, even without a vehicular connection from 6th Street, and that the Pedestrian Path will provide much needed new multi-modal access to the Fort Totten Metrorail station. The Commission finds that the TIS prepared by Gorove/Slade is acceptable and appropriate. The report's scope was discussed and agreed to with DDOT, and its general methodology follows national and DDOT guidelines on preparation of transportation impact evaluations of site development. The Commission finds that the TIS adequately compares existing conditions to two future scenarios: (i) 2018 background conditions without the Project, and (ii) 2018 conditions with the Project completed. Based on the TIS and testimony presented at the public hearing, the Commission finds that the roadways surrounding the Property currently operate under acceptable conditions during peak hours, and that impacts attributable to the Project will be minimal and will have no significant effects on the surrounding roadway network. The Commission also finds that no study intersections will operate under unacceptable future conditions following construction

of the PUD that will not also operate under unacceptable future conditions without the PUD.

79. The Commission also finds that the Pedestrian Path will significantly improve existing conditions, increase safety, and deter criminal activity, since the Applicant will pave the path, provide pedestrian-oriented lighting, install a security camera to be capable of monitoring by the Metropolitan Police Department as part of the Capital Shield program and create clear lines of sight to deter illicit behavior. The Commission also concludes that the Project will have no adverse impacts on emergency vehicle access to or evacuation of the Property. As indicated in the letter from DC FEMS, dated May 29, 2015, the Office of the Fire Marshal indicated that the Project is consistent with the requirements of the DC Fire Code and does not present any operational difficulties for FEMS. (Ex. 24D.) As to the suggestion that there should be a new private or public street, the Commission notes that it cannot compel a private person to dedicate land for public purposes. Even the Mayor cannot accomplish such an action without just compensation. If a full street were required to avoid a danger to the public, the Commission would have to take the absence of such a street into consideration when balancing the public benefits of this PUD. Here, no such danger will result.

80. In addition, the Commission concludes that construction of the Project will not result in unmitigated structural damage to nearby properties, or increased traffic and parking, since the Order contains conditions intended to mitigate the effects of the project on the neighboring properties caused by vibration, as well on the transportation network and parking.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)

2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. Development of the Property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments, which will offer a project with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD complies with the development standards of the Zoning Regulations. The residential use for the Project is appropriate for the Property. The impact of the Project on the surrounding area and the operation of city services is minimal, and is acceptable given the quality of the public benefits in the Project. Accordingly, the Project should be approved.

5. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

6. The Applicant's request for flexibility from the Zoning Regulations is not inconsistent with the Comprehensive Plan. The Commission also concludes that the project benefits and amenities are reasonable trade-offs for the minimal requested development flexibility in accordance with 11 DCMR §§ 2400.3 and 2400.4.

7. Approval of this PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

8. The proposal to rezone the Property from the R-2 and FT/C-M-1 Zone Districts to the R-4 Zone District is not inconsistent with the Property's designation on the Future Land Use Map and the Generalized Policy Map.

9. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2012 Repl.)), to give great weight to OP recommendations. The Commission carefully considered the OP report and, as explained in this decision, finds its recommendation to grant the applications persuasive.

10. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC. The Commission has carefully considered the ANC 5A recommendation for approval and concurs in its recommendation.

11. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for consolidated review and approval of a planned unit development and related map amendment from the R-2 and FT/C-M-1 Zone Districts to the R-4 Zone District for the property located at Lot 814 in Square 3788. The approval of this PUD is subject to the guidelines, conditions, and standards set forth below.

A. Project Development

1. The Project shall be developed in accordance with the architectural plans and elevations dated March 3, 2015 (Ex. 6A1 and 6A2), as modified by the architectural plans and elevations dated May 15, 2015 (Ex. 16A), and further modified by the architectural plans and elevations and drawings dated September 1 and 3, 2015 (Ex. 48A) (together, the "Plans") and as modified by the guidelines, conditions, and standards of this Order.

2. In accordance with the Plans, the PUD shall be a residential development with 40 one-family row dwellings, each containing a garage for one vehicle and accessed by a private road. Each dwelling shall contain three bedrooms and approximately 2,205 to 2,282 square feet of gross floor area, including the garage. Additional surface parking for approximately 17 vehicles shall be provided throughout the Property. The Project density shall be 0.49 FAR; the lot occupancy shall be 17%; and the maximum building height shall not exceed three stories or 40 feet.

3. The Property shall be extensively landscaped and provide various outdoor amenities for residents, including a landscaped mews, seating areas, and a small playground. The Project shall also include a paved and lighted pedestrian and bicycle path across the northern portion of the Property. The Project shall include the landscaping, seating areas, playground, and paved and lighted pedestrian and bicycle plan as shown on the Plans and as supplemented by Exhibits 24B and 48A.

4. The Applicant shall be permitted to provide multiple buildings on a single record lot, pursuant to the special exception authorized by 11 DCMR § 2516, except that the Applicant is granted flexibility from 11 DCMR §§ 2516.5(b), 2516.6(a), and 2516.6(b).

5. The Applicant shall also have design flexibility with the PUD in the following areas:

   a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configurations of the buildings;

   b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of materials;

   c. To make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit;

   d. To vary the location and arrangement of parking spaces, so long as the number of spaces is not reduced; and

   e. To vary the final selection of landscaping materials to provide equivalent plant material, depending on market availability.

B. Public Benefits

1. **Affordable Housing**.

   a. **For the life of the Project**, the Applicant shall devote 10% of the residential gross floor area of the project to four IZ units, two of which, comprising five percent of the residential gross floor area of the project, shall be set aside for "eligible moderate-income households" as defined at 11 DCMR 2601 and two of which, also comprising five percent of the residential gross floor area of the project, shall be set aside for "eligible low-income households" as defined at 11 DCMR 2601;[1]

[1] Although this project must comply with IZ, and therefore a condition to that effect is normally unnecessary, a condition is being added here because such compliance is deemed a public benefit in view of the change from CM-1 zoning. Nevertheless, nothing in this Order shall be construed as permitting anything less than full compliance with IZ as determined by the Zoning Administrator.

b. **For the life of the Project**, the Applicant shall devote one dwelling consisting of 2,205 feet of gross floor area to be set aside as affordable for eligible moderate income households earning up to 80% of the AMI;[2] and

c. The full details of the Applicant's affordable housing requirement are set forth in Figure 1:

Figure 1

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	89,124 sf GFA (100%)	40	Market, IZ, Affordable	N/A	N/A
Market Rate	78,099 sf GFA (87.5%)	35	Market Rate	N/A	N/A
IZ	4,410 sf GFA (5%)	2	50% AMI	For the life of the project	Ownership
IZ	4,410 sf GFA (5%)	2	80% AMI	For the life of the project	Ownership
Affordable/Non-IZ	2,205 sf GFA (2.5%)	1	80% AMI	For the life of the project	Ownership

2. Environmental Benefits.

a. **For the life of the Project**, the Applicant shall (i) preserve the Property's existing slopes and vegetation; (ii) provide a soil composition that allows for the infiltration of trench to discharge storm water directly to the water table; (iii) provide 1.68 acres of pervious surface area; (iv) provide water-conserving Energy Star fixtures, appliances, and lighting in each of the row dwellings; and (v) provide on-site stormwater runoff controls generally as shown on Sheet C9 included at Exhibit 6A of the record and Exhibit 48A of the record; and

b. **For the first two years after the issuance of a certificate of occupancy for the Project**, the Applicant shall provide storm water control maintenance for the Emerson Park development to the north of the Property.

[2] Since this is non-IZ affordable housing, the provisions of §§ 2409.10 and 2409.11 shall apply.

3. Transportation Benefits. **For the life of the Project**, the Applicant shall provide a landscaped and lighted Pedestrian Path for pedestrians and bicycles, as shown on Sheets L01-02 and C03-04 of Exhibit 6A2; Sheet C-12 of Exhibit 16A; Exhibit 24B; and Sheet C-14 of Exhibit 48A. The Applicant shall also implement sidewalk improvements, which shall include four new crosswalks, seven new or modified curb ramps, and one missing sidewalk link along 6th Place, Emerson Street, and Gallatin Street to the north of the Property, in coordination with DDOT.

4. Uses of Special Value to the Neighborhood.

   a. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall contribute $35,000 to the University of the District of Columbia Foundation, Inc. with a specific earmark for the renovation of the Bertie Backus campus on South Dakota Avenue, N.E., which shall also include provision by the University for use of space by ANC 5A and the community represented by ANC 5A08 within the Backus Campus for at least 60 occasions over a two-year period;

   b. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall contribute $12,500 to help establish the FTM, which will consist of a board acceptable to the ANC Single Member District Commissioner 5A08. In establishing FTM, the ANC 5A08 Commissioner, a resident of Totten Mews, a resident of Emerson Park, a resident of 6th Street, a resident of 6th Place, a resident of 7th Street, and a resident of Emerson Street will serve to issue block grants (via grant application) to the community, which will include support for educational projects, community athletic activities, training, community clean ups, beautifications, and events. A certificate of occupancy shall not be issued before the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are in process of being provided;

   c. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall contribute $5,000 to the North Michigan Park Civic Association, which will provide support over the following five years to their annual Scholarship Program and Back to School Supply Give-A-Way. A certificate of occupancy shall not be issued before the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are in process of being provided;

d. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall contribute $10,000 to the Capital Area Food Bank to service providers operating within Ward 5 and within ANC 5A specifically. A certificate of occupancy shall not be issued before the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are in process of being provided;

e. **Prior to the commencement of demolition activities for the Project,** the Applicant shall initiate 10 pre-construction inspections and establish a vibration monitoring plan consistent with the terms of the Construction Management Plan included at Exhibit 48C;

f. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall comply with the terms of the escrow agreement attached to Exhibit 64 of the record. A Certificate of Occupancy shall not be issued before the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided. If the escrow funds are used for scholarships and school supplies, the Applicant shall provide proof that they have been, or are being used, in a manner consistent with Condition B.4.c of this Order; and

g. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall engage a vibration consultant, at a cost not to exceed $4,000, to work directly with neighboring residents within SMD 5A08, to undertake a baseline vibration monitoring study related to rail traffic, as detailed in Exhibit 60. A Certificate of Occupancy shall not be issued before the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided.

C. **Miscellaneous**

1. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

2. The change of zoning from the R-2 and FT/C-M-1 Zone Districts to the R-4 Zone District shall be effective upon the recordation of the covenant discussed in Condition No. C.1, pursuant to 11 DCMR § 3028.9.

3. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

4. The PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 15-04. Within such time, an application must be filed for a building permit for the construction of the Project as specified in 11 DCMR § 2409.1. Construction of the Project must commence within three years of the effective date of Z.C. Order No. 15-04.

5. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identification or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On September 21, 2015, upon a motion by Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the application at the conclusion of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On December 14, 2015, upon the motion of Vice Chairperson Cohen, as seconded by Chairman Hood, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on January 15, 2016.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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RECORDING FEES	$25.00
SURCHARGE	$6.50

THIS IS TO CERTIFY THAT THIS IS A TRUE COPY

Ida Williams

Recorder of Deeds, D.C. OCT 14 2016