

**MEMORANDUM OF UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING is entered into as of the 27<sup>th</sup> day of March, 2019 by and between the undersigned Signatory Parties.

WITNESSETH:

WHEREAS, As You Like It LLC (“Owner”), is the owner of property located on Lot 52 in Square 498 at 501 I Street SW (“Property”);

WHEREAS, through the Owner, Erkiletian Development Company (“Developer”) and Shakespeare Theatre Company (“STC”) have an agreement to develop the Property;

WHEREAS, Developer and STC seek approval from the D.C. Zoning Commission (“Commission”) in Z.C. Case No. 17-21 (“Case”) for a Planned Unit Development and related amendment to the Zoning Map (“Application”) in order to permit the redevelopment of the Property with a new building that will contain approximately 64 for-sale residential units (“Residential Component”) as well as space devoted to office space, rehearsal space, education space, a costume shop, approximately 18 actor housing units, and approximately 18 beds for fellows (“STC Component”) (collectively, the “Proposed Development”);

WHEREAS, the Proposed Development consists of two buildings, the 4-story “Main Building”, which fronts on I Street SW and 6<sup>th</sup> Street SW, and the 5-story “Annex Building”, which is located at the rear of the Property;

WHEREAS, vehicular access to the Proposed Development is proposed as a driveway located on 6<sup>th</sup> Street SW, which extends to the rear of the Main Building and the front of the Annex as a private alley (“Alley”);

WHEREAS, the primary pedestrian entrances to the Main Building are located on I Street SW and the primary entrance to the Annex is located off the Alley;

WHEREAS, the Proposed Development upon obtaining its Certificate of Occupancy will become the "Completed Development";

WHEREAS, the Residential Component of the Completed Development will include a Condominium Association (the “Condo Association”), which will assume some of Developer’s responsibilities for the ongoing management of the Residential Component;

WHEREAS, United Neighbors of Southwest (“UNSW”), an unincorporated group of homeowners whose properties are proximate to the Proposed Development comprised of the persons identified on the party status application filed in the record of the Case as Exhibit 21B, as amended by Exhibit 44 (together, “UNSW Revised Party Status Application”), hereby seeks to address issues and concerns regarding the Proposed Development;

WHEREAS, UNSW, Developer, and STC have met regularly over a number of months to discuss these issues and concerns, and as a result of these discussions have reached a mutual understanding and resolution on many of the material issues and concerns; and

WHEREAS, UNSW, Owner, STC, and Developer (together, “Signatory Parties”) seek to enter into the MEMORANDUM OF UNDERSTANDING (the “MOU”) to confirm understandings and agreements between them concerning the design, construction, and operation of the Proposed Development and the operations of the Completed Development;

NOW, THEREFORE, in consideration of the foregoing recitals (which are a material part hereof) and in consideration of the mutual promises of the Signatory Parties hereto and of other good and valuable consideration, it is agreed as follows:

**PART I – PROPOSED USES AND BUILDING DESIGN**

1) USES

- a) Residential Component. For the life of the Proposed Development, Developer will reserve the Residential Component as for-sale units. During the initial unit sales effort and to the extent that it is economically feasible at currently projected average sales prices of \$720,000 per unit, the Developer shall impose leasing and resale restrictions to insure that a minimum of 90 percent of the Residential Component units of the Completed Development are sold to purchasers who intend to occupy the units as their primary residence(s). The future condominium documents and bylaws shall include a provision that no less than 80 percent of condominium units in the Residential Component of the Completed Development shall be owner-occupied at any time. Rentals through Airbnb or other such short term rentals shall be prohibited in the condominium documents and bylaws.
  - i) Developer will set aside a minimum of three 3-bedroom units, one 2-bedroom unit, and one junior 1-bedroom unit as affordable housing for households earning up to 80% of the Median Family Income.
  - ii) Developer will work with the D.C. Department of Housing and Community Development to include teachers and other staff at public schools within ANC 6D as a part of the marketing efforts for the Proposed Development’s affordable housing.
- b) STC Component.
  - i) For a minimum period of twenty years beginning from the date of the issuance of the first certificate of occupancy for the Proposed Development, STC shall cause the nonresidential portion of the STC Component to be reserved for use by STC as office, rehearsal, and education uses as well as a costume shop.

- (1) STC shall not cause or permit the STC Component to be used for retail activity, other than customary and incidental sales related to the mission of STC or another institutional user.
  - (2) STC shall not cause or permit the STC Component to be used for set fabrication activity.
  - (3) STC shall not cause or permit the STC Component to include a black-box theatre or similar dedicated performance space, though the rehearsal and educational spaces may be used for occasional performances related to STC's other programs.
- ii) For a minimum period of twenty years beginning from the date of the issuance of the first certificate of occupancy for the Proposed Development, STC shall cause the housing portion of the STC Component ("STC Housing Component") to be reserved as housing for STC actors, fellows, and other staff. STC shall be permitted to also make available the STC Housing Component as housing for other arts organizations. The STC Housing Component may be used for short term housing for the above persons and organizations; notwithstanding the foregoing, STC shall not cause or permit the STC Housing Component to include rentals through Airbnb or other such short term rentals.
  - iii) During the initial twenty-year period described above, STC shall be permitted to sell all or a portion of the STC Housing Component, but in the event that STC sells such component during this period, the STC Housing Component shall only be sold for use as for-sale housing consistent with Section 1(a) above and such units and any related condominium association shall be subject in all respects to the terms and conditions of this MOU.
  - iv) In the event that STC sells or leases all or a portion of the STC Component of the Completed Development after the expiration of the twenty-year period, STC shall first cause the purchaser(s) and/or lessee(s) to enter into a written agreement whereby the purchaser(s) and/or lessee(s) acknowledges and agrees that the STC Component will remain as a mix of office, arts/design/creation, educational, housing, or similar institutional uses.

## 2) BUILDING DESIGN

- a) The Signatory Parties hereby agree that the Proposed Development consists of the plans dated March 8, 2019 and included in the record of the Case as Exhibits 39E1 - 39E9 ("Approved Plans"). The Parties hereby acknowledge and agree that page 1.3 of the Approved Plans (the Inclusionary Zoning summary) will be updated to reflect the current

affordable housing program set forth in Section (1)(a)(i) of this MOU. The Approved Plans reflect the following design changes made in response to UNSW concerns:

- i) The removal of habitable units from the penthouse of the Main Building.
  - ii) The one-to-one setback of the 4<sup>th</sup> floor of the Main Building along 6<sup>th</sup> Street.
  - iii) The incorporation of contextual design features into the 6<sup>th</sup> Street and rear façade of the Main Building as well as all facades of the Annex Building, including the development of a “townhouse rhythm” with ground-floor walk-out units, the use of brick material, punched windows, and a reduction in the amount of glass in the tower element at the corner of 6<sup>th</sup> and I Streets, as shown in the Approved Plans.
  - iv) The incorporation of a low-reflectance glass along the 6<sup>th</sup> Street façade of the Main Building.
  - v) The incorporation of a streetscape layout along 6<sup>th</sup> Street that is consistent with the rest of the streetscape layout along 6<sup>th</sup> Street between G Street SW and I Street SW; namely, a sidewalk located at the curb to allow for additional green space in front of the Main Building’s ground-level walkout units (“6<sup>th</sup> Street Streetscape”), with a setback from the sidewalk equal to that of the townhouses on 6<sup>th</sup> Street.
  - vi) The incorporation of shade trees to be planted along 6<sup>th</sup> Street within the planted area of public space in front of the Main Building, and along I Street within the tree box portion of public space in front of the Main Building. The parties agree that Developer and STC shall advocate for flowering trees (i.e. cherry trees) along 6<sup>th</sup> Street, with the understanding that the final selection and approval shall be within DDOT’s discretion.
  - vii) The relocation of bike racks in public space on I Street rather than 6<sup>th</sup> Street.
- b) The Signatory Parties acknowledge and agree that the approval of the 6<sup>th</sup> Street Streetscape deviates from DDOT’s standard design and will require review and approval by the District of Columbia Public Space Committee (“PSC”). The Signatory Parties agree to work collaboratively with ANC 6D and District of Columbia officials to secure approval for the 6<sup>th</sup> Street Streetscape.
- c) Developer and STC agree to notify UNSW of any modifications to the Approved Plans prior to the filing of any request for modification. UNSW shall have the right to object to any such modification or alteration, but the Signatory Parties agree to work cooperatively and collegially to resolve UNSW’s objection.

- i) For the avoidance of doubt, the Signatory Parties agree that during the pendency of the Case and the related application to the PSC, and during any appeals of either, such notice shall be provided as promptly as is reasonably practical. Following the PUD and PSC concept approvals, Developer and STC shall provide notice of modification at least 45 days in advance of filing.

**PART II – PUBLIC BENEFITS**

**3) BUMPOUTS.**

- a) Prior to the issuance of a certificate of occupancy for the Proposed Development and subject to approval by DDOT, Developer agrees to design and install “bumpouts” along 6<sup>th</sup> Street between G Street and I Street as shown on the plan prepared by Bohler Engineering entitled “6<sup>th</sup> Street Concept Plan” dated March 8, 2019 and attached as Exhibit A, to slow vehicular traffic, discourage “cut-through” traffic, and improve pedestrian safety crossing 6<sup>th</sup> Street.
- b) The Signatory Parties acknowledge that the installation of the bumpouts is anticipated to reduce the total amount of on-street parking along 6<sup>th</sup> Street by approximately 1 parking space.

**4) PUBLIC ART**

- a) Prior to the issuance of a certificate of occupancy for the Proposed Development and for so long as STC is located within the Completed Development, STC shall develop and install the “art panels” along I Street as shown on the Approved Plans subject to approval by the PSC.
- b) Following the issuance of a certificate of occupancy for the Proposed Development and for a minimum period of twenty years thereafter, STC shall actively maintain a rotating display of STC costumes and props within the residential lobby of the Completed Development at the intersection of 6<sup>th</sup> and I Streets SW.

**5) WATERFRONT VILLAGE**

- a) Following the issuance of the final order approving the PUD and the adjudication of any appeals or expiration of the appeals period and for a minimum of twenty years, STC will partner with the Waterfront Village to provide access to STC performances. Twice a year, STC will provide the Village with a minimum of thirty tickets to an STC

performance, make available transportation to and from the performance, and provide pre- and/or post-show discussions with STC education staff, artistic staff, or actors<sup>1</sup>.

6) AMIDON-BOWEN ELEMENTARY SCHOOL

- a) The Signatory Parties agree that the Developer and STC are negotiating benefits with the Parent Teacher Associations at Amidon-Bowen Elementary School.
- b) The Signatory Parties agree that the Developer and STC will provide benefits to Amidon-Bowen Elementary School beyond those included in sections 7 and 8 below.

7) SOUTHWEST NIGHT STC PERFORMANCES

- a) Following the issuance of the final order approving the PUD and the adjudication of any appeals or expiration of the appeals period and for a minimum of twenty years, STC will create a “Southwest Neighbors” performance for each STC show (i.e. a minimum of six times per year), for which all Southwest residents will be able to purchase deeply discounted tickets (no greater than 33% of regular price). STC shall designate a staff person to be responsible for working with ANC 6D and the Amidon-Bowen and Jefferson Academy PTAs to publicize the event.

8) ADDITIONAL BENEFITS FROM THE 2014 SOUTHWEST NEIGHBORHOOD ASSEMBLY AGREEMENT (“SWNA AGREEMENT”)

- a) In the 2014 SWNA Agreement, STC agreed to provide certain benefits and amenities immediately and others upon approval of the PUD and/or completion of the Proposed Development. These benefits are restated, elaborated, and updated below.
- b) Until the issuance of the final order approving the PUD and the adjudication of any appeals or expiration of the appeals period, STC shall provide or continue to provide the following benefits:
  - i) Participate in and support the Annual SW ArtsFest, assuming it is held.
  - ii) Reserve four (4) gift certificates for tickets, adult Master Acting Classes, or Camp Shakespeare annually for the Amidon-Bowen PTA and the Jefferson Academy PTA, for PTA special events and raffles, which will be provided upon appropriate request made by organizers of such events to STC and subject to availability (i.e. 2 gift certificates for each program per PTA, annually).

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<sup>1</sup> The pre- and post-show event will be similar to the current STC “Bookends” or “Asides” program.

- iii) Coordinate with the Ward 6 Councilmember's office to distribute free tickets to Ward 6 Night Free for All performances at Sidney Harman Hall. Provide tickets for up to 200 residents of Ward 6 annually.
  - iv) Advertise in the *Southwester* newspaper with at least 4 one-half page advertisements per year (or the equivalent thereof).
- c) Following the issuance of the final order approving the PUD and the adjudication of any appeals or expiration of the appeals period and for a minimum period of twenty years, STC shall provide the following benefits:
- i) Make available "District Shakespeare" events and activities to Jefferson Academy Middle School, including at least 100 tickets for one performance annually, transportation to and from the performance, pre-show workshops, and professional development for teachers.
  - ii) Provide invitations to Jefferson Academy and Amidon-Bowen Elementary School to STC's performances of *A Mini Midsummer Night's Dream* and *The Tiny Tempest*.
  - iii) Invite classes from Amidon-Bowen and Jefferson, as well as community associations, for annual tours of the Lansburgh Theatre, Sidney Harman Hall, and the Proposed Development (once completed).
  - iv) Reserve four (4) gift certificates for tickets, adult Master Acting Classes, or Camp Shakespeare annually for the Amidon-Bowen PTA and the Jefferson Academy PTA, for PTA special events and raffles, which will be provided upon appropriate request made by organizers of such events to STC and subject to availability (i.e. 2 gift certificates for each program per PTA, annually).
  - v) Coordinate with the Ward 6 Councilmember's office to distribute free tickets to Ward 6 Night Free for All performances at Sidney Harman Hall. Provide tickets for up to 200 residents of Ward 6 annually.
  - vi) Provide Southwest Community educators priority invitations to Teacher Appreciation Night at Sidney Harman Hall.
  - vii) Make available at least 10 discounted tuition/scholarship spots for Adult Master Acting Classes and Camp Shakespeare for members of the Southwest Community who apply for such discounted tuition by the advertised deadline for same;
  - viii) Reserve free tickets, annually, to the Academy of Classical Acting Night showcase performances for the Southwest Community.

- ix) An STC representative will serve on the Duck Pond Advisory Group and, based on the direction of the Advisory Group, STC shall assist and participate in programming of arts events at the Duck Pond.
  - x) Advertise in the Southwester newspaper with at least 4 one-half page advertisements per year (or the equivalent thereof) for a minimum period of 4 years.
  - xi) Provide an annual monetary contribution of \$2,500 to the SW ArtsFest for a minimum period of 5 years. In the event that the SW ArtsFest is not held, the contribution shall be reallocated to the Southwest Business Improvement District (SW BID) for improvements to or programming at the Greater Duck Pond/Arts Walk.
- d) Following the issuance of a certificate of occupancy for the Proposed Development, STC shall provide the following benefits:
- i) Provide an Open House at the Completed Development for the Southwest community (including evening tours of the costume shop and rehearsal spaces, with activities for families).
  - ii) When such spaces are not in use by STC, STC shall make available assembly spaces and/or conference rooms, education space, or rehearsal space in the Completed Development to organizations of the Southwest community during reasonable weekday evening and weekend daytime hours for community meetings with no room rental charges, provided STC staff is available to open and close the space during the requested meeting time.
- e) With respect to the remainder of the SWNA Agreement, the Signatory Parties acknowledge that the Developer and STC are no longer seeking a rezoning to the SP-2 Zone or maximum FAR of 4.5, and accordingly 70 parking spaces are no longer included at the Proposed Development. The Signatory Parties acknowledge and agree that the Completed Development will provide 55 total parking spaces as described below.

### **PART III – MITIGATION MEASURES**

All provisions included in Sections (9) through (14) below shall be for the life of the Completed Development.

#### **9) TRASH**

- a) The Condo Association and STC shall ensure that the Completed Development will utilize a vendor that undertakes all trash and recycling pickup no more than twice a week.



- b) The Condo Association and STC shall ensure that trash and recycling collection hours will be limited to 10:00 AM to 4:00 PM, Monday through Friday. There will be no trash or recycling collection on weekends.
- c) The Condo Association and STC shall ensure that trash and recycling collection will take place within the Alley rather than in the building's loading dock.

**10) DELIVERIES AND LOADING**

- a) STC shall ensure that the Completed Development will reserve one space within the garage to accommodate the van used for costume shop deliveries.
- b) The Condo Association and STC shall ensure that all other deliveries and moving activity will occur within the loading dock. Deliveries will be limited to 9:00 AM to 5:00 PM. Except in case of an emergency, service vehicles shall be limited to 7:00 AM to 8:00 PM.
- c) The Condo Association and STC shall ensure that all service, delivery, and moving trucks utilizing the loading dock will be limited to 30-foot box trucks or smaller vehicles.

**11) NOISE**

- a) The Condo Association shall ensure that access to the rooftop terrace of the Completed Development will be limited to 7:00 AM to 10:00 PM on Sunday through Thursday and 7:00 AM to 11:00 PM on Friday and Saturday.
- b) No amplified music through a loudspeaker will be permitted on the rooftop at any time.

**12) PARKING**

- a) Developer and STC shall ensure that the Completed Development will include 40 on-site parking spaces, including 25 parking spaces for the condominium units and 15 spaces for STC.
- b) STC will ensure that STC staff will also have access to a minimum of 15 off-site parking spaces for daytime parking use by STC, either at Arena Stage or at a similar nearby garage.
- c) STC will notify all guests attending classes, workshops, or events at the site that street parking is extremely limited, and STC will provide information on transit alternatives as well as on nearby parking garages.
- d) Developer will include a provision in all condominium documents advising potential purchasers that the properties will not be eligible for participation in the Residential Parking Permit ("RPP") program.

13) CURBSIDE MANAGEMENT

- a) Developer and STC will work with DDOT to implement the curbside management plan prepared by Gorove/Slade Associates entitled “Proposed Curbside Management attached as Exhibit B, which will accommodate STC’s building entrance and summer camp pickup/drop off needs without reducing the number of RPP spaces on 6<sup>th</sup> Street and without reducing the number of RPP spaces on I Street by more than two spaces.

14) PETS

- a) Developer shall incorporate a “pet relief area” into the Proposed Development to be located on the roof of the Proposed Development.
- b) Developer shall ensure that the condominium documents and by-laws require maintenance of the "pet relief area" in the Completed Development.

15) LITTER AND MAINTENANCE

- a) Upon execution of this MOU and prior to the commencement of construction of the Proposed Development, Developer shall:
  - i) Increase its patrols and site visits from twice a week to three times a week.
  - ii) Ensure that the sidewalks adjacent to the Property are shoveled and/or treated the morning after any snow or ice event.
  - iii) Provide the name and contact number of its property management person responsible for the Property to UNSW and to ANC 6D.

16) CONSTRUCTION MANAGEMENT

- a) Developer will adhere to the Construction Management Plan attached as Exhibit C.

**PART IV – OTHER PROVISIONS**

17) COMMUNICATION/REPORTING

- a) Report Point for Neighborhood Comment
  - i) STC will establish and maintain a point of contact to ANC 6D, UNSW, Amidon-Bowen, and Jefferson Academy.
  - ii) The Condo Association will establish and maintain a point of contact to ANC 6D, UNSW, Amidon-Bowen, and Jefferson Academy.

- b) For a minimum of twenty years and for so long as STC is located within the Completed Development, STC shall provide ANC 6D with a written, publicly available annual report with respect to the implementation of the ongoing programs and initiatives described in Sections 4 – 8 above. STC shall continue to evaluate and develop meaningful ways to enhance or supplement these programs based on suggestions and feedback received from ANC 6D, UNSW, the Amidon-Bowen and Jefferson Academy PTAs, and other stakeholders, and STC shall be permitted to modify these programs only as necessary or appropriate to increase efficacy.

**18) NO OPPOSITION TO THE PROPOSED DEVELOPMENT**

- a) Subject to the provisions of this MOU and adherence to those provisions:
  - i) Prior to the beginning of the public hearing and subject to section 23 below, UNSW shall withdraw as a party in opposition to the Proposed Development in the Case. UNSW shall take no action to oppose or object, directly or indirectly, to the Proposed Development at the Commission as well as in any related proceedings before the PSC for concept approval of the Proposed Development, or before ANC 6D to review and report on the Proposed Development.
  - ii) UNSW shall not directly or indirectly oppose or participate in or assist in any opposition to any application, administrative proceeding, or District of Columbia agency action related to the Proposed Development including any challenge to a building permit, certificate of occupancy, public space permit, or other entitlement issued by a District of Columbia agency. Furthermore, UNSW shall not participate in any action contesting any Proposed Development entitlement, including but not limited to, any appeal to the Office of Administrative Hearings, complaint before the D.C. Superior Court, and any appeal to the D.C. Court of Appeals.
  - iii) The Signatory Parties acknowledge and agree that opposition or objection by one or more of the persons identified on the UNSW Revised Party Status Application shall not constitute opposition or objection by UNSW and that UNSW shall not be deemed to be in violation of the provisions of this MOU by virtue of any such opposition or objection.
  - iv) UNSW shall withdraw any complaints or allegations regarding the joint venture between STC and Developer (i.e. as set forth in the letter from UNSW's counsel to the D.C. Attorney General dated February 16, 2018) and shall take no action to cause or support any further inquiry regarding this matter.

- b) UNSW will, upon reasonable request, provide written testimony or oral testimony, for the “6<sup>th</sup> Street Streetscape” design described in Section 2(b) above, in proceedings before the PSC.
- c) Developer and STC shall request the incorporation of the provisions of this MOU as conditions of approval of the Commission’s order on the Proposed Development.
- d) Developer shall incorporate the MOU into the future condominium documents and by-laws of the Residential Component.

**19) AUTHORITY**

- a) UNSW hereby represents that Peter Eicher has the authority to sign on behalf of UNSW and bind UNSW to the provisions of this MOU.
- b) Owner hereby represents that Stefanie Erkiletian has the authority to sign on behalf of Owner and bind Owner to the provisions of this MOU.
- c) Developer hereby represents that Stefanie Erkiletian has the authority to sign on behalf of Developer and bind Developer to the provisions of this MOU.
- d) STC hereby represents that Chris Jennings has the authority to sign on behalf of STC and bind STC to the provisions of the MOU. STC further confirms that the STC board of directors has approved the Proposed Development, including any related change to STC’s financial contribution.

**20) MODIFICATION**

- a) No modification of this MOU shall be valid unless made in writing and duly executed by authorized representatives of the Signatory Parties. Developer may transfer or assign this MOU to an affiliate of Developer and to other successors and assigns. UNSW may transfer or assign this MOU to other successors and assigns. This MOU is binding upon, and inures to the benefit of, the Signatory Parties and their respective successors and assigns.

**21) COUNTERPARTS**

- a) This MOU may be executed in counterparts and via original or facsimile signature.

**22) NO THIRD PARTY BENEFICIARY**

- a) This MOU is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person or entity as a third party beneficiary.

23) EFFECTIVENESS AND TIMING

- a) Aside from the commitments of the Signatory Parties that are required in connection with the PUD approvals process, and except as otherwise stated in previous sections, the commitments of this MOU shall become effective after the expiration of the appeals period or the adjudication of any appeals of the final order approving the PUD.
- b) Following the execution of this MOU, Developer and STC shall submit a copy of the signed MOU to the Commission and, as noted in Section 18(c) of this MOU, request that the Commission adopt the terms of the MOU as conditions of the final written order approving the PUD.
- c) If the Commission does not approve the PUD and related documents as set out in the case documents for the Case as of March 27, 2019, including this MOU, then this MOU will lapse and the Signatory Parties will not be bound by the MOU, but will return to negotiations aimed at a mutual agreement.
- d) The PSC is scheduled to consider the Proposed Development at its March 28, 2019 public meeting, which is the same day as and prior to the Zoning Commission hearing on the evening of March 28.
  - i) If the PSC approves the 6<sup>th</sup> Street streetscape as shown in the Approved Plans and detailed in Section 2(a)(v) above prior to the March 28, 2019 Commission hearing, UNSW shall withdraw its opposition to the PUD as a preliminary matter to the hearing proceedings on March 28.
  - ii) If the PSC denies the 6<sup>th</sup> Street streetscape as shown in the Approved Plans and detailed in Section 2(a)(v) above prior to the March 28, 2019 Commission hearing, this MOU will lapse and the Developer shall request a postponement of the Commission hearing, in order to enable resumption of negotiations with UNSW aimed at a new agreement.
  - iii) If the PSC requests additional information or postpones a decision prior to the March 28, 2019 Commission hearing, but does not deny the Application, the Developer shall request a postponement of the Zoning Commission hearing in order to allow time for the PSC to vote on the streetscape design, but this MOU will otherwise remain in effect. If the PSC subsequently votes to approve the streetscape design, UNSW will submit a letter to the Commission withdrawing its opposition to the PUD or withdraw its opposition to the PUD as a preliminary matter to the rescheduled zoning hearing, with the mechanism for withdrawal determined based on the timing of the PSC's decision relative to the Commission's hearing. If the PSC subsequently votes to disapprove or modify the 6th Street streetscape design, then

this MOU will lapse and the Signatory Parties will not be bound by the MOU, but will return to negotiations aimed at a mutual agreement.

[Signatures on following page]

**EXECUTION VERSION**

IN WITNESS WHEREOF, the Signatory Parties hereto have executed this Memorandum of Understanding as of the day and year 27<sup>th</sup> day of March, 2019.

AGREED AND ACCEPTED:

By:  \_\_\_\_\_ Date: 3/27/2019

Community / Party: AS YOU LIKE IT LLC / OWNER

Its: MANAGER

**EXECUTION VERSION**

IN WITNESS WHEREOF, the Signatory Parties hereto have executed this Memorandum of Understanding as of the day and year 27<sup>th</sup> day of March, 2019.

AGREED AND ACCEPTED:

By:  Date: 3/27/2019

Community / Party: ERKILETIAN DEVELOPMENT COMPANY / DEVELOPER

Its: PRESIDENT



IN WITNESS WHEREOF, the Signatory Parties hereto have executed this Memorandum of Understanding as of the day and year 27<sup>th</sup> day of March, 2019.

AGREED AND ACCEPTED:

By: Chris Jennings Date: 3/27/19

Community / Party: Shakespeare Theatre

Its: Executive Director

IN WITNESS WHEREOF, the Signatory Parties hereto have executed this Memorandum of Understanding as of the day and year 27<sup>th</sup> day of March, 2019.

AGREED AND ACCEPTED:

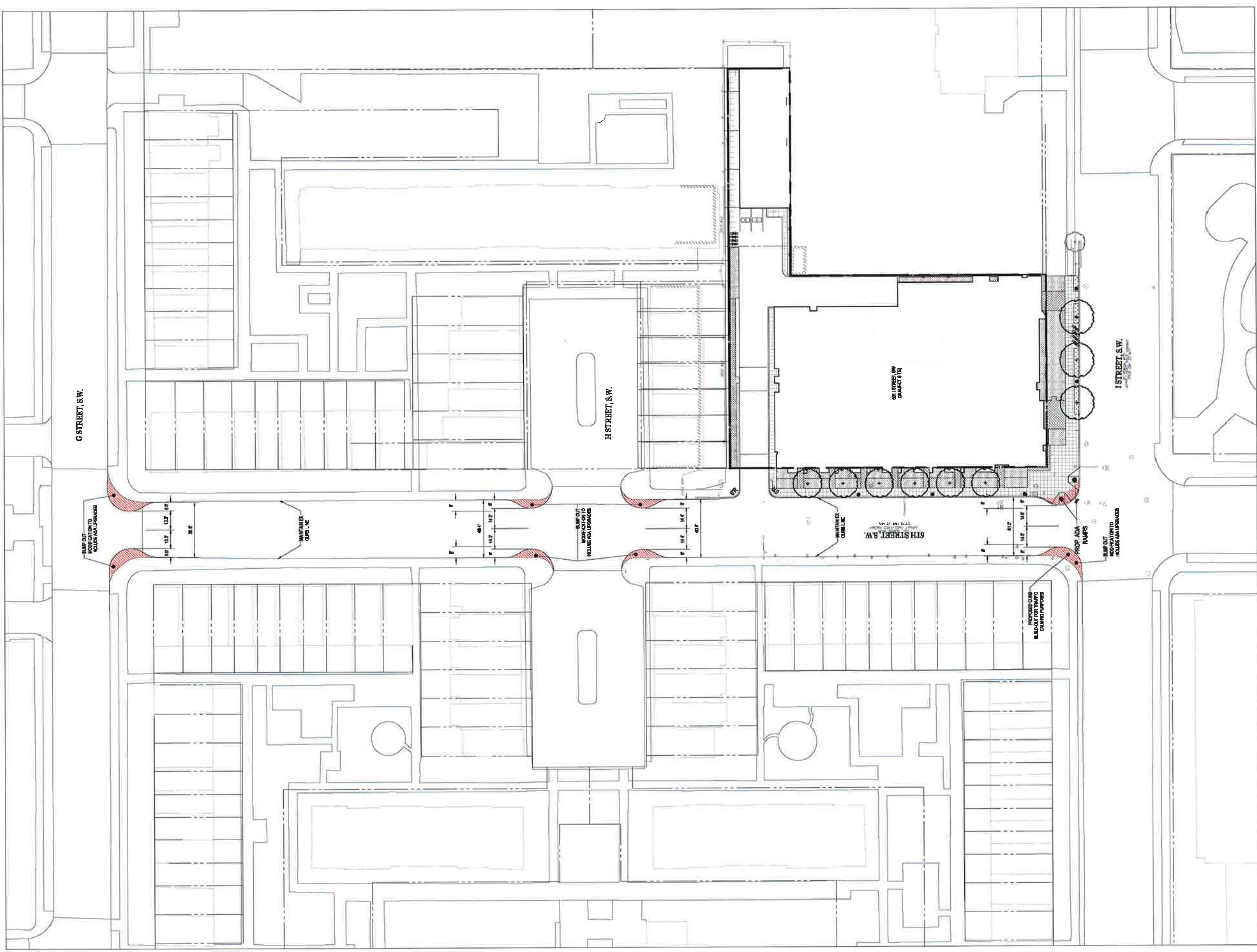
By:  Date: 3/27/2019

Community / Party: UNITED NEIGHBORS OF SOUTHWEST

Its: AUTHORIZED SIGNATORY

**Exhibit A**

**Bumpouts Exhibit**



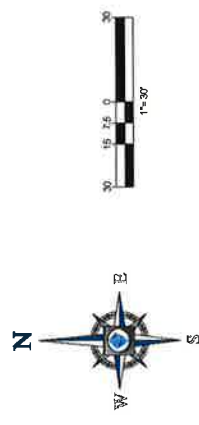
EXISTING PARKING = APPROXIMATELY 46 SPACES  
 PARKING TO REMAIN = APPROXIMATELY 45 SPACES  
 NET SPACE LOSS = 1 SPACES



1331 PENNSYLVANIA AVE. NW, STE. 1250 WASHINGTON, DC 20004  
 PHONE: (202) 544-4700 FAX: (202) 544-4570

THE INFORMATION CONTAINED IN THIS PLAN IS PRELIMINARY AND SHALL BE SUBJECT TO REVISIONS FROM ANY REVISIONS TO THE CONTRACT DOCUMENTS. THE CONTRACT DOCUMENTS SHALL BE THE FINAL AND BINDING DOCUMENTS. PLANS SHALL BE USED FOR CONSTRUCTION PURPOSES. © BOHLER WASHINGTON, D.C.

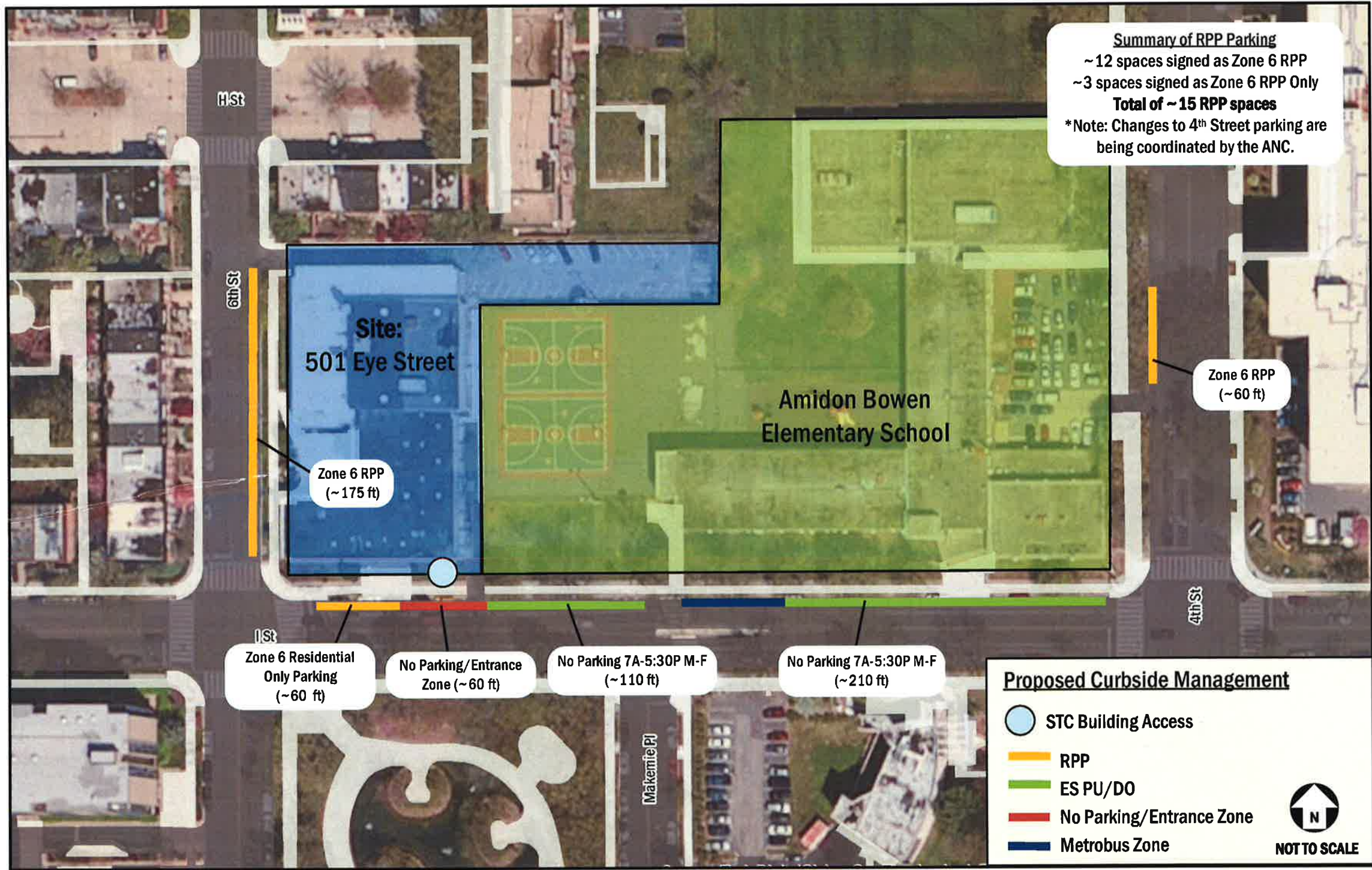
# 6TH STREET CONCEPT PLAN



SHEET C-11

**Exhibit B**

**Curbside Management Plan**



**Exhibit C**

**Construction Management Plan**

## Exhibit C

### CONSTRUCTION MANAGEMENT PLAN

Erkiletian Development Company (the “**Developer**”) proposes the following elements of this Construction Management Plan (“**CMP**”) to minimize any impacts from construction of the mixed-use building with below-grade parking and uses (the “**Project**”) that it proposes to develop at 501 I Street SW (the “**Property**”). The Developer shall be bound by the terms of this CMP, which will be incorporated into the Memorandum of Understanding with the United Neighbors of Southwest (“**UNSW**”) dated March 27, 2019 and also incorporated as a condition to the PUD approval for the Project, and the Developer’s general contractor will be bound to adhere to the requirements in this CMP. The final CMP will be used for securing public space permits and other District agency approvals and will be reviewed with Advisory Neighborhood Commission 6D (the “**ANC**”) prior to implementation.

#### **A. Community Engagement/Outreach**

1. **Anticipated Dates**: The Developer anticipates that construction of the Project will commence in the second quarter of 2020 and last until the third quarter of 2021, for a duration of approximately 18 months, provided that all such construction dates and durations are estimates only and may be impacted by conditions found in the field or unforeseen delays prior to or during construction of the Project.

2. **Project-Specific Liaison and Outreach**: No less than thirty (30) days prior to the commencement of construction on the Project, the Developer shall provide notice to the ANC of the name and contact information for the designated community liaison of (a) the Developer for the Project (“**Developer Liaison**”) and (b) the Project’s general contractor (“**GC Liaison**”). The Developer Liaison and GC Liaison will be the key contacts for interaction with members of the community regarding construction of the Project, and representatives of the ANC or members of the general public may contact either the Developer Liaison or the GC Liaison with questions or concerns about the Project’s construction. The Developer Liaison, GC Liaison, a member of the ANC or its designee, and one or more representatives of UNSW will form a committee (the “**Project Committee**”) to meet regularly (no less than quarterly) during the period of construction of the Project. In addition, the Developer will provide an emergency contact number that can be accessed 24-hours a day for construction concerns, and the Developer shall provide the ANC and UNSW with updates in the event the Construction Liaison or GC Liaison changes during the course of construction of the Project.

3. **Community Advisory Committee**: During the construction of the Project, the Developer Liaison will participate in any “Community Advisory Committee” (the “**Committee**”) that has been or may be formed to address and coordinate response to community concerns to construction-related activities within the boundaries of the ANC. The intent of the Committee is to provide a



forum for discussion and resolution of issues and concerns relating to (a) the construction of the Project not already addressed in this CMP and (b) coordination of construction of all projects within the ANC (with a focus on other projects in or near Waterfront Station). The Committee shall meet quarterly or on an as-needed basis, as determined by the Committee. Any member of the Committee may address immediate concerns regarding this Project with other Committee members at any time. Notice for the meetings will be posted as determined by the Committee. The Developer Liaison shall as appropriate coordinate with the Committee on the following topics of concern to the ANC:

- Rodent control
- Truck routes
- Pedestrian routes
- Construction fencing
- Lane and sidewalk closures
- Staging areas
- Site access
- After hours permits
- Dust control
- Lighting
- Site security
- Truck tire washes
- Other concerns that may arise

In the event concerns or questions raised by the ANC or members of the public to the Developer Liaison are generally applicable to construction of other projects within the ANC, the Developer Liaison shall apprise the Committee of such concerns or questions. It is understood and acknowledged that the Developer cannot compel any unrelated party performing construction within the ANC's boundaries to comply with this provision or any other provision of this CMP, and such third party's failure to attend any meeting or otherwise perform does not constitute a violation of the Developer hereunder.

**4. Initial Contact Information:** The following is the initial contact information for the Developer Liaison:

Julie Delgado, Owner's Representative  
Erkiletian Development Company, 2009 14<sup>th</sup> Street N, Suite One, Arlington, VA 22201  
Tel: (703) 671-4400  
Mobile: (703) 408-1465  
E-mail: [jdelgado@erkiletian.com](mailto:jdelgado@erkiletian.com)

## **B. Traffic and Parking**

**5. Traffic and Construction Control Plan:** Prior to commencement of construction of the Project, the Developer or its designee shall submit a traffic control plan to the District Department of Transportation (“**DDOT**”) for review and approval in accordance with its standards and guidelines. A copy of the approved traffic control plan will be provided to the ANC, the Project Committee, and the Community Advisory Committee at the same time that it is provided to DDOT.

During the period of construction of the Project (a) all ingress and egress to the Property for construction purposes will be from the construction entrance on 6<sup>th</sup> Street SW or potential second entrance on I Street SW; and (b) the Developer shall have the right to seek permission from DDOT to close at any time or times (i) the eastern sidewalk of 6<sup>th</sup> Street, SW and the parking lane immediately adjacent to the Project; and (ii) the northern sidewalk of I Street, SW and the parking lane immediately adjacent to the Project as shown on the Proposed Construction Management Plan Diagram (the “**CMP Diagram**”), dated March 20, 2019 and attached hereto as Exhibit A. Although curb lanes adjacent to the Property may be closed from time to time, the Developer shall not seek to close any vehicular and bicycle travel lanes adjacent to the Property during construction of the Project. In addition, the Developer will undertake the following efforts to help minimize the impact of the closure of the sidewalk and parking lanes on each street:

- a. Provide advance notice to UNSW and ANC 6D of any parking lane closures.
- b. Utilize a second construction entrance on I Street during initial excavation work, if practical and if permitted by DDOT.
- c. Fund a crossing guard at the crosswalk across I Street at Makemie Place during school hours
- d. Reduce the amount of parking lane occupied on 6<sup>th</sup> Street or I Street when practical. Less space may be needed at the start of construction, which would allow for some public parking to remain.
- e. Work with DDOT to ensure that the parking lane closure on 6<sup>th</sup> Street preserves sufficient width in the travel lane to allow for two-way emergency vehicle access through 6<sup>th</sup> Street.

**6. Truck Routes and Staging:** During construction of the Project, truck traffic is anticipated to approach traveling westbound on M Street, SW turning right onto 6<sup>th</sup> Street, SW traveling north, and turning right into the construction site from 6<sup>th</sup> Street, SW, all with the intention of ensuring such trucks make only right hand turns to access the Project once entering the neighborhood surrounding the Property. Project-related trucks shall exit the Property by turning left out of a temporary curb cut on 6<sup>th</sup> Street, SW and continue south on 6<sup>th</sup> Street, SW, turning right at I Street, SW. Trucks will be instructed not to use 6<sup>th</sup> Street SW north of the Property, G Street SW, or 7<sup>th</sup> Street, SW and not to pass in front of Amidon-Bowen Elementary School, and the Developer or its general contractor shall enforce such instructions. Flaggers shall be positioned at all truck entrances and exits when trucks are maneuvering into and out of the Property. The Developer shall

continue to work with the ANC and DDOT to determine the exact location for truck staging, but anticipates, and will request that DDOT allow, using the closed parking lane along I Street SW for truck staging. In any event, there will be no truck staging on H Street SW. In the event Developer is granted permission to use the curb lane along the Property's I Street frontage for truck staging, there will be no truck staging on 6<sup>th</sup> Street with the exception of the pump truck for pouring concrete, when it must be located on 6<sup>th</sup> Street to effectively access the site (that is, there will be no long-term staging of the pump truck on 6<sup>th</sup> Street when it is not in use). Concrete delivery trucks, as well as all other trucks, would still be staged on I Street. Any trucks staged on 6<sup>th</sup> Street must be staged only adjacent to the Proposed Development's property line.

**7. Construction Parking:** During the period of construction of the Project (a) should on-site parking be made available, any available parking on the Property shall be reserved for vehicles making deliveries or actively working on the Project or parking for full-time employees of the general contractor or other contractors, and other construction workers working on the Project shall either park at off-site public parking lots or utilize mass transit; (b) such general contractor shall supply all such construction workers with a list of public parking lots and shall coordinate off-site parking with its subcontractors to eliminate parking by construction personnel on adjacent residential streets. The Developer will include statements in its contract with the general contractor that parking on adjacent residential streets is prohibited, and such personnel may not in connection with their work on the Project seek to purchase parking permits or visitor passes from residents of blocks immediately adjacent to the Property.

**8. Public Transportation Options:** Numerous public transportation options are available to the Southwest community and visitors to aid in circulation to, from, and around the neighborhood. The Developer does not anticipate that the construction of the Project will interrupt any transit services.

**9. Pedestrian Circulation:** The Developer shall maintain a clear pedestrian circulation path that is well-lit around the perimeter of the construction area around the Property. The pedestrian circulation area will be as generally shown on the Construction Pedestrian Flow Diagram ("**Pedestrian Diagram**") dated March 21, 2019 and attached as Exhibit B. More particularly, pedestrian traffic is anticipated to be managed as follows:

- a. Traveling southbound on the east side of 6<sup>th</sup> Street, SW adjacent to the Property: pedestrians detour to the western side of 6<sup>th</sup> Street, SW via the existing H Street SW crosswalks north of the Property;
- b. Travelling northbound on the east side of 6<sup>th</sup> Street, SW adjacent to the Property: pedestrians detour to the western side of 6<sup>th</sup> Street, SW via the existing crosswalk southwest of the Property;

- c. Travelling eastbound on the north side of I Street, SW adjacent to the Property: pedestrians detour to the south side of I Street SW via existing crosswalks southwest of the Property; and
- d. Travelling westbound on the north side of I Street, SW adjacent to the Property: pedestrians detour to the south side of I Street, SW via either the existing or a temporary crosswalk to be installed in an alignment with Makemie Place, SW.

**10. Safe Routes to School:** Prior to the commencement of construction of the Project, the Developer shall host an education session for the students of Amidon-Bowen Elementary School and Jefferson Academy Middle School regarding safe routes to school during the construction of the Project and shall make printed literature about such routes available for distribution to students. A suggested walking route around the Property will be developed in concert with DDOT's Safe Routes to School staff. During construction of the Project, the Developer and its general contractor shall ensure that flagmen serving the Project regularly coordinate with traffic control officers and/or crossing guards serving nearby schools.

### **C. Site Management and Cleanliness**

**11. Site Management:** Prior to the commencement of construction of the Project, the Developer shall continue to conduct routine maintenance of the Property. At the time construction of the Project commences, the Developer will cause the erection and maintenance of a construction fence and other erosion control measures around the Property pursuant to an erosion and sediment plan as approved by the District Department and Consumer and Regulatory Affairs ("**DCRA**"). Such construction fence shall have a full-height, neutral-colored vision barrier. During the period of construction of the Project, the Property will be lighted with adequate security lighting during the hours of darkness, and such lighting shall be kept to a minimum while still being sufficient to provide necessary security and to comply with the federal and local safety standards. It is the intent that such lighting shall be installed and maintained so as to not adversely impact neighboring properties.

**12. Amidon-Bowen Fence and Lighting:** Prior to the commencement of construction of the Project, the Developer shall move the light fixture currently located on the Property to the Amidon-Bowen Elementary School (the "**School**") property, at a location to be determined by the School provided such location is a reasonable distance from the Property. Additionally, in the event the existing School fence adjacent to the Property is damaged during construction, Developer will replace the damaged fencing in a manner consistent with the existing fence.

**13. Cleanliness:** During the period of construction of the Project, the Developer shall: (a) ensure that all construction rubbish and debris from the Property during the construction workday be removed on a daily basis; (b) place portable toilets serving the Property near I Street SW; (c) sweep and/or water daily all construction access and egress to and from the Property in order to

minimize dust and mud; (d) install and maintain a tire wash station at the construction entrance(s) for use by all construction vehicles leaving the Property; (e) employ an environmental consultant to monitor the Property for dust control during excavation activities per the approved erosion and sediment control plan; (f) undertake a program of pest control on the Property to ensure that no increase in pest activity occurs during the construction period; (g) require any food truck(s) serving construction personnel working on the Project to park only on the Property or within designated/fenced Project-related staging areas and not on 6<sup>th</sup> Street SW or H Street SW (the Developer shall not permit food trucks to park in “active” public space or on private property other than the Property except as allowed by the owner of such private property); (h) ensure that all rubbish from such food truck operations be swept or otherwise cleaned daily; and (i) use reasonable efforts to provide indoor space and tables for construction personnel to eat once construction of the Project safely permits such activity.

**14. Work Hours:** The normal construction work week shall be Monday through Friday, 7:00 a.m. to 7:00 p.m., and Saturday, 9:00 a.m. to 7:00 p.m., in accordance with Section 105.1.2 of the D.C. Construction Code Supplement. No construction shall occur on Sundays or on any legal holidays observed in the District of Columbia. The Developer and/or its general contractor shall inform subcontract bidders that bids reliant on the receipt of so-called “after-hours permits” shall be disfavored except for interior-only work. The Developer will provide UNSW with advance notice of any approved after hours work.

**15. Contractors:** The Developer shall enforce contractor compliance with all rules and regulations described herein. Such conditions will be included in any general and sub-contractor contracts.

**16. Environmental Monitoring:** In addition to complying with all required environmental rules and regulations, the Developer’s environmental consultant shall provide on-site screening of excavated soils during excavation activities. In the event that contaminated soils are discovered during excavation activities and environmental remediation is required, the Developer shall notify the ANC and the Project Committee within five (5) business days of confirmation of such contamination. Furthermore, the Developer’s environmental consultant shall monitor the Property for dust control during excavation activities.

**17. Pile Driving.** Developer shall use means other than hammer pile driving to install soldier piles, sheeting and shoring, and other below-grade support structures.

**18. Crane Swing:** The Developer’s contractors intend to erect one or more main construction tower cranes on the Property during the construction of the Project. Such tower crane(s) shall be located only on the Property. The number and location of cranes are planned to minimize the length of the crane extension and over swing on the block. The crane(s) may swing over adjacent properties, but at no time will building materials swing over adjacent properties or the “active”

public space in 6<sup>th</sup> Street, SW or I Street, SW (i.e., “active” public space being the portions of such streets for which a permit has not been obtained for temporary closure).

**19. Security:** The Developer shall provide security guards during the period of construction of the Project as needed. Upon commencement of construction, the Developer shall require its general contractor to provide sufficient security to patrol the area within its control, as necessary. Any general contractor’s security schedule shall be made available on site for reasonable inquiry. The Developer’s general contractor shall notify the Metropolitan Police Department prior to the start of construction and provide a point of contact to ensure proper communication and security coverage.

**D. Pre/Post-Construction Surveys**

**20. Pre-Construction survey:** Prior to commencement of construction of the Project, the Developer shall deliver a written offer to perform a pre-construction survey to the owner of any property adjacent to the Property, including properties adjacent to the Property but separated by 6<sup>th</sup> Street SW (the “**Potentially Impacted Properties**”). If accepted by the owner of a Potentially Impacted Property, the Developer shall select an independent testing and inspection firm to conduct a thorough pre-construction survey of such Potentially Impacted Property in order to document the pre-construction condition of the Potentially Impacted Property. The Developer shall pay all fees and costs of the pre-construction survey.

**21. Monitoring:** Prior to commencement of construction of the Project, the Developer shall hire a third-party consultant to monitor vibrations and any movements to the Potentially Impacted Property resulting from the construction of the Project. The Developer shall pay all fees and costs related to such monitoring. The monitoring period shall commence prior to the commencement of construction of the Project and shall terminate upon completion of construction of the structural frame of the Project. During such monitoring period, the Developer shall provide monthly monitoring reports to the owners of the Potentially Impacted Properties who elect to receive a pre-construction survey. In the event that such monitoring detects movement in a Potentially Impacted Property arising from construction activities of the Project, which movement may cause damage to the Potentially Impacted Property, the Developer shall promptly notify the owner of such affected Potentially Impacted Property and shall cause such movement to be promptly addressed. The Developer will be obligated to restore the Potentially Impacted Property to the condition that existed prior to commencement of construction as documented in the Pre-Construction Survey.

**22. Post-Construction:** No later than three months after the issuance of the first certificate of occupancy for the Project’s last building to obtain a certificate of occupancy, the owner of each Potentially Impacted Property, at its election, may require the Developer to commission, at the Developer’s expense, a post-construction survey of such Potentially Impacted Property, which survey shall be completed within four weeks of the request for same. The Developer shall use best

efforts to employ the same firm that conducted the applicable pre-construction survey, provided the Developer may select a different independent testing and inspection firm if necessary.

**23. Damage to the Potentially Impacted Property.** To the extent that any post-construction survey reveals that a Potentially Impacted Property sustained damage due to activities attributable to the Developer's development, excavation or construction of the Project, the Developer shall coordinate repairs with the owner of the Potentially Impacted Property at the Developer's expense.

**24. Access to Records.** The Developer shall ensure that the owner of the Potentially Impacted Property has access to all records and reports that the independent testing and inspection firm creates related to the Potentially Impacted Property.

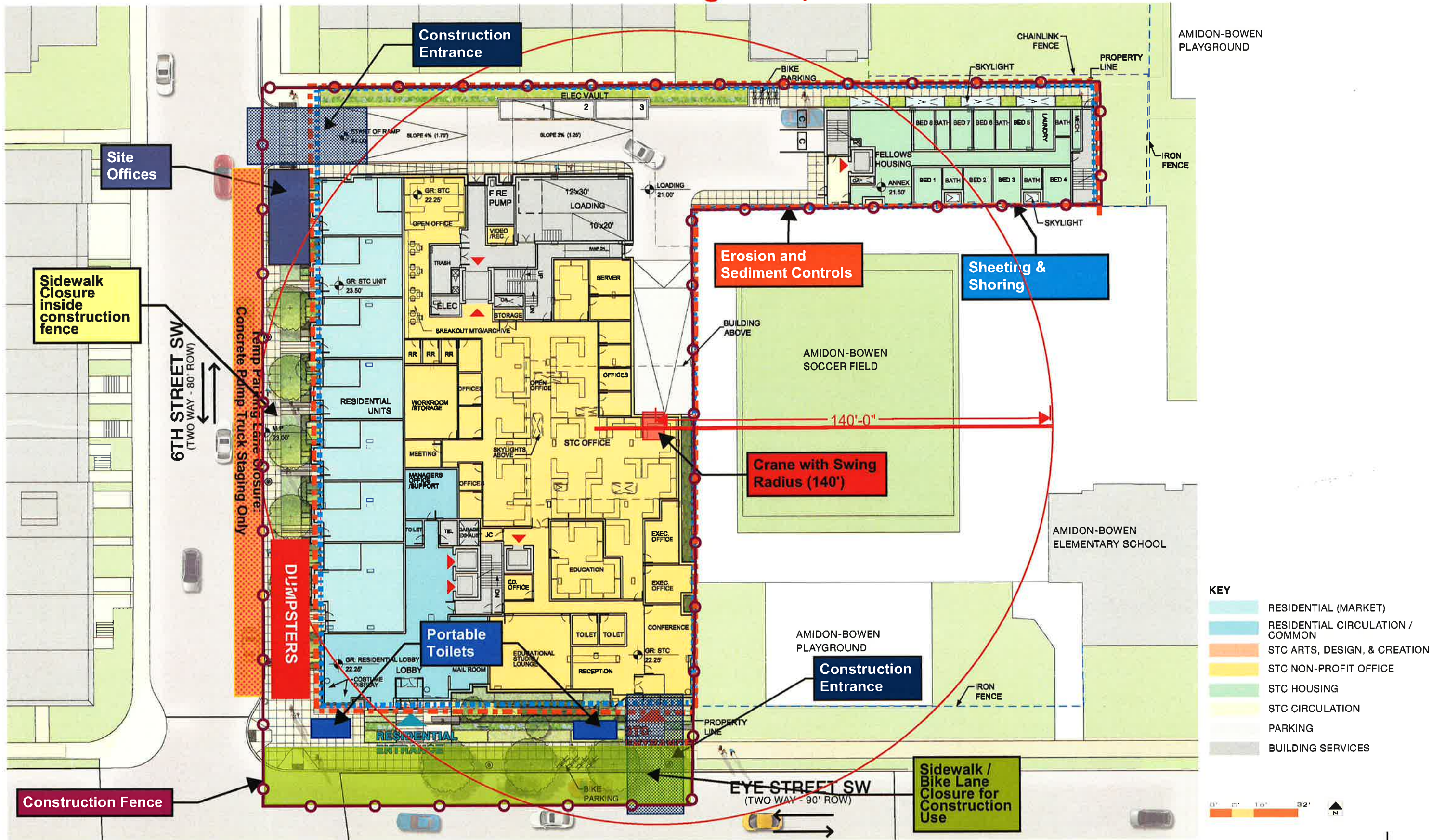
**25. Amendments.** If changed circumstances require revision to the CMP, the Developer shall work with the Project Committee and/or the ANC, as appropriate, to implement such changes.

**Exhibit A**

CMP Diagram



# CMP Diagram (March 20, 2019)



THE BARD REDEVELOPMENT

GROUND LEVEL PLAN

shalom baranes associates architects

**Exhibit B**

Pedestrian Diagram

# Proposed Temporary Pedestrian Flow During Construction (March 21, 2019)

