

December 20, 2024

**Via IZIS**

Anthony Hood, Chairperson  
District of Columbia Zoning Commission  
441 4th Street, NW, Suite 200-S  
Washington, DC 20001

Re: Z.C. Case No. 06-10I: Application for a Time Extension of the Approved First-Stage Planned Unit Development (“**First-Stage PUD**”) and Zoning Map Amendment for the Arts Place at Fort Totten Development (Square 3766, Lots 3, 4, 6, and 800; and Square 3767, Lot 5) (“**Property**<sup>1</sup>”)

Dear Chairperson Hood:

The Morris and Gwendolyn Cafritz Foundation (“**Applicant**”) hereby requests a two-year time extension of the First-Stage PUD. The First-Stage PUD was initially approved pursuant to Zoning Commission Order No. 06-10 (“**Order**”) and was extended until December 31, 2024, pursuant to Zoning Commission Order No. 06-10D.

The Applicant requests an extension of the First-Stage PUD approval for two years; that is, until December 31, 2026. This extension request will provide the Applicant the opportunity to review, potentially revise, and move forward with Second-Stage PUD applications for the development of the Property. The time extension request will also allow the Applicant to finalize a new development timeline and mix of uses, which better reflects the current and expected economic climate. This extension request is made pursuant to Subtitle Z, Sections 705.2 of the 2016 Zoning Regulations. This is the second time extension request for the First-Stage PUD.

**Background on the Arts Place at Fort Totten PUD**

In ZC Order No. 06-10, effective as of January 15, 2010, the Zoning Commission approved the consolidated and first-stage PUD application for Art Place at Fort Totten (“**APFT**”). The APFT project included development of four blocks, Blocks A-D, with Consolidated PUD approval for Block A, and First-Stage PUD approval for Blocks B, C, D. The First Stage Order also granted a PUD-related map amendment for the Property to a combination of the C-2-B and FT/C-2-B zones, which became the MU-5-A zone effective September 2016. The APFT PUD Project was

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<sup>1</sup> These are the Square and Lot numbers for the properties that are subject to the First Stage PUD approval. The Lot numbers have changed since the First-Stage PUD approval as the result of the development of the Block B portion of the project.

originally envisioned to include approximately 929 residential units, a full-service grocery store, significant community-serving retail and cultural uses, a children's museum, and other significant amenities and community benefits. A site plan depicting Blocks A – D is attached as Exhibit C.

The construction of the building in Block A, which was subsequently modified in Order 06-10A (which shifted the grocery store use from Building A to Building B) and 06-10C (which reduced the amount of parking provided in Building A), was completed and The Modern at Art Place has been occupied since 2017. The Modern at Art Place currently includes 520 residential units (141 units are subject to an affordability covenant) and 92,000 square feet of retail use and commercial use (including tenants such as: One Life Fitness; Ramdass Pharmacy; Shining Star Pediatric Dentistry; Menomale Restaurant; Urban Garden Brewery; and Love and Care Daycare).

The Block B PUD Project, which received its second-stage PUD approval in ZC Order No. 06-10D (effective March 20, 2020), consists of a mixed-use building with two primary components – the Family Entertainment Zone (“FEZ”) and a residential component. The FEZ fronts on South Dakota Avenue and included the following uses: retail space/food hall; theatre/interactive space; gala/events space; Meow Wolf (an innovative arts collective); Explore! Children's Museum; and an Aldi grocery store. The residential component of the Block B PUD Project, with frontage along the former 4<sup>th</sup> Street, NE (which was closed pursuant to DC Act 23-214), included approximately 271 units (30 reserved as artist affordable units) with ground floor retail spaces and ground floor artist maker spaces. Since the approval of ZC Order No. 06-10D, the Zoning Commission has approved three modifications of the Block B PUD Project (ZC Order Nos. 06-10E, 06-10G, and 06-10H).

Construction activity for the Block B PUD Project began in January of 2022 and to date the Applicant has spent over \$120,000,000 on the development of Block B. Importantly, an Aldi grocery store opened its doors on December 5, 2024. Photographs from the Aldi Grand Opening event are attached as Exhibit D.

#### **Approval of Charter School Use on Property that is Subject to First-Stage PUD Approval**

On February 15, 2018, the Office of the Zoning Administrator determined that a charter school could operate as a matter-of-right on the portion of the APFT PUD Property that was only subject to First-Stage PUD approval, part of the original Block C. In that letter, attached as part of Exhibit E, the Zoning Administrator concluded that the property's inclusion within the First-Stage PUD approved in ZC Order No. 06-10 does not bar the owner or tenant of the property from operating a charter school on the property as a matter-of-right under its MU-28 Zone. As a result of this approval, the Rocketship Infinity Charter School and the Social Justice School began charter school operations on this property (5450 3<sup>rd</sup> Street, NE) in 2021.

Since their opening, these schools have been very successful, photographs of some of the Rocketship students are attached as Exhibit F, so much so that the Social Justice School is now in need of its own space across the street at 301 Kennedy Street, NE (also known as 5455 3<sup>rd</sup> Street,

NE, which is also part of the original Block C). The 301 Kennedy Street, NE property is located within the MU-7B/FT Zone (which is the Zone that was formerly identified as the MU-28 Zone). The MU-7B/FT Zone allows charter school use as a matter-of-right, pursuant to Subtitle U, Section 515.1.

Consistent with the Zoning Administrator's determination of February 15, 2018, the Zoning Administrator confirmed, on July 15, 2024, that the Social Justice School is able to operate in the building located at 301 Kennedy Street, NE as a matter-of-right, provided all development standards of Subtitle G, Chapter 49 are satisfied. The Social Justice School is currently using temporary trailers, located on a portion of Block B, while renovation of the building at 301 Kennedy Street, NE is completed. The Zoning Administrator noted that the temporary charter school use on Block B was consistent with the arts and education uses approved in the Block B PUD Project and that these temporary trailers will not impede the construction of the residential uses approved on Block B.

#### **Previous Zoning Commission Review and Approval of Period of First-Stage PUD Approval**

Findings of Fact Nos. 35-39 and Condition No. G. 3. of ZC Order No. 06-10D addressed the timeline for the filing of the second-stage PUD applications for the development of Blocks C and D. Finding of Fact No. 37 and 38 state:

37. The Applicant will file a second-stage PUD application for either Block C or Block D by December 31, 2024, which is expected to be two years after Block B is open and operating.
38. The second-stage PUD application for the final development parcel included in the overall PUD will occur by December 31, 2030.

#### **The Commission Should Grant the Requested Time Extension**

##### **A. Standards of Review of Time Extension Request**

The standards for a time extension are enumerated in Subtitle Z Section 705.2 of the Zoning Regulations. The Commission is authorized to extend a PUD provided that:

- (a) The extension request is served on all parties to the application by the applicant and all parties are allowed thirty (30) days to respond;
- (b) There is no substantial change in any of the material facts upon which the Commission based its original approval of the application that would undermine the Commission's justification for approving the original application; and
- (c) The applicant demonstrates with substantial evidence one (1) or more of the following criteria:



- (1) An inability to obtain sufficient project financing for the development, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control;
- (2) An inability to secure all required governmental agency approvals for a development by the expiration date of the order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or
- (3) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the order.

B. Time Extension Request and Applicant's Satisfaction of the Standards for Granting Time Extension

In this time extension application, the Applicant requests that the Commission extend until December 31, 2026, the First-Stage PUD approval. As noted above, this extension request will provide the Applicant the opportunity to review, potentially revise, and move forward with Second-Stage PUD applications for the development of Blocks C and D.

1. Service on Parties

The parties in Zoning Commission Case Nos. 06-10 and 06-10D were ANC 5A and the Lamond Riggs Citizens Association ("LRCA"). The boundaries of ANC 4B are located across the street from a portion of the Property and ANC 4B was granted party status *in absentia* in ZC Case No. 06-10. Therefore (in satisfaction of § 703.13 of Subtitle Z), ANC 5A, the LRCA and ANC 4B are being served with this application.

2. No Substantial Change of Material Facts

There has been no substantial change in any material facts that would undermine the basis for the Commission's original approval of the First-Stage PUD. In fact, numerous benefits and amenities of the APFT PUD project have already been provided. The development of Block A has delivered 520 (141 of which are subject to an affordability covenant) of the 920 residential units that were envisioned in the APFT project and Block B will create 270 more residential units. Block A includes a significant amount of retail and service uses (including a fitness club, restaurants, and a day care center) and Block B has delivered the promised full-service grocery store with a children's museum expected to be delivered in early 2026.

ZC Order No. 06-10 approved the construction of an eight-story, 90 foot-tall residential building with 400 residential units on Block C and a seven-story, 90 foot-tall building on Block D that would include rehearsal and support space for Washington-area performing arts institutions and potentially a branch library. During the next two years, the Applicant will further analyze whether these uses are still needed in this community (for instance the Lamond Riggs Library,

located across South Dakota Avenue from the Property, recently completed a major renovation and recently reopened) or whether other arts, cultural, or education uses may be more appropriate.

In addition, since the Commission approved the First-Stage PUD the City Council has adopted modifications to the Comprehensive Plan that, among other things, require that the Commission evaluate zoning actions through the lens of racial equity, and the Commission has released criteria for such evaluation. Because the First-Stage PUD approval is in the form of a two-stage PUD, the Commission will have the opportunity as part of future Second-Stage PUD applications to review those applications' consistency with the Commission's racial equity evaluation standards.

3. The Applicant was unable to obtain sufficient project financing for the development, despite its diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control.

The Applicant has been a long-term member of this community for over 80 years. The Applicant has spent hundreds of millions of dollars in the development of Blocks A and B. The Applicant has brought two well-established and thriving Charter School uses to the Property and has delivered over 100,000 square feet of community serving retail, including a full-service grocer. Despite the significant investments of time, resources and financial capital that the Applicant has expended in the development and construction of Blocks A and B, circumstances outside the Applicant's control have prevented the Applicant from proceeding with the preparation and filing of Second-Stage PUD applications for Blocks C and D.

Since the First-Stage PUD was approved, the Applicant has faced a global pandemic, unprecedented increases in construction costs, higher interest rates and tougher lending conditions. In fact, the Applicant lost years during the COVID pandemic in which the First-Stage PUD assumed development work would be progressing on Block B. As noted in Finding of Fact #37 of ZC Order No. 06-10D, it was anticipated that the development of Block B would have been completed by December, 2022 and there would have been two years of operations of the uses in Block B by the December 31, 2024 deadline to file a Second-Stage PUD for either Block C or Block D. As noted above, the Aldi grocery store just opened on December 5, 2024, and the other cultural, retail and residential elements have not been constructed at this time. Therefore, this time extension request for two more years to file Second-Stage PUD applications for Blocks C and D is consistent with the amount of time that the Applicant desired to have between the completion and occupancy of uses in Block B and the future development of Blocks C and D.

### **Dialogue with the Community**

In response to dialogue with representatives of ANC 5B, LRCA, and members of the surrounding community, the Applicant has agreed to undertake the following actions to enhance the physical appearance of the area around Blocks B, C, and D as follows:

- The Applicant has prepared a full design program for a new fence with signage and art images, as well as banner signs on new light poles throughout the site;
- The Applicant will install trashcans along South Dakota Avenue in front of Block B; and
- The Applicant will work with LRCA, ANC 5B, and members of the community to activate the site (in particular the South Dakota Avenue frontage) while the planning for the future development of Blocks C and D progresses.

### **Exhibits**

Attached are the following Exhibits:

Exhibit A – Letter of Authorization from the Applicant.

Exhibit B – Zoning Commission Order Nos. 06-10, 06-10D, 06-10E, 06-10G, and 06-10H.

Exhibit C – Site Plan Depicting Blocks A - D

Exhibit D – Photographs from the Aldi Grand Opening Event (December 5, 2024).

Exhibit E – Zoning Administrator Determinations Approving Charter School Use on Property Subject to First-Stage PUD Approval

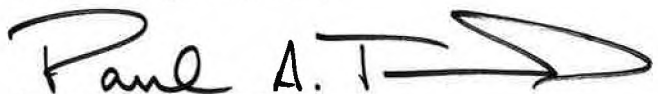
Exhibit F - Photographs of Students of the Rocketship School.

Exhibit G - Affidavit of Jane L. Cafritz; Board Chair, President and CEO of the Morris & Gwendolyn Cafritz Foundation.

### **Conclusion**

For the foregoing reasons, the Applicant requests that the Commission grant the requested time extension. Please feel free to contact the undersigned if you have any questions or comments regarding this application.

Respectfully Submitted,

  
Paul A. Tummonds

**Certificate of Service**

I hereby certify that a copy of the foregoing document was sent to the following by first-class mail or email on December 20, 2024.

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