

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU" or "Agreement") is made this 11th day of October, 2012 by and between DOUGLAS DEVELOPMENT CORPORATION, a District of Columbia corporation ("**Douglas**"), and ADVISORY NEIGHBORHOOD COMMISSION 3E ("**ANC**"). Douglas and the ANC are collectively referred to herein as the "**Parties**."

RECITALS

A. Jemal's Babes, L.L.C., an affiliate of Douglas, is the owner in fee simple of certain real property located at premises 4600 and 4614 Wisconsin Avenue, N.W., in the District of Columbia and designated as Lots 820 and 817, respectively, in Square 1732 (the "**Subject Property**").

B. Douglas desires to develop the Subject Property with a six-story mixed use building, containing approximately 48,000 square feet of gross floor area dedicated to residential use, and approximately 13,000 square feet of gross floor area dedicated to retail/service uses. The proposed development will provide one off-street handicap parking space, instead of the 87 spaces required under the Zoning Regulations for the residential and commercial retail uses. The project will provide shared loading facilities for the residential and retail/service uses instead of separate loading facilities for each use.

C. In order to proceed with the proposed development, Douglas has filed an application for a planned unit development ("PUD") with the District of Columbia Zoning Commission ("**Commission**" or "**ZC**"). The PUD application proposes to amend and be incorporated into the zoning map amendment application filed by Douglas on September 17, 2010, in ZC Case No. 10-23. The map amendment application requests the Commission to rezone the Subject Property from C-2-A to the C-3-A District.

D. The PUD application will ensure that the project provides appropriate and adequate project amenities and public benefits for area residents and the community.

E. The Parties intend the Subject Property, which sits approximately one block from a Metro stop, to be a signal example of Transit-Oriented Development (TOD). Toward that end, the Subject Property will be developed and marketed to appeal to prospective residents that wish to live without owning automobiles.

F. The Parties understand that the ANC may enter into contracts but may not initiate suit in DC courts. The Parties nonetheless intend this Agreement to be enforceable fully.

UNDERSTANDING OF THE PARTIES

Provided that the ANC supports the proposed redevelopment of the Subject Property and the applications for the PUD and map amendment to effectuate the project ("support" shall be indicated by a majority vote of the ANC on a resolution or motion supporting the proposed redevelopment), Douglas agrees to the following:

1. Restricted Uses: The following uses, even though permitted within the C-2-A District as a matter of right or with special exception approval by the BZA, will not be permitted on the Subject Property: the sale of any pornographic material; a check-cashing establishment; a pawnbroker; a night club; a drycleaners; a bank; a mattress store; a convenience store such as 7-Eleven; a professional office; a "chain" (defined as any establishment with five or more of the same named establishments in DC); a drug store such as CVS, any store that sells products that weigh 40 or more pounds each, unless the store makes such products available only by shipping or delivering to the consumer.

Notwithstanding the foregoing, the Parties agree that the ANC may approve a prospective tenant otherwise prohibited in this paragraph ("Otherwise Prohibited") that the ANC believes would provide substantial value for the community. Such approval shall be granted by the ANC only by a formal resolution.

2. Development Plans: The Subject Property will be developed substantially in accordance with the architectural plans and elevations attached hereto as Exhibit A.

3. Public Space Improvements: The PUD shall improve the public space area along the street frontage of the building, as shown Pages L1-L4 of Exhibit A, which will include the following:

- a. special entrance pavement
- b. street edging board of mixed ground covers and perennials
- c. four new street trees on Brandywine Street, N.W.
- d. five new street trees on Wisconsin Avenue, N.W.
- e. 4 bike racks on Wisconsin Ave., N.W.
- f. streetscape furniture, including 4-foot bench and trash can, and table with two seats
- g. an outdoor patio/seating area along Brandywine Street, N.W., for the adjacent retail/service use space
- h. a new fountain wall and planter at the ground level of the building
- i. Douglas shall contribute \$500,000 based on an estimate provided by PEPCO, plus or minus 20 percent, to accommodate for fluctuations in the estimate, to fund the undergrounding of all utilities along the Brandywine Street and Wisconsin Avenue frontages of the Property (the "Utilities Pledge").
"Undergrounding" means the construction of underground vaults; installation of the utility lines presently located above ground on existing utility poles, and other appurtenant equipment in those

vaults; and removal of all utility poles, in cooperation and coordination with PEPCO and other utility providers using the poles, such as Comcast and/or RCN. For avoidance of doubt, Douglas shall contribute any sum up to \$600,000 necessary to perform the Utilities Pledge. If 36 months have passed after issuance of the PUD order and construction work on Undergrounding has not commenced, the ANC may, after consultation with Douglas, designate an alternative community benefit or benefits: (“Alternative”) for a fixed amount of \$500,000. If the ANC designates an Alternative pursuant to this paragraph, Douglas shall promptly seek a modification of the PUD to redirect the \$500,000 fixed amount to the Alternative. Similarly, if the Utilities Pledge can be performed for less than \$400,000, then the ANC shall designate an Alternative for the difference between the actual cost of performing the Utilities Pledge and \$400,000, and Douglas shall promptly seek a modification of the PUD to redirect these funds to the Alternative.

Douglas shall purchase a performance bond in the amount of \$600,000 to guarantee the promises in this sub-paragraph 3(i).

4. TDM Measures: Douglas will implement the following transportation demand management measures at the PUD:

a. Resident Transportation Coordinator (RTC): Douglas' site management will designate one employee as the Resident Transportation Coordinator. Among this person's duties would be to provide information to residents (particularly those incoming) regarding transit opportunities and schedules, as well as the location of Bike Share stations within the area, and bicycle parking provisions within the building. The RTC will generally encourage non-private auto usage and will have related information prominently displayed in the offices, community rooms, and other appropriate common space.

b. Digital Multimodal Display: Douglas will install a digital multimodal display in the lobby of the residential building that provides schedule information of Metro bus and Metrorail, and locations of Bike Share and car share stations, among other transportation related information. This display is being developed by DDOT, and is referred to as "NextBus Display. The installation at the subject site will be dependent on the progress made by the City, its cost and its availability for installation.

c. Bicycle Usage Program: Douglas will provide 25 bicycle parking spaces in a secure, convenient location that would be accessible to residents at all times. Additionally, Douglas will provide a one-time Capital Bikeshare annual membership fee for each initial tenant of the building.

d. Car Sharing/Handicap Parking: Douglas shall provide one (1) handicap parking space to be located in the building within the area of the loading facilities. Douglas will provide a one-time Zipcar membership and application fees (totaling \$85.00) to each initial residential tenant of the building. Douglas shall also secure at least one car-sharing parking space, either directly in front of or within one block of the Subject Property. If such space is provided on the street fronting the subject property, it shall not be subject to rush hour or other restrictions.

e. Transit Subsidies: Douglas shall provide a one-time \$100.00 transit fare card to each initial tenant and employee in the building to encourage non-auto mode usage.

f. Residential Parking Permit Program Exclusion: The Parties intend that residents of the Subject Property (Residents) shall not be or become eligible for Residential Parking Permits (RPP). Accordingly, Douglas shall take such steps as are necessary to ensure that Residents do not receive RPPs, including without limitation (1) placing a clause in emphasized type in all leases for Residents that prohibits Residents from applying for or obtaining RPPs, or using an RPP guest pass within one mile of the Subject Property, upon pain of mandatory lease termination, to the full extent permitted by law; (2) ensuring that the District Department of Transportation (DDOT) removes the Subject Property from the list of properties eligible for RPPs, or if presently not on the list, classifying it as ineligible for RPPs, and Douglas shall furthermore obtain from DDOT written confirmation that it will not grant RPPs to Residents; (3) should Douglas sell any units at the Subject Property, adding a covenant that runs with the land to the deed for the units prohibiting Residents from applying for or obtaining RPPs; (4) executing a covenant that runs with the land for the Property generally that embodies the promises contained in this Paragraph 4(f).

In the event DDOT does not remove the Subject Property from the RPP list or classify it as ineligible for RPPs, any resident of ANC 3E may take legal action ("Suit") as a third-party beneficiary of this Agreement to compel Douglas to terminate the lease of any Resident who violates the RPP prohibition, if Douglas has failed promptly to take such action on its own initiative. A resident of ANC 3E that substantially prevails in a Suit shall be entitled to an award of its reasonable attorney's fees. Furthermore, if Douglas loses three or more Suits, it shall be required to donate \$10,000 to a non-profit organization identified by the ANC for each subsequent Suit it loses.

g. Unlawful Parking/Stopping: Douglas will place a provision in the leases for all commercial tenants requiring them actively to discourage visitors to their establishment from unlawfully stopping or parking automobiles in front of

the establishment or elsewhere in the neighborhood in connection with visits to the establishment. The provision shall note, without limitation, (1) that a pattern of unlawful stopping or parking in connection with visits to the establishment may, in Douglas' discretion, be cause for lease termination, and (2) that should the ANC receive complaints about unlawful stopping or parking in connection with visits to the establishment, it may send a written notification to the establishment concerning same, and the establishment shall ensure that a senior representatives thereof will attend the next ANC meeting to address such complaints.

h. Metered Parking Demand: Douglas shall work with DDOT to match the supply of and restrictions on metered parking spaces adjacent to the building to the parking demand.

5. Construction Hours: Douglas, its tenants, and contractors will not engage in any construction activities, other than emergency repairs, before 7:00a.m. and after 8 p.m. Monday- Friday, or before 8:00 a.m. and after 8:00 p.m. on Saturday. Douglas and its contractors will not engage in any construction work, other than repairs, on Sunday.

6. Trash Removal: Douglas, or its tenants, will promptly remove all trash and debris from the public space located between the property line and the adjacent curb.

7. LEED Qualification: Douglas commits that the resulting building will qualify for a LEED Gold rating subject to scoring by a qualified party unaffiliated with the project selected by the ANC ("Qualified Party"). A "Qualified Party" would include an architectural or engineering firm or other professionals as agreed to by the ANC with LEED certified personnel at a cost of up to \$10,000.00. Prior to the issuance of a certificate of occupancy, Douglas agrees to deposit into an escrow account an amount equal to 2% of the construction cost for the project, such construction cost amount being that identified on the building permit application. When the Qualified Party certifies the project would qualify for LEED Gold Certification, the Security will be released to Douglas. In the event that Douglas does not demonstrate to the satisfaction of the Qualified Party that the project would qualify for does not achieve LEED Gold Certification within 24 months after the date of the certificate of occupancy for the project, the Security will be released to the District of Columbia ("District"), unless the District determines that the sustainable features, as built, provide value. If such finding is made, the District, in its sole discretion, shall determine whether the Security shall be released in part to the District and in part to Douglas.

8. Reserved Residential Parking Spaces; Validated Parking for Business Patrons: Douglas commits that at the time the Subject Property receives a certificate of occupancy, it will have in place agreements with facilities within a 500 yard radius to provide 20 off-site parking spaces to residents. Such agreements shall have at least an annual duration and Douglas will make all commercially-reasonable efforts to renew or

replace them annually or on some other term for a period of up to ten years from the date the Certificate of Occupancy issues. The ANC recognizes that Douglas will be marketing this building to prospective tenants that do not have automobiles. Douglas shall nonetheless record all requests by residents for parking spaces by residents, and shall notify the ANC in writing within 30 days of its inability to provide a requested parking space. In the event Douglas is not able to provide the required parking, then Douglas shall pay annually to a non-profit organization designated by the ANC an amount of 150% of the market rate cost per parking space not provided. If there is no demand for some or all of such spaces as determined by the ANC and Douglas, then this requirement shall be reduced accordingly. Douglas shall also arrange for validated parking for patrons of commercial businesses at the Property with 3,500 square feet of space or more at a facility within 500 yards of the subject property. Such validated parking shall permit patrons to park for free for the first hour of parking.

9. Improvements to Parks on the East Side of Wisconsin Avenue: Douglas shall undertake landscape improvements to the south portion of the triangular park known as Reservation 503 and to the public space area at the northeast corner of Brandywine Street and Wisconsin Avenue, N.W., as shown on the drawing attached as Exhibit B, and subject to obtaining any necessary governmental approvals or permits. Douglas shall maintain the landscaping for a period of five years. The landscape improvements at the corner of Brandywine Street and Wisconsin Avenue will include a concrete pad to allow for the future installation of a Capital Bikeshare station by DDOT. If DDOT does not commit funds to install the bikeshare station within 24 months after issuance of the PUD order, Douglas shall raise the funds for the installation or pay for the installation itself.

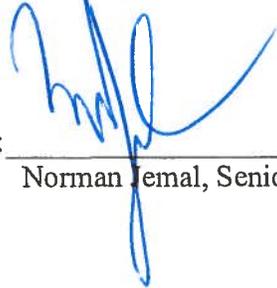
11. ANC Support of Project: The terms and provisions of this MOU are contingent upon the formal support of the ANC at all public hearings and other related proceedings on the Application before the Zoning Commission which the ANC elects to attend. For avoidance of doubt, the ANC may offer suggestions regarding and criticism of elements of the Application without affecting the validity of this Agreement, so long as same occurs within the context of formal support of the Application as a whole. The terms and provisions of this MOU are further conditioned upon final approval of the Application by the Zoning Commission as evidenced by the issuance of a final written order by the Zoning Commission and issuance of a certificate of occupancy for a building built pursuant to the order by the Zoning Commission.

12. Amendments: The Parties hereto reserve the right to amend this document at any time with the written agreement of both Parties.

13. Incorporation of MOU Provisions in PUD Order: The Parties will ask the Zoning Commission (ZC) to incorporate each provision herein in an order concerning the subject property. Any provision not so incorporated by the ZC into an order concerning

the subject property shall be fully enforceable between the Parties (Privately-Enforceable Provisions). Any disputes arising out of or related to Privately-Enforceable Provisions shall be decided by binding arbitration between the Parties in the District of Columbia pursuant to the rules of the American Arbitration Association. The Parties agree that they will comply with any arbitral decision within the time provided in the decision or, if no time for compliance is set therein, within 15 calendar days. The Parties agree that this Agreement is intended to benefit residents of the area within the jurisdiction of ANC 3E (“ANC Residents”); accordingly, the Parties agree that any such ANC Resident is to be considered a third-party beneficiary of this Agreement for the purposes of ensuring arbitral decisions arising out of or related to it (Arbitral Decisions) are enforced, and that any such ANC Resident may file suit in a Superior Court of the District of Columbia, or, if jurisdiction is otherwise proper there, in the United States District Court for the District of Columbia, to enforce an Arbitral Decision. Any ANC Resident who initiates suit to enforce an Arbitral Decision and who substantially prevails shall be entitled to an award of reasonable attorney fees. For avoidance of doubt, this Paragraph 13 shall not authorize lawsuits by residents of ANC 3E for any purpose other than enforcing an arbitral order in favor of ANC 3E, except that without limiting anything else in this Agreement, this Paragraph 13 shall permit lawsuits by ANC Residents pursuant to Paragraph 4(f) of the Agreement.

DOUGLAS DEVELOPMENT CORP.,
a District of Columbia corporation

By: 
Norman Jemal, Senior Vice President

Advisory Neighborhood Commission 3E

By: 
Matthew Frumin, Chairperson