

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU" or "Agreement") is made this 9th day of October, 2014 by and between 47th Avenue, LLC, a District of Columbia limited liability company ("**Developer**"), and ADVISORY NEIGHBORHOOD COMMISSION 3E ("**ANC**"). Developer and the ANC are collectively referred to herein as the "**Parties**."

RECITALS

A. Developer is the owner in fee simple of certain real property located at premises 4700, 4702 and 4704 Wisconsin Avenue, N.W., in the District of Columbia and designated as Lots 800, 833, and 834 in Square 1733 (the "**Subject Property**").

B. Developer desires to develop the Subject Property with a four-story mixed use building, containing approximately 15,379.6 square feet of gross floor area (the "**Project**"). The street level of the Project will be comprised of approximately 3,822 square feet devoted to retail uses; floors two through four will contain approximately 10,214.8 square feet of gross floor area devoted to 16 residential units, and the ground floor will include approximately 753.4 square feet of gross floor area devoted to residential amenity uses. The Project will include a green roof.

C. The Project will provide eight off-street parking spaces (one of which will be a handicap space) at the ground (cellar) level of the building, in satisfaction of the residential parking zoning requirement of one space for every two units. However, some of the spaces will be compact in size (8' x 16') where full-size spaces (9' x 19') are required. Three parking spaces are required for the retail use but the Project will not provide any retail parking spaces. Instead, the current long curb cut and driveway along Chesapeake Street will be removed, the curb reinstalled and three on-street parking spaces will be created.

D. The Developer currently leases space in the existing building at 4700 Wisconsin Avenue, N.W., to the Steak and Egg Restaurant. The Developer will lease approximately 1,900 square feet or more of gross floor area in the Project, upon completion, to Steak and Egg Restaurant.

E. In order to proceed with the Project with less than the required amount of retail parking, the Developer has filed an application for a parking variance with the District of Columbia Board of Zoning Adjustment ("**BZA**") in BZA Case No. 18839 ("**BZA Application**"). The BZA will consider the case at a hearing on October 28, 2014.

F. The Parties understand that the ANC may enter into contracts but may not initiate suit in D.C. courts. The Parties nonetheless intend this Agreement to be enforceable through conditions in any BZA order granting the BZA Application

UNDERSTANDING OF THE PARTIES

Provided the ANC supports the BZA Application (“support” shall be indicated by a majority vote of the ANC on a resolution or motion supporting the BZA Application), and the BZA grants the BZA Application, Developer 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 in the Project: the sale of any pornographic material; a check-cashing establishment; a pawnbroker; an establishment requiring a night club license from the Alcohol Beverage Regulation Administration; a drycleaners; a mattress store; a convenience store such as 7-Eleven; or a drug store such as CVS. 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. The Project will provide a green roof as a component of its compliance with the Green Area Ratio requirements of the Zoning Regulations.

3. Public Space Improvements: The Developer shall make all reasonable efforts to secure approval from the D.C. Public Space Committee (“PCS”) to improve the public space area along the street frontage of the building, as shown Pages ___ of Exhibit A, which will include the following:

- a. special entrance pavement
- b. street edging board of mixed ground covers and perennials
- c. an outdoor patio/seating area along Wisconsin Avenue, N.W., for the adjacent retail/service use space; and
- d. a new fountain, wall, and planter at the ground level of the building

The Developer will use permeable pavers of its choice in the public space adjacent to the Subject Property, except for the parking and driveway areas. . Non-permeable pavers with permeable spaces in between shall be deemed “pervious” for the purposes of the restaurant seating area. The Project shall result in a net increase in the permeable area for the site as a whole (private property and adjacent public space areas) over the present configuration.

4. The ANC shall support the Developer's request for these public space improvements before PSC. The Developer shall have the flexibility to make adjustments to the plans, in coordination with the ANC, in order to obtain PSC approval. Developer's failure to obtain PSC approval, provided it has made all reasonable efforts to secure such approval, shall not be deemed a breach of this MOU and the remainder of the Project may be constructed consistent with the order granting the BZA Application.

5. Noise Reduction and Avoidance: The Developer shall reduce noise from mechanical equipment on the roof through the use of a parapet wall and the installation of equipment with a quieter rating over standard equipment. Before any restaurant is opened on the premises, the Developer and the prospective restaurateur will work with the ANC and the community to develop an agreement governing operations to ensure that noise from the restaurant cannot be heard from the nearby residences on Chesapeake after hours. Such agreement may include provisions for when windows must be closed and outdoor seating limited or other enforceable mechanisms to assure compliance with the rules relating to noise and courtesy to neighbors.

6. Transportation Management Coordinator ("TMC"): The Developer shall designate a Transportation Management Coordinator to implement and manage TDM strategies. The strategies are: (i) the development and distribution of information and promotional brochures to residents, visitors, patrons and employees regarding transit facilities and services, pedestrian and bicycle facilities and linkages, ridesharing (carpool and vanpool) and car sharing; and (ii) ensuring that loading activities are properly coordinated and do not impede the pedestrian, bicycle, or vehicular lanes adjacent to the development. The TMC will generally encourage non-private auto usage and will have related information prominently displayed in the common spaces of the Project.

7. Unlawful Parking/Stopping: Developer 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 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.

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

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

10. Inclusionary Zoning Units. Pursuant to Chapter 26 of the D.C. Zoning Regulations, in the C-2-A District the Developer is required to provide 10 percent of the residential gross floor area, or 75 percent of the bonus density (whichever is greater), to inclusionary zoning (“IZ”) units. The Developer shall ensure that 50 percent of the IZ units are set aside for households earning no more than 50 percent of the area median income (“AMI”) and the remaining 50 percent of the IZ units set aside for households earning no more than 80 percent of AMI.

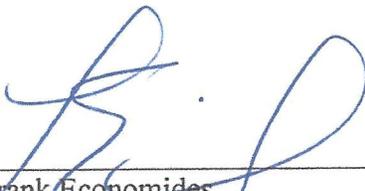
11. ANC Support of Project: The terms and provisions of this MOU are contingent upon the formal support of the ANC at all public hearings and other related proceedings on the Application before the Board of Zoning Adjustment ("BZA") which the ANC elects to attend. The terms and provisions of this MOU are further conditioned upon final approval of the Application by the BZA as evidenced by the issuance of a final written order by the BZA and issuance of a certificate of occupancy for a building built pursuant to the BZA order.

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

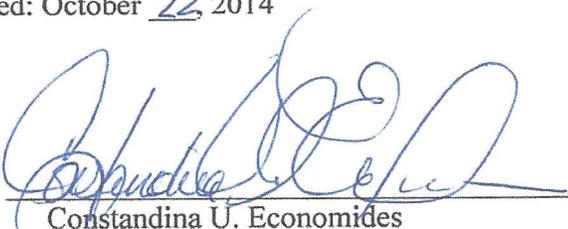
13. Incorporation of MOU Provisions in BZA Order: The Parties will ask the BZA to incorporate each provision to the fullest extent possible herein in an order granting the BZA Application.

47th AVENUE, LLC

a District of Columbia limited liability company

By: 
Frank Economides

Dated: October 22, 2014

By: 
Constandina U. Economides

Dated: October 22, 2014

Advisory Neighborhood Commission 3E

By: 
Matthew Frumin
Chair, ANC 3E

Dated: October 24, 2014