

MEMORANDUM OF UNDERSTANDING
BETWEEN ANC 3E AND STREET RETAIL, INC.
FOR A PLANNED UNIT DEVELOPMENT AT 5333 WISCONSIN AVENUE NW

This Memorandum of Understanding (the “**MOU**” or “**Agreement**”) is made this ____ day of December 2022 by and between Street Retail, LLC (“**Developer**”) or its successors and assigns, and Advisory Neighborhood Commission 3E (“**ANC 3E**” or the “**ANC**”). Developer and the ANC are collectively referred to herein as the “**Parties.**”

RECITALS

WHEREAS, Developer, an affiliate of Federal Realty Investment Trust (“**Federal Realty**”), is the owner of the property located at 5333 Wisconsin Avenue NW (Square 1661, Lot 855) in the District of Columbia (the “**Property**” or “**Subject Property**”);

WHEREAS, the Subject Property is within the boundaries of ANC 3E, and District of Columbia law designates the ANC to represent the community in planned unit development (“**PUD**”) and related proceedings;

WHEREAS, Developer has applied for approval of PUD and related Zoning Map Amendment (the “**Application**”) from the D.C. Zoning Commission (“**ZC**”) in Case No. 96-13A (the “**ZC Case**”), and the Map Amendment requests the Commission to rezone the Subject Property to MU-9A;

WHEREAS, Developer intends to construct a new-mixed use building with ground floor retail, underground parking, and approximately 310 residential units (the “**Project**”), as shown on the plans included in the record of the ZC Case (the “**Proposed Plans**”);

WHEREAS, Developer has agreed to certain benefits and mitigation measures in exchange for support by the ANC of the PUD;

NOW THEREFORE, provided that ANC 3E supports the Project and the ZC Case (“support” shall be indicated by a majority vote of the ANC on a resolution or motion recommending approval of the ZC Case, and the ANC shall otherwise be free to opine on aspects of the project as it sees fit), Developer agrees to the following:

BUILDING-SPECIFIC PUBLIC BENEFITS

1. Affordable Housing. Developer will devote 15.43% of the Project’s residential floor area to Inclusionary Zoning (“**IZ**”) units. Two of the IZ units will be reserved for families at or below

30% of the median family income (“MFI”), half of the IZ units will be reserved for families at or below 60% MFI, and the balance of the IZ units will be reserved for families at or below 50% MFI. The affordable housing in the Project shall be commensurate with the following, subject to the final plans approved by the Zoning Commission:

Residential Unit Type	Residential GFA/% of Total	Income Type	Affordable Control Period	Affordable Unit Type	Notes
Total	371,000 sf		Life of Project	Rental	NA
Market Rate	315,715 sf/84.57%	Market	Life of Project	Rental	NA
IZ	2 units @ 800 sf = 1,600 sf	30% MFI	Life of Project	Rental	NA
IZ	29,425 sf/7.93%	60% MFI	Life of Project	Rental	N/A
IZ	Remaining balance: 57,250 sf/15.43% – 1,600 sf (2 units @ 800 sf) – <u>29,425</u> <u>sf/7.93%</u> 26,225 sf	50% MFI	Life of Project	Rental	*Remaining balance of IZ set-aside provided at 50% MFI depends on GFA attributable to two 30% MFI units.

2. Building Design Features: The design of the Project will include the following:
 - a. A minimum of 10,500 square feet of retail space on the ground floor
 - b. LEED Certification at the Gold level.
 - c. 10 electric vehicle charging stations, two of which will be available to the public for charging in a publicly accessible portion of the parking garage.
 - d. 10 long-term bicycle parking spaces for residents on the ground floor.
 - e. Two residential units will be built-out to the ANSI A standard prior to the lease-up of the building. One of these units will be market-rate, and one will be an IZ unit.

3. Restricted Uses: The following commercial uses, even though permitted within the MU-9A zone as a matter-of-right or with special exception approval, will not be permitted in the Project: sexually-oriented business establishment; a check-cashing establishment; a bail-bond establishment; a pawnbroker; a marijuana dispensary; a mattress store; or a head/smoke/vape shop. The Developer further agrees to enter into a lease with no more than one bank or financial institution at the Project. If a bank or financial institution does lease space at the Project, then its

leased frontage on Wisconsin Avenue will be limited to 33 feet. Notwithstanding the foregoing, a tenant otherwise prohibited in this paragraph is permitted in the Project if the ANC supports it, as demonstrated by the adoption of a formal resolution.

4. Local-, Minority-, Women-Owned, and Inclusive Retailers: During the initial retail lease-up and until all of the retail space is leased, the Developer will make commercially reasonable efforts to market to local-, minority- and / or women-owned businesses as retail tenants in the Project and shall reach out to the Greater Washington DC Black Chamber of Commerce, the DC Small Business Development Center, the Washington DC Women’s Business Center, and the DC Developmental Disabilities Council. The Developer will offer at least \$40 per square foot of gross leasable area in tenant improvement allowance for any local-, minority-, women-owned and/or inclusive businesses with whom the Developer enters into a market-rate retail lease. This tenant improvement allowance may be in the form of a direct payment, buildout cost, or some combination of the two.

NEIGHBORHOOD PUBLIC BENEFITS

5. Intersection Improvements: Prior to the issuance of a final certificate of occupancy for the Project, in consultation with the ANC and DDOT Developer will design and construct improvements to the intersection at 43rd Street and Military Road, subject to District Department of Transportation (“DDOT”) approval, which Developer will seek in good faith. With DDOT approval, such improvements shall include installation of a crosswalk on the west leg of Military Road where none currently exists; improvement of all crosswalks at the intersection to be raised pedestrian crossings; and installation of curb extensions on the south side of both Military Road approaches.
6. Chevy Chase Park Landscaping: Prior to the issuance of a final certificate of occupancy for the Project, Developer will install new landscaping at the Chevy Chase Park, including removal of invasive plants and dead and undesirable trees and bushes, in the area between the existing fence and the sidewalk along Western Avenue from Livingston Street to 41st Street and along 41st Street from Western Avenue to Livingston Street, subject to approval by the Department of Parks and Recreation and DDOT. Developer shall spend a minimum of \$100,000 on these improvements, but the total combined design, permitting, consultant, and installation costs shall not exceed \$150,000. Developer shall consult with and if requested present to ANCs 3E and 3/4G on landscaping plans, and maintain landscaping for 3 years after installation.
7. Installation of Street Trees: Prior to the issuance of a final certificate of occupancy for the Project, Developer will, subject to DDOT approval, enlarge the existing tree pits on the east side of Wisconsin Avenue between Jenifer Street and Military Road as required to meet current DDOT

standards and plant nine (9) new street trees with a 3-inch caliper DBH . This is in addition to the Project's proposed public space frontage improvements.

8. Photovoltaic Array at Iona Senior Center: Prior to the issuance of a final certificate of occupancy for the Project, the Developer will, at its cost, design, permit, and install a photovoltaic array at the Iona Senior Center at 4125 Albemarle Street, NW. This work will include a new roof membrane on the upper flat roof, photovoltaic panels, a racking system, and an inverter. These improvements will be subject to approval by the authorities having jurisdiction, including PEPCO. Upon completion of the work and final commissioning, the improvements will be conveyed to Iona, and Iona will be the sole beneficiary of both reduced energy bills and SREC income. The intent of this benefit is that the photovoltaic array be designed to produce as much solar power as reasonably possible, notwithstanding building code, engineering, and other technical limitations. In any event, Developer's total cost shall not exceed \$240,000 for all design, permitting, and installation work for these improvements, but Developer shall install as productive a photovoltaic array as is permissible and structurally supportable up to the cost of \$240,000.

CONSTRUCTION-RELATED BENEFITS

9. Preconstruction Surveys: Developer will offer, at its cost, pre-construction surveys to the residential property owners on the following blocks:
 - a. East side of 43rd Street between Jenifer Street and Military Road.
 - b. South side of Military Road between 42nd Place and 43rd Street.
10. Parking and Truck Routing: Prior to the commencement of construction on the Project, Developer will consult with the ANC on issues related to parking arrangements for construction workers and construction truck routing. The Applicant will also include the following provision in its construction contract with the general contractor: "Contractor acknowledges that the job site is surrounded by a residential neighborhood, and that on-street parking by its and its subcontractors' workforces would impose an impact on local residents. Contactor agrees to prohibit its workforces and the workforces of all subcontractors from parking on local residential streets, even if permitted by local parking regulations."
11. Transportation Demand Management Plan: Developer or future property manager shall share with the ANC results of annual parking demand and trip generation surveys required by DDOT for the first three years after building opens.
12. Point of Contact: Prior to the commencement of construction on the Project, Developer will designate a representative of Federal Realty as the point of contact for all construction-related matters while the Project is under construction. Developer will provide the email address and mobile phone number of this designated representative to the ANC.

EFFECT OF AGREEMENT

13. Conditions. Developer shall propose each of the above terms as specific and enforceable conditions of approval of the PUD to be included in the final written ZC order. If the Zoning Commission does not, for any reason, include a term as a condition of approval of the PUD, then Developer nonetheless commits to comply with the term.
14. No Approval: If the ZC does not approve the Application or Developer does not proceed with construction of the Project consistent with the approved PUD, then this Agreement shall be null and void, and Developer shall not be bound to any of the terms herein.

MISCELLANEOUS

15. Headings: Section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this agreement.
16. Enforcement: If a majority vote of the ANC determines that Developer has not fulfilled their obligations under this Agreement, then the ANC shall be permitted to take all necessary legal action to enforce this Agreement. The Parties agree to work in good faith prior to taking any legal action to enforce the Agreement. The Parties further agree that any legal action taken to enforce this Agreement shall be pursuant to the Zoning Regulations and in no other forum unless specifically allowed by law.
17. Entire Agreement: This Agreement constitutes the entire Agreement between the Parties hereto, and no party is liable to the other or bound in any manner by express or implied warranties, guarantees, promises, statements or representations pertaining to the subject matter hereof unless such warranties, guarantees, promises, statements, or representations are expressly and specifically set forth herein.
18. Choice of Law: All parts of this Agreement shall be governed by and construed in accordance with the laws of the District of Columbia.
19. Modifications: Modifications, waivers, and consents regarding this Agreement shall only be binding if in writing and signed by both Parties.

20. Succession: This Agreement shall be binding upon and shall inure to the benefit of Developer and ANC 3E, and their respective heirs, successors, and assigns.

Street Retail, LLC

By: _____

Name:

Title:

Advisory Neighborhood Commission 3E

By: _____