

MEMORANDUM OF UNDERSTANDING  
BETWEEN ANC 3E AND VALOR DEVELOPMENT, LLC  
FOR THE DEVELOPMENT AT 4330 48<sup>th</sup> St. NW

This Memorandum of Understanding (the “**MOU**” or “**Agreement**”) is made this 13<sup>th</sup> day of December 2018 by and between Valor Development, LLC., a District of Columbia Limited Liability Corporation (“**Developer**”) or its successors and assigns, and Advisory Neighborhood Commission 3E (“**ANC 3E**” or the “**ANC**”). Valor and the ANC are collectively referred to herein as the “**Parties**.”

**UNDERSTANDING OF THE PARTIES**

WHEREAS, Developer has certain real property located at the address of 4330 48th Street NW, Washington, DC (Lot 1499 in Square 0807) under contract for purchase (“**Site**”).

WHEREAS, the Site is within the boundaries of ANC 3E, and the District of Columbia Zoning Regulations authorizes the ANC to appear as a party in proceedings before the District of Columbia Zoning Commission (“**ZC**”);

WHEREAS, Developer has filed an application for Planned Unit Development (“**Planned Unit Development**”) to the ZC to seek permission to develop a mixed-use building on the Site superior in design and quality than would be allowed as a Matter-of-Right development;

WHEREAS, Developer intends to develop the Site into an approximate 219 apartment unit development across two buildings inclusive of a ~16,000 sf retail portion (the “**Project**”), and

WHEREAS, Developer has agreed to provide community benefits in exchange for support by the ANC of the Planned Unit Development;

NOW THEREFORE, provided that ANC 3E supports the Planned Unit Development (“support” shall be indicated by a majority vote of the ANC on a resolution or motion recommending approval of the Planned Unit Development), Developer agrees to implement the following as part of the Project:

**PUBLIC BENEFIT: RETAIL USES**

1. Full-Service Grocer: For at least 10 years from date a certificate of occupancy is issued for the project, Developer will reserve a minimum of 13,000 square feet of retail space within the Project solely for use by a full-service grocer (“**Grocery Space**”). The term “**Full-Service Grocer**” is to be defined by The District of Columbia’s Alcoholic Beverage Regulation Administration (ABRA), as stipulated in Exhibit A. The parties agree that a guaranteed full-service grocery at the Property is of substantial value to the community.
2. Restaurant Venting: Developer shall run any kitchen exhaust venting from any grocer or from eating and drinking establishments within the Project to the highest roof of the Project, so as to minimize the impact of odors and noise on the neighbors to the Property.

3. Waste Management: Developer commits to a plan for waste management so that waste is managed within the facilities of the Project.

## **OTHER PUBLIC BENEFITS**

4. Affordable Housing: Developer will set aside no less than 11% of the residential Gross Residential Area of the project to ADUs that are devoted to households at MFI levels as prescribed by the IZ regulations in effect at the time of execution. MFI levels by tenure type, as of January 3<sup>rd</sup>, 2018 are 60% for rental and 80% for ownership.
5. Building Design: LEED Certification: Developer commits to achieve LEED Gold certification. Prior to building permit, Developer will demonstrate to the Zoning Administrator that the project is registered with the USGBC to commence the LEED certification process. Prior to certificate of Occupancy, Developer will provide the ZA with a copy of the LEED application indicating enough points to achieve LEED Gold. Developer will complete the LEED certification process at the LEED Gold level.
6. Public Space: Reorganization, Cleaning and Expanding Existing Public Alley: Developer commits to reorganize alleys to the west and south of project so that they are organized, clean and pedestrian friendly. The Project plans shall include the clean-up of the unattractive and disorganized mess of dumpsters currently lining the public alley behind the Spring Valley Shopping Center, as well as the dumpsters along Yuma Street. The disparate dumpster locations will be centralized and screened behind fencing so as to be unobtrusive to pedestrians. Developer also proposes to widen the existing alley so as to maintain a 20 foot drive aisle. These changes of the alley are designed, among other things, to ensure that the current parking of delivery trucks along Yuma Street to service the Spring Valley Shopping Center is no longer necessary.
7. Public Space: Landscaping. The Project commits to including retainage of the Heritage Tree along the west side of 48<sup>th</sup> St, planting of and care for the appropriate trees per DDOT requirements in the tree-boxes along the west side of 48<sup>th</sup> and the south side of Yuma Street adjacent to the project, filling any tree-boxes gaps that exist on either side of 48<sup>th</sup> or Yuma, to ensure the new structure more fully blends with the character of the neighborhood that is replete with larger mature trees along the roadways.
8. Transportation: Funding and Coordinating Installation of a “HAWK” signal: Developer commits to funding the study and installation of a High-Intensity Activated Crosswalk Beacon across Massachusetts Avenue, near Lot 807. Developer commits to working with DDOT to ensure the light is timed appropriately so as to not inhibit vehicular traffic along Massachusetts Avenue. The HAWK signal will provide a safe pedestrian crossing in an area with significant, and dangerous, jay-walking instances. The HAWK signal will promote connectivity between the Project and the commercial lots across from Massachusetts Avenue creating a cohesive commercial area.
9. Transportation: Car Sharing: Developer commits to set aside four (4) parking spaces for car sharing services such as ZipCar, Car2Go, etc.

- a. Transportation: Ride-Hailing: Developer commits to work with ride hailing services to designate the building entrance on Yuma Street as the preferred pickup and drop-off location.
10. Transportation: Improvement of Bicycle Infrastructure: Developer commits to improving bicycle infrastructure by providing a bike storage area and further working with DDOT on its efforts to install a Capital Bikeshare station in the vicinity of the Project. Additionally, Developer commits to working with JUMP on its efforts to include electric bicycles and scooters either in the pursued Capital Bikeshare station or in close proximity to the project site.
11. Transportation: Connectivity between Project and Tenleytown Metro Station: Developer commits to spending \$100,000 on means for connecting residents to the Tenleytown Metro station through shuttle, geofence with ride hailing services or other options if they become available. These benefits will be available to residents without further cost as long as the benefit exists.
12. Transportation: Improving Vehicle Circulation at 49th Street NW and Yuma Street NW: Developer commits to discussing the implementation of a “pork chop” at the 49<sup>th</sup> Street, NE exit from the Spring Valley Shopping Center with DDOT and with the adjacent gas station owner. It is understood that the ultimate decision to implement the pork-chop-will be under DDOT’s purview and beyond Developer’s control. Developer commits to providing up to \$5,000 toward any recommendations made by DDOT with respect to a pork chop.
13. Pedestrian Infrastructure and Traffic Calming: DDOT has made the recommendation for the Developer to fund and construct pedestrian network improvements in the immediate vicinity of the site to encourage walking and offset the impacts of being over-parked. Specifically, upgrade substandard curb ramps, stripe missing crosswalks, and install curb extensions. After consulting with DDOT, AU and the ANC, Applicant agrees to adhere to DDOT’s final recommendations at the following intersections:
  - a. Yuma Street and 48<sup>th</sup> Street NW
  - b. Windom Place and 48<sup>th</sup> Street NW
  - c. Warren Street and 48<sup>th</sup> Street NW
  - d. 49<sup>th</sup> Street and Yuma Street NW
14. Building Operations: Rooftop Terrace Restrictions: Developer shall mitigate as much as possible noise and light emanations from the planned rooftop terrace. Further, Developer will agree to limit events on the terrace to between the hours of 8 AM and 10 PM Sunday through Thursday, and 8 AM to 12 AM Friday and Saturday. No amplified music shall be permitted on the rooftop terrace.
15. Building Use: Alternate uses: Developer agrees not to negotiate a master lease with American University for student housing within the development now or in the future. This would not preclude students independently renting units, as is their right, but would preclude the mass leasing of the building for essentially student housing.

## TRAFFIC MITIGATION EFFORTS

16. Loading Management Plan: Developer will cause its traffic consultant, Gorove/Slade, to prepare a Loading Management Plan for the Project, which Developer will implement. Plan shall include measures to ensure that trucks or vans destined for the project after occupancy shall stop, park, load, or unload only in the alley or the Project's loading dock to prevent congestion on 48th Street and Yuma Street.
17. Residential Permit Parking: The Property is located on 48<sup>th</sup> Street, NW, within a block that is neither listed or eligible for the District's Residential Permit Parking ("RPP") program, and the Property does not adjoin other streets which might serve as the Property's address. To further ensure that residents of the Project will not participate in the RPP program, Developer shall take the following steps:
  - a. Place a clause in emphasized type in all leases of the apartment building 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 ("No RPP Policy"), and enforce the No RPP Policy, to the full extent permitted by law;
  - b. Oppose any effort by residents or others to add the Subject Property Apartment Building to the list of properties eligible for RPPs;
  - c. Should Developer sell any units at the Subject Property in the Apartment Building, Developer will add a covenant that runs with the land to the deed for the units prohibiting Residents from applying for or obtaining RPPs;
  - d. Developer shall develop a written RPP-exclusion enforcement plan in concert with residents of Single Member Districts 3E01, 3E02, 3E05 and DDOT. Developer shall document the plan and present it to the ANC at least two months before initial building occupancy.
  - e. Any resident of ANC 3E may take legal action in DC Superior Court, or another court with jurisdiction, ("Suit") as a third-party beneficiary of this Agreement to compel enforcement of compliance with the No RPP Policy, or to compel Developer to terminate the lease of any Resident who nonetheless refuses to comply with the No RPP Policy, provided that Developer has first been given notice and presentation of evidence from that ANC resident, and is given 30 days to take such action on its own initiative. A resident of ANC 3E that prevails in a Suit against the Developer shall be entitled to an award of its reasonable attorney's fees.
  - f. Furthermore, if Developer loses three or more Suits brought by residents of ANC3E under this paragraph, it shall be required to donate \$2,500 to a non-profit organization identified by the ANC for each subsequent Suit it loses, up to a maximum of \$10,000.

- g. Nothing herein shall limit the right of the ANC or any individual to seek administrative enforcement of any provision of any order by the ZC in connection with this project.
  - h. The townhouses of the project are exempt from the above RPP restriction/recitals
18. Designation of Loading Zone. Developer shall provide, in consultation with DDOT, a designated delivery zone adjacent to the main entrance for Uber/Lyft/UPS/Fed Ex etc. pickups to prevent idling nearby.
19. Parking Plan: Developer commits to implementing the Parking Management Plan attached hereto as Exhibit B.

## **CONSTRUCTION AGREEMENT**

20. Construction Plans: Developer shall advise the ANC of construction plans before construction begins. These plans shall include general permitting, site preparation, and construction schedules, truck and heavy equipment routes, and possible service outages, such as electrical, water, sewer, or other utilities. Developer shall notify the ANC of significant changes in plans, especially those which shall affect the neighborhood immediately around the project at least 1 week in advance of the execution of the changes.
21. Construction Activity: Developer shall notify the ANC and nearby neighborhood residents in writing of potentially noisy, disruptive, or hazardous events, such as blasting or pile driving at least 1 week prior to the start of such events.
22. Construction Vibration: Developer shall provide and fund a vibration monitoring plan that will monitor vibrations that affect surrounding buildings.
- a. Developer will work with surrounding residents to establish a baseline for acceptable vibration based on industry best practices.
  - b. Plan shall explain in detail the following:
    - i. Methods, personnel and equipment used to measure vibration.
    - ii. Acceptable measurements including baseline and permissible thresholds.
    - iii. Actions that will be taken if vibrations are greater than agreed upon limits.
    - iv. Mitigations Developer will offer if the vibrations both exceed agreed upon limits and show demonstrable harm to resident's homes.
    - v. Alternative avenues of recourse for residents, agreed upon before construction begins, if mitigations offered by Developer are deemed unacceptable.

- vi. Define limitations of liabilities in years that residents can make claims.
- 23. Changes in Construction Plans: Developer shall advise affected neighborhood residents in writing of major changes in previously announced plans (refer to Item 1 above) or potential service outages at least 1 week in advance of the event.
- 24. 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 7 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.

## **EFFECT OF AGREEMENT**

- 25. Conditions. Developer shall propose each of the above terms as specific, enforceable conditions of approval of the Design Review. If the Zoning Commission does not for any reason include a term as a specific, enforceable condition of approval of the Design Review, Developer nonetheless commits to comply with the term.
- 26. No Approval: If the ZC does not approve the ZC Case or Developer does not move forward to construct the Project consistent with the approved Design Review, then this Agreement shall be null and void.

## **MISCELLANEOUS**

- 27. Value of Amenities: Notations herein that a particular amenity has “substantial value” shall not be read to indicate that other amenities are not also of substantial value to the community.
- 28. Substitute Amenities: Notations herein that a substitute amenity of equal or greater value shall be provided if Developer does not provide an amenity promised herein shall not be read to indicate that Developer is not obligated to provide such a substitute amenity if it fails to provide other amenities promised herein.
- 29. Headings: Section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this agreement.
- 30. Entire Agreement: This Agreement constitutes the entire Agreement between the Parties hereto
- 31. Choice of Law: All parts of this Agreement shall be governed by and construed in accordance with the laws of the District of Columbia.
- 32. Modifications: Modifications, waivers, and consents regarding this Agreement shall only be binding if in writing and signed by both Parties.

33. 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.

**Valor Development, LLC**  
a District of Columbia Limited Liability Corporation

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Name: William Lansing  
Title: Managing Member

**ADVISORY NEIGHBORHOOD COMMISSION 3E**

By: \_\_\_\_\_

Jonathan McHugh, Vice Chairperson

## EXHIBIT A

From: <https://abra.dc.gov/page/full-service-grocery-stores>

### Full-Service Grocery Stores

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ABRA issues licenses to full-service grocery stores, which are defined as:

- Self-service retail establishments;
- Independently owned or part of a corporate chain; and
- Licensed as a grocery store.

The following criteria would need to be met in order to apply for a class B license as a full-service grocery store:

1.) A retailer must be licensed as a grocery store and sell at least six of the following categories:

- Fresh fruits and vegetables
- Fresh and uncooked meats, poultry and seafood
- Dairy products
- Canned foods
- Frozen foods
- Dry groceries and baked goods, and
- Non-alcoholic beverages.

2.) Dedicate a certain amount of square footage—or selling area—to the sale of the food products listed above, including a minimum of either:

- 50 percent of the store's total square footage, or
- 6,000 square feet.

3.) Dedicate at least 5 percent of the selling area to each of the food categories. In order for the square footage to be considered part of the selling area, it must be open to the public and may not include storage, preparation areas or rest rooms.