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

This Memorandum of Understanding (the "**MOU**" or "**Agreement**") is made this 25th day of September 2019 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 applied for approval of a Planned Unit Development ("PUD") to from the D.C. Zoning Commission in Case No. 19-10 (the "ZC Case") 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/townhome unit development across six buildings inclusive of a ~16,000 sf retail portion (the "**Project**"), and

WHEREAS, Developer has agreed to provide public benefits and project amenities 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 {305.5(q)}: For at least 10 years from the 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. Existing Tenants and Future Commercial Space {305.6}: Developer agrees to offer, on a right of first refusal basis, any remaining commercial space not leased to the grocer to existing tenants in operation on the Site as of the date of this MOU.

PUBLIC BENEFITS: HOUSING

1. Affordable Housing {305.5(g)}: 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.

PUBLIC BENEFITS: DESIGN

1. Building Design: LEED Certification {305.5(k.5)}: 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.

PUBLIC BENEFITS: PUBLIC SPACE

1. Public Space: Reorganization, Cleaning and Expanding Existing Public Alley {305.5(o)}: 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 Massachusetts Avenue Parking Shops (Square 1499, Lots 802 and 803), 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 encourage that the current parking of delivery trucks along Yuma Street to service the Massachusetts Avenue Parking Shops is no longer necessary.

2. Public Space: Landscaping {305.5(l)}: The Developer commits to retain the Heritage Tree along the west side of 48th St, planting of and care for the appropriate trees per DDOT requirements in the tree-boxes along the west side of 48th and the south side of Yuma Street adjacent to the project, filling any tree-boxes gaps that exist on either side of 48th 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.

3. Public Space: Improvement of Public Spaces at and near proposed Development {305.5(l)}: The Developer commits to improving the public spaces delineated in the plans as 1) all open space on their property , and 2) the triangle park at the intersection of Massachusetts Avenue, 49th Street and Yuma Street. The Developer shall implement ANC 3E's suggestions to the greatest extent possible, and the design and construction of the spaces and any related streetscape improvements shall be subject to review and approval by the appropriate District public space permitting authorities. Developer commits to spending up to $15,000 on these improvements.

PUBLIC BENEFITS: TRANSPORTATION

4. Transportation: Funding and Coordinating Installation of a "HAWK" signal {305.5(o)}: Developer commits to funding the study and installation of a High-Intensity Activated Crosswalk Beacon across Massachusetts Avenue, near Lot 807. Developer commits to coordinate with DDOT so that the timing of the HAWK signal has as little impact on vehicular traffic on Massachusetts Avenue as possible. 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. It is understood that the ultimate decision regarding the design and timing of the signal will be under DDOT's purview and beyond Developer's control.

5. Transportation: Car Sharing {305.5(o)}: Developer commits to set aside four (4) parking spaces for car sharing services such as ZipCar, Car2Go, Free2Move, etc.

6. Transportation: Ride-Hailing {305.5(o)}: Developer commits to work with ride hailing services to designate the building entrance on Yuma Street as the preferred pickup and drop-off location.

7. Transportation Dedicated Multi-Mode Transit Space {305.5(o)}: Developer commits to working with DDOT to designate the section of 48th Street NW between Yuma Street NW and Warren Street NW as an alternative transportation block. Specifically, allowing DDOT to organize the diverse transit options currently available such as electric scooters, electric bikes, electric mopeds, bike shares, car shares, as well as future transit options, in order for DDOT to facilitate and manage those options and their impact on the surrounding community.

8. Transportation: Improvement of Bicycle Infrastructure {305.5(o)}: 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 Site.

9. Transportation: Connectivity between Project and Tenleytown Metro Station {305.5(o)}: 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 equivalent options such as self-driving cars if they become available. These benefits will be available to residents without further cost as long as the benefit exists. Developer commits to establishing and funding an escrow account before obtaining a Certificate of Occupancy, consulting with the DC Department of Transportation (DDOT) and ANC3E on what means they will employ to create and maintain said connection and implementing DDOT and ANC 3E's suggestions to the greatest extent possible, produce yearly reports submitted to ANC3E and DDOT detailing how monies from the escrow account were spent, and consult with DDOT and ANC3E if changes are contemplated. Developer agrees that the full $100,000 shall be spent within 10 years of the issuance of the Certificate of Occupancy.

10. Transportation: Improving Vehicle Circulation at 49th Street NW, Yuma Street NW and Massachusetts Avenue NW between 49th Street and 48th Street NW {305.5(o)}: Developer commits to studying the effects of breaking the median on Massachusetts Avenue in order to improve porosity and turning movements at Spring Valley Shopping Center. It is understood that the ultimate decision to implement any proposed changes will be under DDOT's purview and beyond Developer's control. Developer commits to providing up to $15,000 toward this effort.

11. Residential Permit Parking: The Property is located on 48th 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

MITIGATION EFFORTS: BUILDING USE

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

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. 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. This restriction will exist for the life of the project.

4. 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 prevent students independently renting units, as is their right, but instead preclude negotiations with American University for what would in effect be a student dormitory.

MITIGATION EFFORTS: TRANSPORTATION AND PARKING

1. Pedestrian Infrastructure and Traffic Calming {305.5(o)}: 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 48th Street NW

   b. Windom Place and 48th Street NW

   c. Warren Street and 48th Street NW

   d. 49th Street and Yuma Street NW

2. 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 so 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.

3. Designation of Loading Zone. Developer shall provide, in consultation with DDOT, a designated delivery zone adjacent to the main entrance for UPS/Fed Ex etc. pickups to prevent idling nearby. It is understood that the ultimate decision to implement any proposed changes will be under DDOT's purview and beyond Developer's control.

4. Parking Plan: Developer commits to implementing the Parking Management Plan attached hereto as Exhibit B. In addition, if Developer requests a change in unit mix, the amount of parking reserved for residential units within the apartment section of the development will be in a 1 to 1 ratio of units to dedicated parking parking spaces.

MITIGATION EFFORTS: CONSTRUCTION AGREEMENT

1. Construction Plans: At least 30 days prior to commencement of construction of the Project, the Developer shall attend a duly noticed public meeting of the ANC to provide an update on any and all environmental reports, general permitting, site preparation, razing and construction schedules and hours, truck and heavy equipment routes, possible outages to services and utilities, and requirements and protocols for monitoring and removal of hazardous materials, if any. Any environmental reports produced in connection with the development, including without limitation, any reports to be discussed at said meeting, shall be provided to the ANC and the 200 foot neighbors at least 14 days before said meeting.

2. 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.

3. 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.

4. 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.

5. 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

1. Conditions. Developer shall propose each of the above terms as specific, enforceable conditions of approval of the PUD. If the Zoning Commission does not for any reason include a term as a specific, enforceable condition of approval of the PUD, Developer nonetheless commits to comply with the above terms.

2. No Approval: If the ZC does not approve the PUD or Developer does not move forward to construct the Project consistent with the approved PUD, then this Agreement shall be null and void.

MISCELLANEOUS

3. 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.

4. 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.

5. Headings: Section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this agreement.

6. Entire Agreement: This Agreement constitutes the entire Agreement between the Parties hereto

7. Severability: If any clause, or portion of a clause, in this Agreement is considered invalid under the rule of law, it shall be regarded as stricken while the remainder of this Agreement shall continue to be in full effect.

8. Choice of Law: All parts of this Agreement shall be governed by and construed in accordance with the laws of the District of Columbia.

9. Modifications: Modifications, waivers, and consents regarding this Agreement shall only be binding if in writing and signed by both Parties.

10. 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.

SIGNATURES

Valor Development, LLC
a District of Columbia Limited Liability Corporation

_____

Name: William Lansing
Title: Managing Member

ADVISORY NEIGHBORHOOD COMMISSION 3E

By: _____

Jonathan McHugh, Vice Chairperson

EXHIBITS

EXHIBIT A

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

Full-Service Grocery Stores

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.

ATTACHMENTS

1. Parking Management Plan (PMP)