

MEMORANDUM OF UNDERSTANDING  
BETWEEN ANC 3E AND WISCONSIN AVENUE BAPTIST CHURCH AND SUNRISE  
SENIOR LIVING FOR THE DEVELOPMENT AT 3920 ALTON PLACE NW

This Memorandum of Understanding (the “**MOU**” or “**Agreement**”) is made this 12<sup>th</sup> day of November, 2018 by and between Wisconsin Avenue Baptist Church (“**WABC**”) and Sunrise Senior Living (“**Sunrise**”) or its successors and assigns, and Advisory Neighborhood Commission 3E (“**ANC 3E**” or the “**ANC**”). Sunrise, WABC and the ANC are collectively referred to herein as the “**Parties**” and individually as a “**Party**”.

**UNDERSTANDING OF THE PARTIES**

WHEREAS, **WABC** is the owner of certain real property located at the address of 3920 Alton Place NW, Washington, DC (Lot 14 in Square 1779) (“**Site**”) and Sunrise is a contract purchaser for the 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 Board of Zoning Adjustment (“**BZA**”);

WHEREAS, Sunrise intends to develop the Site with a single building for zoning purposes to accommodate an 86-unit continuing care retirement community (CCRC) and a church with a 250-seat sanctuary (the “**Project**”);

WHEREAS, upon completion of the Project, a condominium regime will be created wherein WABC will own the church portion of the Project and Sunrise will own the CCRC portion of the Project;

WHEREAS, WABC and Sunrise have filed an application with the BZA in Case No. 19823 for several special exceptions and variances in order to develop a mixed-use building on the Site, which is located in the R-1-B District;

WHEREAS, the specific relief requested in BZA Application No. 19823 is as follows: (i) 57% lot occupancy where 60% is permitted for a church and 40% is permitted for all other uses (variance); (ii) 4 stories within the permitted height of 40 feet for non-religious buildings, where only 3 stories are permitted (variance); (iii) no side yard to the west along parkland, but a 36-foot wide side yard to the east adjacent to residential properties, where only 8 feet is required (variance); (iv) a retaining wall 13 feet in height at its tallest point along a garage ramp, where a maximum of 4 feet is permitted (special exception); and (v) establishment of the CCRC use (special exception).

WHEREAS, WABC and Sunrise have agreed to ensure that the Project will not create any objectionable conditions and otherwise be in harmony with the zone map and zoning regulations through the provision of certain community benefits in exchange for support by the ANC of the special exceptions and variances;

NOW THEREFORE, provided that ANC 3E supports the Project and the Special Exceptions and Variances requested (“support” shall be indicated by a majority vote of the ANC

on a resolution or motion recommending approval of the Project), the Parties agree to implement the following as part of the Project:

## **PARKING**

1. Parking: Sunrise shall provide sufficient onsite parking for all uses envisioned for the Property.
  - a. Sunrise shall provide a minimum of 66 automobile spaces in a below-grade parking garage to meet the number of parking spaces required by the D.C. Zoning Regulations.
  - b. Sunrise shall ensure building address does not appear in the Residential Parking Permit ("RPP") database maintained by DDOT as well as other efforts detailed below whose purpose is to ensure that building users utilize onsite parking exclusively and do not park on neighborhood streets. Specific actions that Sunrise shall take are described in Paragraph 24 below.
  - c. Sunrise shall ensure enough onsite spaces are available for staff, contractors (including those hired by residents), and visitors and will endeavor to ensure they are easily accessed in order to minimize offsite parking. In the event that all on-site spaces are occupied, Sunrise shall direct all residents and visitors to park only at nearby parking garages and metered spaces on the street, and not at any unmetered street spaces.
  - d. Neither Sunrise nor WABC will charge for parking in Site's parking garage.
  - e. Neither Sunrise nor WABC will rent the onsite parking spaces to other uses. Spaces will be used only for activities in the building.
  - f. Sunrise shall ensure that entrance driveway on Alton Place is not used for parking but solely for drop off and pickup for Sunrise residents and visitors, by design and enforcement.
2. TDM Measures: Sunrise shall implement the following transportation demand management ("TDM") measures:
  - a. The Applicant will identify TDM Leaders (for planning, construction, and operations). The TDM Leaders will work with employees in the development to distribute and market various transportation alternatives and options.
  - b. The Applicant will work with DDOT and goDCgo (DDOT's TDM program) to implement TDM measures at the proposed development.
  - c. The Applicant will share the full contact information of the TDM coordinator for the proposed development with DDOT and goDCgo.

- d. The Applicant will meet ZR16 Zoning requirements to provide bicycle parking facilities at the proposed development. This includes a minimum of 30 secure long-term parking spaces located within the buildings of the proposed development and a minimum of 12 short-term bicycle parking spaces around the perimeter of the buildings (in the form of bicycle racks). Sunrise will install a Transportation Information Center Display (kiosk) in the CCRC containing materials related to local transportation alternatives and maintain a stock of materials at all times.
- e. Sunrise shall offer all eligible on-Site employees subsidized transit benefits via WMATA SmartBenefits program.

### **LIMITS ON THE INTENSITY OF USE OF THE BUILDING**

3. Child Development Center Use: WABC will agree to not seek Special Exceptions in order to allow for the Church's use of its share of building as a child development center under 11-U DCMR 203.1 (g). Notwithstanding the foregoing, WABC and the ANC may modify this provision by mutual consent of the Parties.
4. For-profit Entity Use: WABC will agree to not seek Special Exceptions in order to allow for the Church's sharing of its portion of building with for-profit entities.
5. Other Uses: Sunrise will work with surrounding community to ensure that the cumulative effect of Site uses, other than exclusively religious and accessory uses, will not have an adverse impact on the neighborhood due to traffic, noise, operations, or other similar factors.

### **COMMUNITY RELATIONS**

6. Community Outreach Fund: Sunrise will create a community outreach fund in the amount of \$10,000. The ANC will direct Sunrise to disburse funds in the amount of \$2,000 per year, beginning on the date the certificate of occupancy is issued for the CCRC portion of the building, and every 12 months thereafter, to support various community events and projects as agreed upon by the ANC.
7. Sunrise Intergenerational Programs: Sunrise will work with area schools to establish intergenerational programs and activities for students and Sunrise residents.

### **BUILDING OPERATIONS**

8. Emergency Vehicles: Sunrise shall strive to minimize impacts of emergency vehicles, such as ambulances and fire trucks, at the Site by:

- a. Requesting any non-emergency visits to the Site to be undertaken without emergency lights or sirens.
  - b. Requesting emergency vehicles to the Sunrise facility to enter from Alton Place and exit via Yuma Street.
9. Large buses: Any buses with a capacity of 49 passengers or more to the Site will be on an “on-demand” basis in order to prevent bus idling on the adjacent streets. Such buses will be called to the Site from an off-site location only when all passengers are ready for immediate boarding. The buses shall depart from the Site immediately after passengers board or disembark the bus.
10. Deliveries: Deliveries to the building will adhere to the following:
- a. Deliveries are limited to the hours of 8 AM to 6 PM.
  - b. Deliveries will use the garage ramp on the Site by entering at the Alton Place driveway and exiting via the ramp to Yuma Street with a right turn to Tenley Circle.
  - c. Delivery trucks will not use the streets to the east of the Site to access or depart the Site but instead use Wisconsin and Nebraska Avenues to enter via Alton Place and exit via Yuma Street going west.
  - d. Deliveries will be limited to a 30-foot truck or smaller.
11. Waste Management: Sunrise commits to a plan for waste management so that waste is managed within the facilities of the Project.
- a. Waste management pickups will be limited to the hours of 8 AM to 6 PM.
  - b. Pickups will enter from Alton Place entrance and exit to the Yuma Street exit with a right turn to Tenley Circle.
  - c. Waste trucks will not use the residential streets to the east of the Site to access the Site.
12. Noise: The Parties recognize and agree that Sunrise provided a noise study demonstrating that sound levels of the proposed mechanical equipment for the Site will fall below the maximum thresholds established by D.C. Law. WABC and Sunrise shall each individually mitigate as much as possible the effects of noise emanating from the Site and ensure that building operations do not exceed the maximum sound levels permitted by D.C. regulations.
- a. Sunrise will locate equipment and install sound barriers to ensure the surrounding neighbors are not impacted by the building’s operations.
  - b. Equipment that is unusually loud and requires regular testing, e.g. emergency generators, shall be tested during daytime hours in order to mitigate noise impacts.

- c. Sunrise shall work to ensure noise emanating from individual units will not adversely affect adjacent neighbors. This may take the form of ensuring windows are closed after a certain time of day, for instance between 8PM and 7AM, and agreements between Sunrise and residents/building users that minimize noise emanating from their activities.
13. Rooftop Terrace: Sunrise and/or WABC shall mitigate as much as possible noise and light emanations from the planned rooftop terrace. Further, Sunrise and WABC 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 11 PM Friday and Saturday. No amplified music shall be permitted on the rooftop terrace.
  14. Lighting: Interior and exterior lighting for the Project shall be designed so as to minimize impact on adjacent neighbors while also meeting minimum safety needs or code requirements. Exterior lighting will be limited to ground-level path lighting at private walkways; decorative sconces with downward directed lights at exterior doors; downward directed lighting at the garage ramp; bollard lighting in the interior courtyard of the Sunrise facility; pole mounted, downward directed and directionally shielded lighting at Sunrise dropoff and interior courtyard; seasonal holiday lighting. Sunrise will extinguish unneeded interior lighting by 11PM. The main entry, the foyer, and the front parlor will be illuminated on a 24-hour basis, but lighting levels will be dimmed after 10 PM.
  15. Kitchen Venting: Sunrise shall run any kitchen exhaust venting from any food preparation services within the Project to the roof of the Project, so as to minimize the impact of odors and noise on the neighbors to the Property.

**OTHER DESIGN AND TRANSPORTATION MEASURES**

16. Effective screening of properties to the east of the building: Sunrise shall implement the landscaping plan shown in the BZA drawings for the strip of land on the east side of the Site to visual screening for the 39<sup>th</sup> Street neighbors in Square 1779. The landscape screening shall include a vertical board fence at the property line, evergreens in the planting strip, and a second fence on top of the retaining wall. Sunrise shall coordinate with the 39<sup>th</sup> Street neighbors directly abutting the Property on the landscaping choices and implementation of the plan.
17. Funding and Coordinating Reprogramming of pedestrian crossing signal at Tenley Circle and Nebraska Avenue: Sunrise commits to funding the study and reprogramming of the pedestrian crossing signal at Tenley Circle and Nebraska Avenue. Sunrise commits to working with DDOT to ensure the signal is timed appropriately so as to not inhibit vehicular traffic along ~~Massachusetts~~ Avenue but to increase the crossing time across Nebraska Avenue in order to create a safer crossing for pedestrians.
18. Traffic Mitigation: If approved by DDOT, Sunrise commits to funding and installing the following:
  - a. Curb extensions on all of the corners of the following streets:

Wisconsin

- i. Yuma Street and Tenley Circle
  - ii. Yuma and 39<sup>th</sup> Street
  - iii. Alton Place and Nebraska Avenue
  - iv. Alton Place and 39<sup>th</sup> Street
- b. "Do Not Block Intersection" markings and signs at the intersection of Nebraska Avenue NW and Alton Place NW.
  - c. "No Parking on Sundays" signs on North side of Yuma Street: If approved by DDOT, Sunrise will fund the installation of "No Parking on Sundays" signs on north side of 3900 block of Yuma Street for three to four car-lengths along the Site.
19. Traffic Calming: If approved by DDOT, Sunrise fund the construction of traffic calming measures on 39<sup>th</sup> Street to include an all-way-stop control at the intersection of 39th Street NW and Alton Place NW.
20. Landscaping of National Park Service land to the west of property and adjacent to Tenley Circle (part of the Fort Circle Parks system): Sunrise commits to landscaping and maintaining, in perpetuity, the NPS land adjacent to property on the west, between the property line and Tenley Circle, consistent with the plans included with the BZA application and developed with the NPS to be approved by the U.S. Commission of Fine Arts and National Capital Planning Commission.
21. LEED Certification: Sunrise commits to design the Project to meet the LEED-compliant level of "certified" and will make all reasonable efforts to achieve the LEED-Silver compliant rating.
22. Green Building Features: Sunrise shall adhere to DC Zoning code requirements for stormwater management and pervious surfaces as they pertain to commercial properties even if those requirements are not attached to this project.

## **TRAFFIC MITIGATION EFFORTS**

23. Loading Management Plan: Sunrise will cause its traffic consultant, Gorove/Slade, to prepare a Loading Management Plan for the Project, which Sunrise 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 Project's loading dock to prevent congestion on Alton Place and Yuma Street. Trucks shall be limited to a 30-foot truck size or smaller.
24. Residential Permit Parking: The Sunrise facility fronts on Alton Place NW and the Property does not adjoin other streets which might serve as the Sunrise facility's address. To ensure that residents of the Project will not participate in the RPP program, Sunrise shall take the following steps:

- a. Place a clause in emphasized type in all leases for Sunrise residents that prohibits such residents from applying for or obtaining RPPs, or using an RPP guest pass within one mile of the Site, 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 Site residents or others to add the Subject Property to the list of properties eligible for RPPs;
- c. Should Sunrise sell any units at the Site, Sunrise will add a covenant that runs with the land to the deed for the units prohibiting residents from applying for or obtaining RPPs;
- d. 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 Sunrise to terminate the lease of any Resident who nonetheless refuses to comply with the No RPP Policy, provided that Sunrise 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 Sunrise shall be entitled to an award of its reasonable attorney's fees.
- e. Furthermore, if Sunrise loses three or more Suits brought by residents of ANC3E under this paragraph, it shall be required to donate \$5,000 to a non-profit organization identified by the ANC for each subsequent Suit it loses.
- f. Nothing herein shall limit the right of the ANC or any individual to seek administrative enforcement of any provision of any order by the BZA in connection with this project.

## CONSTRUCTION AGREEMENT

25. Construction Plans: Sunrise 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. Sunrise 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.
26. Construction Activity: Sunrise shall notify the ANC and residents within 200 feet of the Property 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.
27. Construction Vibration: Sunrise shall provide and fund a vibration monitoring plan for residents within 200 feet of the Property that will monitor vibrations that affect surrounding buildings.
  - a. Sunrise will work with such residents to establish a baseline for acceptable vibration based on industry best practices.

- b. Sunrise will install vibration monitors on the houses closest to the construction activity and will stop construction promptly if monitors indicate that vibrations are exceeding threshold levels.
  - c. In order to minimize vibrations during construction, Sunrise will not use pile drivers. Sunrise will ensure that any alternatives methods used will generate less vibrations than pile driving.
  - d. 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 Sunrise will offer if the vibrations both exceed agreed upon limits and show demonstrable harm to resident's homes.
28. Changes in Construction Plans: Sunrise shall advise the ANC and residents within 200 feet of the Property in writing of major changes in previously announced plans described in Paragraph 25 herein or of potential service outages at least 1 week in advance of the event.
29. Construction Hours: Sunrise, 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. Sunrise and its contractors will not engage in any construction work, other than repairs, on Sunday unless such activity is conducted within the building after it is water-tight to allow for painting, drywalling, electrical wiring, and other similar work, provided that (i) the work does not create any disruptive noise, and (ii) all necessary permits for Sunday work have been obtained.

## **EFFECT OF AGREEMENT**

30. Conditions: WABC and Sunrise 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, WABC and Sunrise nonetheless commits to comply with the term.
31. No Approval: If the BZA does not approve the application or Sunrise does not move forward to construct the Project consistent with the approved design, then this Agreement shall be null and void.
32. Lawful Activities Permitted: Nothing in this Agreement shall preclude WABC or Sunrise from engaging in any lawful activities except as otherwise addressed herein.

## MISCELLANEOUS

33. Headings: Section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this agreement.
34. Entire Agreement: This Agreement constitutes the entire Agreement between the Parties hereto
35. Choice of Law: All parts of this Agreement shall be governed by and construed in accordance with the laws of the District of Columbia.
36. Modifications: Modifications, waivers, and consents regarding this Agreement shall only be binding if in writing and signed by the Parties.
37. Succession: This Agreement shall be binding upon and shall inure to the benefit of WABC, Sunrise and ANC 3E, and their respective heirs, successors, and assigns.
38. Liability: Each Party shall only be responsible for the obligations attributable to that individual Party. No Party shall be liable for another Party's failure to abide by the terms of this Agreement. Neither a trustee or trustees of WABC signing this Agreement or member of WABC shall have any liabilities or obligations under, based upon, or arising out of this Agreement, any of the terms, provisions, covenants, representations, warranties or indemnities of this Agreement, or the performance or non-performance of this Agreement.
39. Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signatures pages may be distributed to the Parties via email.

*[Signature Pages Follow]*

**Wisconsin Avenue Baptist Church**

By: Patricia Dueholm  
Name: Patricia Dueholm  
Title: Trustee  
Date: Nov. 12, 2018

**Sunrise Development, Inc., a** VA  
corporation

By: [Signature]  
Name: Philip Kroskin  
Title: VA  
Date: NOVEMBER 12, 2018

**ADVISORY NEIGHBORHOOD COMMISSION 3E**

By: [Signature]  
JONATHAN MCHUGH  
VICE-CHAIR