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VIA IZIS AND HAND DELIVERY

Zoning Commission of the
District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

**Re: Z.C. Case No. 16-23
Valor Development, LLC – Voluntary Design Review
Applicant’s Submission of Revised Plans and Supporting Information**

Dear Members of the Zoning Commission:

On behalf of Valor Development, LLC (the “Applicant”), please find attached a set of revised plans for the subject voluntary design review application (the “Revised Plans”) ([Exhibit A](#)). The Revised Plans reflect diligent efforts made by the Applicant since the January 25, 2018, public hearing to address comments and concerns expressed by the community regarding, among other things, the overall height and mass of the proposed development, pedestrian safety in the public alley system, and calculation of the Inclusionary Zoning (“IZ”) set aside requirement for the Project. As shown in the Revised Plans, the Applicant believes it has successfully addressed each of these issues while maintaining the viability of the Project through the design modifications summarized below. Overall, these design modifications have resulted in a reduction in gross floor area (“GFA”) of the proposed development of approximately 42,000 square feet. Despite the reduction, the Applicant has been able to maintain the same approximate number of market-rate and affordable dwelling units without compromising unit size. Indeed, the majority of both market-rate and affordable dwelling units continue to be larger-sized units of two bedroom, two bedroom plus den, and three bedrooms. The Applicant has also been able to maintain the same approximate amount of affordable square footage as previously proposed. Following the January 25, 2018, public hearing, the Applicant worked with the Office of Planning (“OP”) on how IZ was to be applied given the unique set of circumstances that exist within the Project Site and the current language of the IZ regulations. As discussed below, based upon feedback provided by OP, which the Applicant understands was confirmed with the Zoning Administrator (“ZA”), the amount of affordable housing proposed by the Applicant is now fully consistent with how a proposed project’s IZ set aside requirement shall be calculated when existing gross floor area will remain on a proposed development site (such as in this case the AU Building and Spring Valley Shopping Center). Finally, the Applicant has slightly increased the size of the proposed grocery store, which,

as committed to by the Applicant, will continue to be a grocer that offers a full service, neighborhood serving amenity to the community. The following is a list of major design changes that have been made to the Project:

Building 1

- Reduction in overall GFA of the proposed development by approximately 42,000 square feet through the removal of a floor;
- Adjustments to remaining above-grade floor to ceiling heights which will increase natural light and overall unit quality;
- Added new dwelling units by extending southern portion of the building into area previously proposed as Windom Walk;
- Addition of lower-level (below-grade) dwelling units in area previously devoted to parking;
- Courtyards adjacent to 48th Street, NW lowered by one level to provide natural light and amenity space to new lower-level dwelling units;
- Increased the amount of grocery/retail use in Building 1 by approximately 2,300 square feet of GFA;
- Added condenser units and mechanical screen wall to upper penthouse;
- Addition of partial parking level to maintain previously proposed number of parking spaces;
- Modified loading facilities to provide one 30-foot berth, one 55-foot berth, and one 20-foot delivery space;
- Changed window frame color on western portion of building from black to white;

Building 2

- Replaced Building 2 with five lower-scale townhomes

Other design changes

- Replaced Windom Walk with Windom Park to address pedestrian safety concerns expressed by the community and to recapture dwelling units lost due to changes to Building 1 height;
- Modified project footprint to maintain existing heritage tree located just outside of Project Site along 48th Street, NW;
- Added above-grade transformers along existing southern alley;

Updated Comprehensive Plan analysis

Pursuant to Subtitle X § 604.5 of the design review standards, the Commission shall find that the proposed Project design is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the Project Site. Attached hereto as Exhibit B is an updated Comprehensive Plan analysis that is based upon the Revised Plans.

Updated design review standard analysis

Pursuant to Subtitle X §§ 604.6 and 604.7, the Commission must also find that the proposed Project will not tend to affect adversely the use of neighboring property and meets the general special exception criteria of Subtitle X, Chapter 9, and shall review the urban design of the proposed site and building against several enumerated criteria. Attached hereto as Exhibit C is an updated design review standard analysis that is based upon the Revised Plans.

Update of aggregation / transfer of density within Project boundary

At the January 11, 2018, public hearing, the Commission requested a summary of the existing and proposed allocation of density within the voluntary design review project boundary, and the mechanism within the Zoning Regulations that allows the Applicant to effectuate the proposed allocation of density. The Applicant submitted this information as part of its post-hearing submission. *See* Exhibit 211C. As a result of the aforementioned reduction in gross floor area of the Applicant's proposal, the amount of density proposed to be allocated from the Spring Valley Shopping Center ("SVSC") site to Lot 807 (the "Valor Lot") through the flexibility in building bulk control provided under the ZR16 design review process has been reduced from approximately 92,764 square feet to approximately 50,115 square feet. As such, for the Commission's convenience an updated aggregation / transfer of density summary is attached hereto as Exhibit D.

Updated Inclusionary Zoning ("IZ") set aside calculation

As stated above, following the January 25, 2018, public hearing, the Applicant worked with OP on how IZ was to be applied given the current language of the IZ regulations and the unique set of circumstances present in the subject application, including the substantial amount of existing commercial density that is located within the Project Site. As stated in the Applicant's post-hearing submission, under the current regulations IZ only applies to "new gross floor area that would result in ten (10) or more dwelling units." 11-C DCMR § 1001.2(b). While the current IZ regulations do address when IZ is applicable to existing gross floor area, this is only done relative to additions to existing buildings. In this case, a unique circumstance exists in that the Project Site currently contains approximately 196,224 GFA, or 1.22 FAR (based upon the area of the Project Site), of commercial density that is located on separate lots than the Valor Lot, was constructed decades ago and has no IZ requirement, is not being modified in any way, and is not owned / controlled by the Applicant and thus receives no benefit from that existing commercial density. The existing language of the regulations and this unique set of circumstances formed the basis of the Applicant's initial IZ set aside calculation as being equal to 10% of proposed residential gross floor area. Notwithstanding the above, OP, in consultation with the ZA, determined that the IZ set aside requirement for the Project must take into account the existing commercial GFA within the Project Site for purposes of identifying under the IZ requirements whether 10% of the proposed residential gross floor area or 75% of the bonus density used is the

greater set aside requirement for the Project.¹ Based upon the feedback from OP and the December 2017 plans submitted by the Applicant, the 10% of residential GFA and the 75% of bonus density used set aside calculations equated to approximately 25,759 GFA (10% of residential GFA) versus approximately 53,060 GFA (21% of residential density). As stated in the Applicant's April 16, 2018, request for deferral, upon recommendation of the Commission and OP, the Applicant met with the District of Columbia Department of Housing and Community Development ("DHCD") to discuss whether any programs exist that could support greater affordable housing within the Project. Due to specific program requirements and constraints, and the substantial and complicated cost structure associated with development of the project site, there are no viable DHCD programs available to the Applicant at this time. Based on these circumstances, and in response to other considerations related to community concerns over the height and mass of the Project, the Applicant was compelled to revise the Project as shown in the Revised Plans.

Attached hereto as Exhibit E is the Applicant's IZ set aside calculation for the Revised Plans, which is consistent with the feedback provided by OP and the ZA on how a proposed project's IZ set aside requirement shall be calculated when there is existing gross floor area on a proposed development site. It is also consistent with the proposed clarifications to the IZ regulations that are currently under review by the Commission. As clearly demonstrated in Exhibit E, the Project consists of approximately 214,094 GFA of residential use, which at 10% would equate to a set aside requirement of approximately 21,409 GFA. In comparison, the revised Project has an overall density of approximately 2.68 FAR, which is 0.18 FAR above the maximum matter-of-right density of 2.5 FAR permitted in the MU-4 zone. As such, 75% of the 0.18 FAR of bonus density used equates to a set aside requirement of approximately 21,706 GFA, which is the greater of the two set aside calculations; and therefore, the Applicant's IZ requirement. Of note, the calculations contained in Exhibit E do not reflect the additional IZ required for non-communal penthouse habitable space, residential dwelling units located in a cellar, or residential GFA located in projections. As shown in the tabulations of development data included in the Revised Plans, these components would increase the IZ requirement of the Project by approximately 5,734 GFA, for a total IZ set aside requirement of approximately 27,440 GFA. A full set of IZ tabulations and an IZ unit mix plan is included on Sheet G07 of the Revised Plans.

Areas of technical zoning flexibility

As shown in the tabulation of development data included in the Revised Plans, the Applicant is not requesting any additional areas of technical zoning flexibility. The only area of technical zoning flexibility being requested by the Applicant is related to the rear yard of Building 1 to allow a ten foot rear yard where a minimum 15 feet is required. As shown in the Revised

¹ The Commission is in the process of reviewing amendments to the IZ regulations that include, among other amendments, a clarification regarding when IZ applies to existing gross floor area within a site based upon the extent to which the existing gross floor area of a building is being enlarged by an addition and/or whether IZ bonus density is used on the site. The proposed amendments also include a clarification to the existing IZ regulations that the set aside calculation is intended to be based upon the amount of bonus density used in a particular project rather than the full amount (20%) of bonus density made available through IZ regardless if it is used. See Z.C. Case Number 04-331.

Plans, the extent of the requested rear yard flexibility is limited to two small portions of the Building 1 west façade. Specifically, for the first 20-feet of building height the 15-foot required rear yard will be provided, and in fact exceeded, since the rear yard can be measured from the centerline of the north-south public alley. Above 20 feet, where the rear yard must be measured from the rear property line, the rear yard flexibility is only necessary along a small portion of the northwest and southwest corners of the building, and only for certain levels of the building that are located above the height of the SVSC.

Areas of technical zoning relief

As shown in the Revised Plans, the Applicant is proposing a small, 10-foot high penthouse on four of the five proposed townhomes along 48th Street, NW. In accordance with the Zoning Regulations, the proposed penthouses would be for the sole purpose of providing access to a modest-sized roof deck that will be oriented toward the rear of the townhome, away from 48th Street and the existing residences to the east. Pursuant to 11-C DCMR § 1500.4, a penthouse, other than screening for rooftop mechanical equipment or a guard-rail required by the D.C. Construction Code for a roof deck, is not be permitted on the roof of a detached dwelling, semi-detached dwelling, rowhouse or flat in any zone. However, the Board of Zoning Adjustment (“BZA”) may approve a penthouse as a special exception under Subtitle X, Chapter 9, provided the penthouse is (a) no more than 10 feet in height and contains no more than one story, and (2) contains only stair or elevator access to the roof, and a maximum of 30 square feet of ancillary storage space. Pursuant to 11-X DCMR § 603.3 of the ZR15 design review regulations, an application for a special exception or variance that would otherwise require the approval of the BZA may be heard simultaneously with a design review application, subject to all applicable special exception criteria and variance standards. The Applicant respectfully requests special exception relief to allow the proposed penthouses.

As shown in the Revised Plans, the proposed penthouses will be located on Townhomes #1 – 4. As required by the Zoning Regulations, the penthouses will have a maximum height of 10 feet and will meet all setback and area requirements. Pursuant to the general special exception criteria of Subtitle X § 901.2(a), the proposed penthouses will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The general purpose and intent of the Zoning Regulations is to promote public health, safety, morals, convenience, order, prosperity, and general welfare in order to provide adequate light and air; prevent undue concentration of population and the overcrowding of land; and provide distribution of population, business and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services. Given their modest size and setbacks, and the orientation of the roof decks toward the rear of the townhomes, the proposed penthouses will not negatively impact any of these stated purposes. Further, pursuant to Subtitle X § 901.2(b), the proposed penthouses on Townhomes 1 – 4 will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. The properties/buildings that are immediately adjacent to the proposed penthouses include proposed Building 1 and the existing AU Building, both of which will not be adversely affected by the modest-sized

penthouses. As shown in the Revised Plans, the closest existing residential uses are located over 110 feet away along the east side of 48th Street. Given this substantial distance, and the orientation of the proposed roof decks toward the rear of the townhomes, the proposed penthouses will not adversely affect the use of these existing residential uses.

As such, the Applicant respectfully requests the Commission to grant a special exception to allow a penthouse on each of Townhouses 1-4, provided such penthouse is: (i) no more than 10 feet in height and contains no more than one story; and (ii) contains only stair or elevator access to the roof and a maximum of 30 square feet of storage space ancillary to a roof deck. The proposed penthouses shall also meet all other applicable provisions of Subtitle C, Chapter 15 relating to penthouse height, setbacks, and area.

Areas of minor design flexibility

The Applicant is not requesting any additional areas of minor design flexibility beyond those that have already been requested. The language of the areas of minor design flexibility listed below is generally consistent with the language that had been previously discussed with OP and the District Department of Transportation (“DDOT”) during the course of proceedings. Those areas of flexibility that are specific to the subject application remain unchanged, such as those pertaining to GAR / LEED, parking, and the minimize size of the proposed grocery store. The Applicant has, however, updated the areas of flexibility relating to exterior building details and materials in order to be consistent with recent changes made to the standard flexibility language that has been adopted by the Commission in recent cases.

- a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and elevators provided that the variations do not change the exterior configuration of the building; and
- b. To make refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, venting, window mullions and spacing, and any other changes that otherwise do not substantially alter the exterior design to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit. Such refinements shall not substantially change the exterior configuration, appearance, proportions, or general design intent of the building; and
- c. To vary the final color of exterior building materials based upon the availability at the time of construction, provided such colors are within the color ranges shown in the [approved plans]. Any such variations shall not reduce the overall quality of materials, nor substantially change the exterior appearance, proportions, or general design intent of the building; and

- d. To vary the final selection of landscaping materials utilized based on availability at the time of construction; and
- e. To vary the number, size, extent, and type of sustainable design elements within the Project provided all applicable Green Area Ratio ("GAR") and District storm water requirements are fully met, and the project achieves a LEED Gold (v. 4) certification with no less than 60 points;
- f. To increase the final number of residential units on Lot 807 by no more than 10% above the total number shown on the [approved plans] to respond to program demand, or to decrease the final number of residential units within the approved residential gross floor area of the project to accommodate demand for larger units, provided that the number of parking spaces that are solely devoted to the residential uses on Lot 807 is equal to the greater of the minimum required under the Zoning Regulations or 85 parking spaces;
- g. To vary the number and location of affordable dwelling units provided the amount of affordable gross floor area contained within the Project is, at minimum, equal to the amount shown in the [approved plans]; and
- h. To vary the amount of floor area devoted to retail uses within the project provided the amount of floor area devoted to a full-service grocery store is, at minimum, equal to 13,600 square feet; and
- i. To vary the types of uses designated as "retail" use on the [approved plans] to include the following use categories, provided the amount of floor area devoted to a full-service grocery store is, at minimum, equal to 13,600 square feet: (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); and (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j));
- j. To vary the garage layout and the number, location, and arrangement of vehicle and bicycle parking spaces provided the numbers of vehicle spaces that are solely devoted to residential and retail uses on Lot 807 are not reduced below 85 and 49 spaces, respectively. Any increase in the number of vehicle spaces solely devoted to residential or retail use on Lot 807 that exceeds two times the minimum required under the Zoning Regulations for that particular use shall require the Applicant to comply with the excess parking requirements of Subtitle C, Section 707. Further, the number of bicycle parking spaces solely devoted to residential and retail uses on Lot 807 shall meet or exceed the minimum bicycle parking requirements of Subtitle C, Section 802 at all times.
- k. To vary the final design of retail frontages, including the design of entrances, show windows, and signage, in accordance with the needs of retail tenants. Such refinements shall not substantially change the exterior configuration, appearance,

proportions, or general design intent of the building, and all signage shall be designed and located in accordance with the Signage Plan and Guidelines contained in the [approved plans].

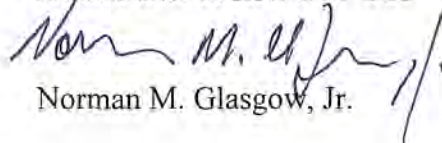
List of witnesses and witness testimony

Attached as Exhibit F is a list of witnesses that the Applicant intends to call as part of its direct presentation of the Revised Plans, or make available for questions, as necessary, at the public hearing on January 7, 2019. An outline of the testimony for each witness that will participate in the Applicant's direct presentation is also included. The resumes for each witness listed in Exhibit F are already included in the case record as Exhibits 107C, 114D, 136, and 189.

We look forward to the public hearing on January 7, 2019.

Respectfully Submitted,

HOLLAND & KNIGHT LLP



Norman M. Glasgow, Jr.

Enclosures

- cc: Jennifer Steingasser, Office of Planning (via email)
Joel Lawson, Office of Planning (via email)
Elisa Vitale, Office of Planning (via hand delivery and email)
Anna Chamberlin, District Department of Transportation (via email)
Aaron Zimmerman, District Department of Transportation (via email)
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Jeff Kraskin, Spring Valley Opponents (via hand delivery and email)
William Clarkson, Spring Valley Neighborhood Association (via hand delivery and email)
John H. Wheeler, Ward 3 Vision (via hand delivery and email)