

100112 MOU Between Be The Change St Phillips

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU") is dated as of the ____ day of September ____, 2012 and is by and between BE THE CHANGE DEVELOPMENT CORPORATION, a not-for-profit corporation having an address at 1500 16TH Street NW, Washington DC 20036, (hereinafter referred to as "BTC") and ST. PHILLIPS BAPTIST CHURCH, having an address at 1001 North Capitol Street NE, Washington DC 20002 (hereinafter referred to as the "Church" and together with BTC, each a "Party" and collectively the "Parties") hereto.

WHEREAS, BTC has an Exclusive Rights Agreement with the District of Columbia government in regard to having a long-term lease for District-owned property at 1005 North Capitol Street, NE, Washington, DC (Lot 439, Square 674) (the "Premises"), on which Premises BTC desires to develop, construct and operate an affordable housing rental apartment development containing approximately 124 units and identified as the North Capitol Commons ("NCC Project"), to include a number of apartment units that will operate as permanent supportive housing;

WHEREAS, the Church owns two lots immediately to the south of the Premises at 1001 North Capitol Street, N.E., Washington, D.C. (Lots 802 and 846, Square 674), the first of which is improved by a church building erected in 1892 and designated as a District of Columbia historic landmark;

WHEREAS, BTC has applied to the District of Columbia Board of Zoning Adjustment (the "BZA") in Case No. 18412 for variance and special exception relief in order to erect the NCC Project (the "BZA Application");

WHEREAS, the Church has agreed to support the BZA Application in reliance on BTC's agreement to and future performance of certain covenants and commitments made herein;

NOW, THEREFORE, in consideration of the mutual covenants and promises made herein, the Parties hereby agree as follows:

SECTION 1 - ROLES AND RESPONSIBILITIES

A. Retail space - the design of the NCC Project includes approximately 3,000 square feet on the ground floor which could be available for commercial tenants, including retail uses (the "retail space"). To ensure that the use of such commercial space is compatible with the values of BTC and the Church, BTC covenants and agrees that the retail space will not be leased or otherwise made available for use by any business or other entity that: (1) generates or expects to generate any of its revenue through the sale of alcoholic beverages; (2) operates a "sexually-oriented business establishment" as such term is

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defined in § 199 of the Zoning Regulations; or (3) requires a commercial hood
for the preparation of food.

B. Property Access - To provide for access to the northern side of the Church, BTC will:

1. Design and construct the NCC Project to allow for access on the Premises immediately adjacent to the Church's northern property line, as represented on the Ground Floor Plan, A1.1 submitted to the District's Board of Zoning Adjustment dated September 17, 2012 which is attached as Exhibit 1.

2. Permit the Church, at mutually agreeable times, access to this area for any maintenance, repair, loading, or any other reasonable purpose, which may include moving materials, scaffolding and mechanical equipment through this area.

3. To confirm the rights granted to the Church in the forgoing paragraphs (1) and (2), BTC will, prior to the issuance of a Certificate of Occupancy for the NCC Project, deliver to the Church an instrument satisfactory to the Church establishing a non-exclusive right of access over and across the Premises for the foregoing purposes, subject to the consent of the District of Columbia as fee-owner of the Premises.

C. Loading Zone -BTC anticipates that loading to the NCC Project will be either a) via a loading berth, to be located on the southern end of the NCC Project accessible by a curb cut to be created on North Capitol Street, or b) via a 30 foot commercial loading zone that would be created on North Capitol Street. If the loading is in fact via a 30 foot commercial loading zone on North Capitol Street, BTC will:

1. Submit an application to DDOT requesting approval of a proposed loading zone as shown on the "Alternative Ground Floor Plan", dated September 17, 2012, and attached as Exhibit A to this MOU.

2. That for so long as the "No Parking" Restrictions on the 1000 block of North Capitol Street NE remain in effect during the hours of 7:00-9:30 AM and 4:00-6:30 PM Monday-Friday, ask the District's Department of Transportation (DDOT) that the hours for the Commercial Loading Zone be limited to Commercial Vehicles from 6:00 AM-7:00 AM and 9:30 AM-1:30 PM, Monday-Saturday, and that otherwise unrestricted parking be available within this zone

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3. Request DDOT to use whatever power it might have to maximize the availability of unrestricted parking in front of the Church site on North Capitol Street and along the unit-block of K Street, N.E..

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D. Artificial Lighting - To account for the loss of natural light to the stained-glass windows on the northern side of the Church as a result of the NCC Project, BTC will, at its own expense:

1. Arrange and complete a measurement of the current Visible Light Transmission (VLT) levels at each of the windows of the two main worship and gathering spaces on the northern side of the church.

2. Procure and install an artificial lighting system, to be located on the southern side of the NCC Project which will have the capability of duplicating the highest level of VLT currently available at each of the windows on the northern side of these spaces during any point of the day during the summer solstice.

3. Install controls to this lighting system, to be located in an area easily accessible to the Church, whereby such controls will be under the sole control of the Church.

4. Provide all repairs and maintenance to the lighting system, including the portion on the Church's property, provided that in the event such repairs or maintenance are necessary due to the result of negligence or omission by the Church of any of its agents, then the cost of such repairs or maintenance will be the sole responsibility of the Church.

The Church agrees that the power for the artificial lighting system will be drawn from the Church's power connection, and once installed, that all ongoing utility costs for the operation of the system will be borne by the Church.

E. Property Management - BTC intends to contract with an experienced property management company, which will be responsible for operating the NCC Project on a day-to-day basis. As part of such contract, BTC will

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1. Provide that the Property Management company's contract includes, as an attachment, this MOU or any subsequent MOU between BTC and the Church.

2. Instruct the Property Management company that the Property Management company's responsibilities include, at minimum, daily monitoring and clean up of any trash on the grounds of the NCC Project adjacent to the Church.

3. Instruct the Property Management company that the Property Management company will provide the Church with the names and numbers of appropriate personnel that can be contacted 24 hours a day should the Church have any concerns or issues of which the Church believes the Property Management company should be aware.

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F. Social Services - BTC intends to contract with an established provider of social services, which will be charged with making a variety of social supports available to the tenants in the NCC Project. BTC's service model will be focused on the tenants living in the NCC Project, and BTC commits that:

1. The contract(s) between the Social Service provider(s) and BTC will include language instructing such provider(s) that the programming offered as part of the social services in the NCC Project will not include a "drop-in" center advertised or available to the general public

2. The contract(s) between the Social Service provider(s) and BTC will include language instructing such provider(s) will not regularly publicize the services offered at NCC Project to persons other than tenants of the building.

3. BTC anticipates that the initial priority, based upon current funding sources, for the 60 supportive housing units in the NCC Project will be military veterans at risk of homelessness.

G. Security - The residential portion of NCC Project will be accessible to residents, staff, contractors, and any other visitors only via key or other controlled access, 24 hours a day. In addition to the controlled access to the building, BTC commits that the Property Management staff contracted by BTC will have a daily charge of duties which will include monitoring the exterior of the NCC Project for any unusual activities.

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H. Trash Handling - Any trash created by the operation and activities at the NCC Project will be hauled away by a contracted trash company. BTC commits that:

1. All trash resulting from activities within the NCC Project will be stored in an enclosed space within the building until picked up by a contracted trash hauler.

2. All contracts with trash haulers for the NCC Project will specify that collections are not to be made on Sundays between the hours of 8:00 AM and 9:00 PM.

I. Street Parking -

1. For as long as the parking spaces immediately in front of the Church's property on North Capitol Street are unmetered, as part of all employment and services contracts BTC will require that employees and contracted staff not park personal vehicles in these spaces on Mondays through Saturdays between the hours of 7:00 AM and 9:00 PM, or on Sundays between the hours of 7 00 AM and 9:00 PM.

2. In addition, BTC will have signage posted in the NCC Project that requests that any guests to the NCC Project observe these same restrictions on parking on North Capitol Street in front of the Church.

3. BTC agrees to consult and collaborate with the Church prior to making any request of DDOT concerning any future changes beyond the plans approved in the BZA Application to the on-street parking situation along the 1000 block of North Capitol Street and the unit block of K Street N.E.

J. Construction -

1. BTC agrees to utilize an "augered pile foundation system" in the construction of the NCC Project so as to minimize disturbance to the Church building

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2. At the request of the Church, BTC agrees that during construction of the NCC Project, BTC will make reasonable efforts to accommodate occasional day-time activities at the Church, such as funerals, and to minimize the disturbance to those activities by reason of noise, vibrations, or other adverse effects from construction.

SECTION 2 - ADDITIONAL AGREEMENTS

A. The Parties agree to request that the BZA incorporate this MOU into its decision and order as a material condition should it determine to approve the BZA Application.

B. The Church will remove their objection to BTC's application before the District's Board of Zoning Adjustment.

C. This Agreement sets forth the entire understanding of the parties hereto with respect to the subject matter herein and shall not be changed or terminated orally. There are no other warranties or representations made or relied upon by any of the parties to this matter other than those expressly set forth in said Agreement. This Agreement shall be construed in accordance with the laws of the District of Columbia.

D. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. In the event any provision of this MOU should be determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the rest of the Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part held to be invalid or unenforceable.

E. The provisions of this Agreement are not intended to be for the benefit of or enforceable by any third party.

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F. Any notice required or permitted to be given under this Agreement shall be in writing. Notice to a Party shall be deemed duly given. (i) upon confirmed delivery when personally delivered or sent by nationally recognized overnight courier to such Party; or (ii) at the close of business on the third (3rd) day after being deposited in the United States mail, certified mail, postage prepaid and addressed to the address set forth in this Agreement or to such other address specified in writing by a Party.

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G. Each party who signs this MOU warrants that he or she is authorized to do so.

H. Each party has the right to request changes in this agreement from time to time and the approval of the proposed changes by the other party shall not be unreasonably refused or delayed.

I. This MOU will terminate on the date of the termination of BTC's lease with the District government, or earlier if by mutual written agreement of the Parties.

IN WITNESS WHEREOF, the undersigned have signed this MOU as of the date first above written intending to be bound.

BE THE CHANGE DEVELOPMENT ST. PHILIPS BAPTIST CHURCH
CORPORATION

BY: Dean J Snyder BY: _____

NAME: Dean J Snyder NAME: _____

TITLE: Vice-Chair TITLE: _____

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