

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 48<sup>th</sup> 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 ZR 16 Voluntary Design Review (“**Design Review**”) 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 Design Review;

NOW THEREFORE, provided that ANC 3E supports the Project and the Design Review (“support” shall be indicated by a majority vote of the ANC on a resolution or motion recommending approval of the Design Review), 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 10% 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. 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, subject to DDOT approval. 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.
6. Pedestrian Infrastructure and Traffic Calming: DDOT has recommended the Developer fund and construct pedestrian network improvements in the immediate vicinity of the Site to encourage walking and offset the impacts of being over-parked. Such improvements include upgrading substandard curb ramps, striping missing crosswalks, and installing curb extensions. In addition, the Applicant has agreed to coordinate with DDOT regarding the potential to install an all-way stop at the intersection of 48<sup>th</sup> Street and Warren Street, and restrict parking along the east side of 48<sup>th</sup> Street between Warren Street and the entrance to the private/public alley along the south side of the Site. 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
7. Study of Transportation Options between Project and Tenleytown Metro Station: Developer commits to studying options for public transit options between project and Tenleytown Metro Station.
8. 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.

9. Reorganization, Cleaning and Expanding Existing Public Alley: Developer commits to reorganize alleys to the west and south of the Site 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. In addition to these physical alley improvements, the Developer will also coordinate with DDOT and the owner of the Spring Valley Shopping Center to evaluate the potential for a consolidated loading management plan.
10. LEED Certification: Developer commits to design the Project to meet the certification requirements at the Gold level under the LEED rating system.
11. 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 48th 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.
12. Rooftop Terrace Restrictions: Rooftop Terrace: 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 outdoor rooftop terrace after 10 PM. Nothing contained herein shall be construed as relieving the Developer from fully complying with all applicable provisions of the District of Columbia noise control regulations (20 DCMR Chapters 27 – 29).

## **TRAFFIC MITIGATION EFFORTS**

13. 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.
14. 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 Single Member Districts 3E01, 3E02, 3E05 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 in the event the townhouses are made to be For Sale (Fee Simple).
15. 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.

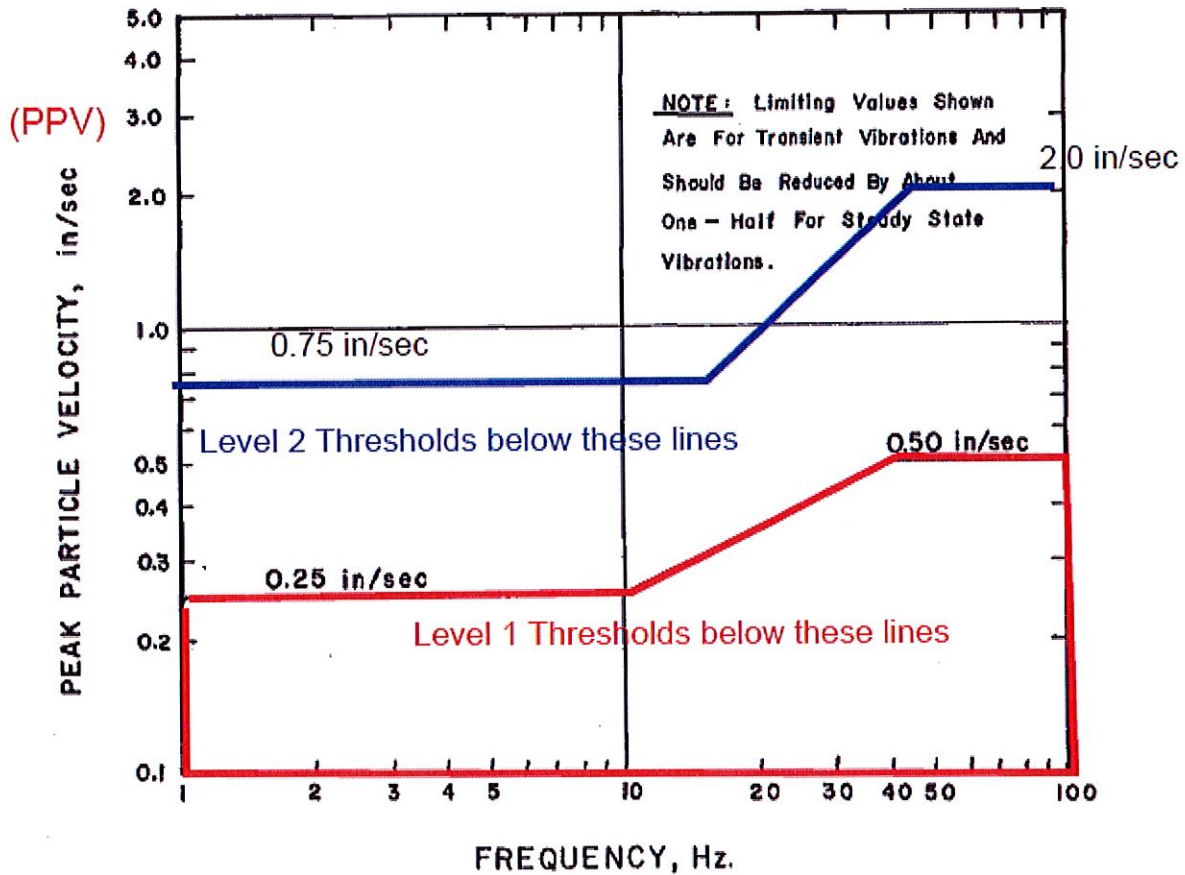
16. Designation of Loading Zone. Developer shall provide, in consultation with DDOT, a designated delivery zone adjacent to the main entrance for Uber/Lyft/UPS/Fed Ex etc. pickups to prevent idling nearby.
17. Parking Plan: Developer commits to implementing the Parking Management Plan attached hereto as Exhibit B.

## **CONSTRUCTION AGREEMENT**

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18. 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.
19. 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.
20. Construction Vibration: Developer shall provide and fund a vibration monitoring plan that will monitor vibrations that affect surrounding residential buildings within 200 feet of the Site during the period of construction involving excavation, sheeting and shoring, and pouring of the foundation of the Project. Developer agrees to seek the installation of up to four (4) vibration monitoring devices in residential units along Yuma St NW and 48<sup>th</sup> St. NW subject to the terms below:
  - a. Pre-Construction Surveys. Developer shall have access to neighboring residential units on Yuma St NW and 48th St. NW for the purposes of conducting pre-construction visual surveys documented primarily with still photographs. Ideally the interior and exterior of the residential units are surveyed but Developer acknowledges it must gain permission by the individual homeowners for interior and exterior access and documentation. If access is denied, Developer will use tele-photo lenses to document (as best as possible) the condition of the homes. The purpose of the surveys is to establish the baseline condition of the residences prior to starting construction, so that any claims of damage from adjacent construction can be evaluated in the context of the surveys. The survey will document existing cracks or other similar building distress issues in a report format. Developer agrees to share findings of surveys with owners if they desire it.
  - b. Post-Construction Surveys. Upon completion of the construction, Developer will have access to neighboring residential units on Yuma St NW and 48th St. NW for the purposes of conducting post-construction visual surveys. The post-survey will focus on any changes to cracks or other items of building distress identified in the pre-construction survey. Developer agrees to share findings of surveys with owners if they desire it.

- c. Developer will generate a baseline report that identifies typical ambient vibration levels collected over a period of two weeks prior to starting construction. The ambient vibration levels will serve as the “baseline” to evaluate construction impacts.
- d. Vibration Level Thresholds. The maximum permissible vibration level will be based on the “Vibration Criteria for Historic Buildings” by ASCE (American Society of Civil Engineers). Program summary as follows:



**FIG. 1.—Recommended Vibration Criteria for Historic and Sensitive Older Buildings**

- e. 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. If any vibration levels exceed the Level 1 Threshold, the first action taken is to examine construction activity and the adjacent structures and determine if any modifications are needed; Level 1 Threshold is a “warning” threshold and not a stop work level value. If any vibration levels exceed the Level 2 Threshold, the contractor will stop work and adjust construction techniques to limit vibration levels below Level 2. The contractor is provided email notifications for both Threshold levels and can react accordingly.

iv. Limitations of liabilities in years that residents can make claims.

21. 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.

22. 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**

23. 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.

24. 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**

25. 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.

26. 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.

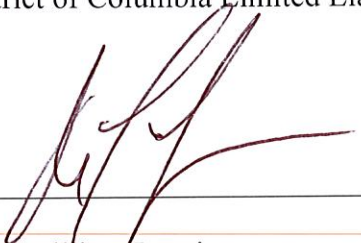
27. Headings: Section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this agreement.

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

29. Choice of Law: All parts of this Agreement shall be governed by and construed in accordance with the laws of the District of Columbia.
30. Modifications: Modifications, waivers, and consents regarding this Agreement shall only be binding if in writing and signed by both Parties.
31. 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.
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32. Severability: If any provision of this Agreement, or its application to any party or circumstances of this Agreement, shall be determined by a court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

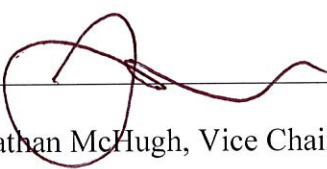


**Valor Development, LLC**  
a District of Columbia Limited Liability Corporation

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

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.