

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is entered into as of the 15th day of April, 2019 by and between the undersigned Parties.

WITNESSETH:

WHEREAS, As You Like It LLC (“Owner”), is the owner of that certain property located at Lot 52 in Square 498 with an address of 501 I Street SW (“Property”);

WHEREAS, through the Owner, Erkiletian Development Company (“Developer”) and Shakespeare Theatre Company (“STC”) have an agreement to develop the Property;

WHEREAS, Developer and STC seek approval from the District of Columbia Zoning Commission (“Commission”) in Z.C. Case No. 17-21 (“Case”) for a Planned Unit Development and related Zoning Map amendment (the “Application”) in order to permit the redevelopment of the Property with a new building that will contain approximately 64 for-sale residential units (“Residential Component”) as well as space devoted to office space, rehearsal space, education space, a costume shop, approximately 18 actor housing units, and approximately 18 beds for fellows (“STC Component”) (collectively, the “Development”);

WHEREAS, the Development consists of two buildings: the four-story “Main Building”, which fronts on I and 6th Streets SW, and the five-story “Annex Building”, which is located at the rear of the Property;

WHEREAS, the Residential Component of the Development will include a Condominium Association (the “Condo Association”) that will assume some of Developer’s responsibilities for the ongoing management of the Residential Component;

WHEREAS, Amidon-Bowen Elementary School and associated improvements are located immediately to the east of the Property on Lot 886 in Square 498 with an address of 401 I Street SW (“School”);

WHEREAS, the Parent-Teacher Association for the School (“PTA”) hereby seeks to address issues and concerns regarding the Development;

WHEREAS, the PTA, Developer, and STC have met to discuss these issues and concerns, and as a result of these discussions have reached a mutual understanding and resolution on many of the material issues and concerns; and

WHEREAS, the PTA, Owner, STC, and Developer (together, “Parties”) seek to enter into the MEMORANDUM OF UNDERSTANDING (“MOU”) to confirm understandings and agreements between them concerning the design, construction, and operation of the Development;

NOW, THEREFORE, in consideration of the foregoing recitals (which are a material part hereof) and in consideration of the mutual promises of the Parties hereto and of other good and valuable consideration, it is agreed as follows:

1) BENEFITS

- a) Not more than 90 days after the issuance of the final order approving the Development and the adjudication of any appeals or expiration of the appeals period, Developer shall contribute \$50,000 via check to the Amidon-Bowen Parent-Teacher Association to fund after-school programs and related facility improvements at Amidon-Bowen Elementary School, with the final programs and improvements to be selected by the PTA. Compliance with this condition shall be demonstrated through evidence submitted by Developer prior to the issuance of a Certificate of Occupancy that (1) Developer has completed the contribution to the PTA and (2) the after-school programs and improvements have been or are being provided.
- b) With respect to the above provision, the PTA agrees to promptly provide Developer with invoices, receipts, letters, and other evidence as needed by Developer to demonstrate the use of the above funds toward the after-school programs and related facility improvements.
- c) STC will provide space for and install fasteners to accommodate a potential mural on the east side of the Annex Building, facing the School, as shown on the drawing attached as Exhibit A (“Mural Location”). The PTA will be solely responsible for the preparation and delivery of the mural, including all costs of the design, creation, and maintenance of the mural. The design of the mural must be mutually acceptable to STC and the PTA.
- d) STC will provide the benefits previously agreed to in the 2014 Southwest Neighborhood Assembly Agreement as outlined in Section 8 of the Memorandum of Understanding with the United Neighbors of Southwest dated March 27, 2019 and included in the record of the Case as Exhibit 52C. This includes benefits that accrue directly to the School and the PTA.
- e) STC’s education team will work with the PTA to identify potential opportunities for STC to enhance arts-based education at the School.

2) AFFORDABLE HOUSING.

- a) Developer will set aside a minimum of three 3-bedroom units, one 2-bedroom unit, and one junior 1-bedroom unit as affordable housing for households earning up to 80% of the Median Family Income.

- b) Developer will work with the D.C. Department of Housing and Community Development to include the PTA as well as teachers and other staff at public schools within Advisory Neighborhood Commission (“ANC”) 6D as a part of the marketing efforts for the Development’s affordable housing.
- c) Parking spaces within the Development will not be bundled with sales of individual units but will be made available for purchase to all potential owners, including owners of the affordable housing units.

3) BUILDING DESIGN AND OPERATIONS.

- a) Developer will provide a written disclosure to all initial condominium owners acknowledging that the Development is located adjacent to the School and associated playgrounds and sports fields, which facilities are used for outdoor activities during school hours, after school, and on weekends. Such disclosure will include language that is substantially similar to the following:

Unit owners, lessees, and other occupants hereby acknowledge and accept that the Condominium is located adjacent to and near schools and that Unit owners and lessees and other occupants of the Condominium will be subject to certain disturbances, commotion, noises, light sources, and odors resulting therefrom.

Developer will also incorporate such language into the condominium bylaws.

- b) The Condo Association will work with the School and PTA to address concerns and complaints arising from School and related field uses.
- c) Condo Association and STC will work with the PTA to address issues regarding soccer balls crossing over the property line dividing the Property and the School and falling between the fence and the Main Building into the “closed courts”, including, if necessary, installing protective features over the small “closed courts” to deflect balls back to the field.
- d) The Condo Association and STC will bring no claims against the School or students of the School for minor property damages totaling \$2,500 or less resulting from authorized use of the playground or soccer field during ordinary school and after-school hours. The Condo Association reserves the right to pursue claims for any willful misconduct, intentional acts, or claims arising out of the unauthorized use of the playground, soccer field, or other School facilities.
- e) Developer and STC will ensure regular maintenance of the area between then fence and Main Building along the Property’s and School’s shared property line.

- f) STC will conduct background checks on all fellows who reside in the Annex and comply with all applicable laws and regulations regarding sex offenders.

4) CURBSIDE MANAGEMENT

- a) Developer and STC will work with the District Department of Transportation (“DDOT”) to implement the curbside management plan prepared by Gorove/Slade Associates entitled “Proposed Curbside Management” and included as Exhibit B to Exhibit 52C of the record of the Case, which plan will accommodate the Development’s regular pickup/drop off needs without adversely affecting the use of the “no parking” area in front of the School during the School year. The parties acknowledge that during the summer months STC may utilize a portion of the “no parking” area in front of the School property for pickup and dropoff activity related to summer camp activities at the Development.
- b) The PTA and ANC 6D will work with DDOT to integrate new signage into the School’s “no parking” zone to allow for fifteen (15)-minute periods for dropoff/pickup at the School. The PTA and ANC 6D will work with DDOT to seek installation of new 15-mph speed limit signs and to enhance visibility of existing signs.

5) CONSTRUCTION MANAGEMENT AND RELATED ISSUES.

- a) Developer will adhere to the Construction Management Plan (“CMP”) included as Exhibit C to Exhibit 52C of the record of the Case, which include commitments to:
 - i) Relocate the existing light pole that is located on the Property and serves the sports field to a new location that is mutually acceptable to the Parties;
 - ii) During construction, fund a crossing guard to direct traffic at the Makemie Place SW crosswalk during normal school hours and after-care hours (3:30-6:00pm);
 - iii) Work with DDOT’s Safe Routes to School program to address construction impacts and host an education session with the School and Jefferson Academy regarding construction impacts;
 - iv) Provide a full-height, neutral-colored vision barrier fence around the boundary with the School property during construction;
 - v) Repair any damage to the existing school fence caused by construction of the Development;
 - vi) To the extent feasible, avoid using hammer piles;

- vii) Screen excavated soils and report any contamination to the Project Committee, as described in detail below in Section A.2 of the Construction Management Plan; and
- viii) Prohibit crane loads from swinging over the School property.

b) In addition, Developer will undertake the following additional measures as outlined on the CMP Addendum attached as Exhibit B:

- i) Include the PTA as a part of the Project Committee that will meet regularly during the construction of the Development;
- ii) With respect to the relocation of the light pole and subject to approval by the appropriate District authorities:
 - (1) Relocate the existing light pole to the northwest corner of the School property, behind the existing shed, to a location that is approximately 2-6 feet from the shed and approximately 1-2 feet from the fence line;
 - (2) Establish an electrical connection from the light pole to the green junction box on the school building and cover the electrical trench with asphalt; and
 - (3) Provide the School with a license to access the Property at a mutually agreeable time as necessary to maintain the light pole and lights;
- iii) Relocate the school fence east of the Annex Building so that said fence is adjacent to the Property and, subject to approval by the appropriate District authorities, remove the dying tree cluster and plant sod on the area east of the Annex Building that was previously enclosed by the fence;
- iv) Replace air filters at the School twice during the construction period, including once after the completion of excavation work and once after the completion of construction;
- v) Work with the general contractor for the Developer to minimize the impact of any portable toilets located along I Street SW on the School playground, including ensuring toilets are cleaned at least once per week; and
- vi) Work collaboratively and collegially with the PTA to address noise and vibration impacts during the annual PARCC testing period during April and May.

6) COMMUNICATION

- a) STC will establish and maintain a point of contact available to the School.

- b) The Condo Association will establish and maintain a point of contact available to the School.

7) SUPPORT FOR THE PROPOSED DEVELOPMENT

- a) Subject to the provisions of this MOU and adherence to those provisions:
 - i) Prior to April 15th, 2019, and subject to Section 12 below, the PTA shall submit a letter of support, substantially similar to the draft letter attached as Exhibit C, for the Development into the record of the Case. The PTA shall not take any action, directly or indirectly, to oppose or object to the Development before the Commission or ANC 6D.
 - ii) The PTA shall not directly or indirectly participate or assist in any application, administrative proceeding, or District of Columbia agency action related to opposing the Development, including any challenge to a building permit, certificate of occupancy, public space permit, or other entitlement issued by a District of Columbia agency. Furthermore, the PTA shall not directly or indirectly participate or assist in any action contesting any Development entitlement, including but not limited to, any appeal to the Office of Administrative Hearings, complaint before the D.C. Superior Court, and appeal to the D.C. Court of Appeals.
- b) Developer and STC shall request the incorporation of the public benefit to the PTA (Sections 1(a) and 1(b)) and the CMP Addendum as conditions of approval of the Commission's order for the Application. (For the avoidance of doubt, Developer and STC will also submit the drawing showing the revised Mural location described in Section 1(d) above to the Commission, and Developer has already requested that the Commission incorporate the benefits and mitigation measures described in Sections 1(e), 2(a), 2(b), and 4(a), as well as the CMP, be incorporated as conditions of approval.)
- c) Developer shall incorporate relevant provisions of this MOU into the future condominium documents and by-laws of the Residential Component.

8) AUTHORITY

- a) The PTA hereby represents that Allison Harvey has the authority to sign on behalf of the PTA and bind the PTA to the provisions of this MOU.
- b) Owner hereby represents that Stefanie Erkiletian has the authority to sign on behalf of Owner and bind Owner to the provisions of this MOU.
- c) Developer hereby represents that Stefanie Erkiletian has the authority to sign on behalf of Developer and bind Developer to the provisions of this MOU.

- d) STC hereby represents that Chris Jennings has the authority to sign on behalf of STC and bind STC to the provisions of the MOU. STC further confirms that the STC board of directors has approved the Development, including any related change to STC's financial contribution.

9) MODIFICATION

- a) No modification of this MOU shall be valid unless made in writing and duly executed by authorized representatives of the Parties. Developer may transfer or assign this MOU to an affiliate of Developer and to other successors and assigns. The PTA may not transfer or assign this MOU to other successors and assigns. This MOU may only be enforced by the Parties and their successors or assigns, if permitted under this section. Enforcement of this MOU is not permitted for any third party. This MOU is binding upon, and inures to the benefit of, the Parties and their respective successors and assigns, to the extent permitted under this section.

10) COUNTERPARTS

- a) This MOU may be executed in counterparts and via original or facsimile signature.

11) NO THIRD PARTY BENEFICIARY

- a) This MOU is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person or entity as a third party beneficiary.

12) EFFECTIVENESS AND TIMING

- a) Aside from the commitments of the Parties that are required in connection with the PUD approvals process, and except as otherwise stated in previous sections, the commitments of this MOU shall become effective after the expiration of the appeals period or the adjudication of any appeals of the final order approving the Application.
- b) Following the execution of this MOU, Developer and STC shall submit a copy of the signed MOU to the Commission and, as noted in Section 7(b) of this MOU above, request that the Commission adopt certain terms of this MOU as conditions of the final written order approving the Application.
- c) If the Commission does not approve the Application, then this MOU will be null and void, and the Parties will not be bound by this MOU.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Understanding as of the day and year 15th day of April, 2019.

AGREED AND ACCEPTED:

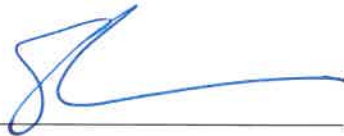
By:  Date: 4/15/2019

Community / Party: AS YOU LIKE IT LLC

Its: MANAGER

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Understanding as of the day and year 15th day of April, 2019.

AGREED AND ACCEPTED:

By:  Date: 4/15/2019

Community / Party: ERKILETIAN DEVELOPMENT COMPANY

Its: MANAGER

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Understanding as of the day and year 15th day of April, 2019.

AGREED AND ACCEPTED:

By: Chris Jennings Date: 4/15/2019

Community / Party: Shakespeare Theatre Company

Its: Executive Director

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Understanding as of the day and year 13th day of April, 2019.

AGREED AND ACCEPTED:

By: 

Allison Harvey



Rose Shelton

Date: April 13, 2019

Community / Party: Amidon-Bowen PTA

Its: co-Presidents

Exhibit A

Potential Mural Location

MURAL LOCATION



THE BARD REDEVELOPMENT

VIEW FROM SCHOOL LOOKING WEST

shalom baranes associates
architects

Southwest Washington, D.C.

March 26, 2019

shp project# 14105 ©2018 Shalom Baranes Associates

DESIGN UPDATE

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Exhibit B

Construction Management Plan Addendum

FIRST ADDENDUM TO CONSTRUCTION MANAGEMENT PLAN

Erkiletian Development Company (“**Developer**”) hereby declares this addendum (“**Addendum**”) to the Construction Management Plan filed in the record of Z.C. Case No. 17-31 as Exhibit C to Exhibit 52C (“**CMP**”), which was developed in order to minimize any impacts from construction of the mixed-use building with below-grade parking and uses (the “**Project**”) that Developer proposes to develop at 501 I Street SW (the “**Property**”). Developer will be bound by the terms of this Addendum together with the terms of the CMP. Both the CMP and this Addendum will be incorporated into the Memorandum of Understanding with the Parent-Teacher Association (the “**PTA**”) for Amidon-Bowen Elementary School (the “**School**”). Specifically, in addition to the commitments provided in the CMP, the Developer will undertake the following measures:

- i) Include the PTA as a part of the Project Committee described in detail in Section A.2 of the CMP;
- ii) With respect to the relocation of the light pole and subject to approval by the appropriate District authorities:
 - (1) Relocate the existing light pole to the northwest corner of the School property, behind the existing shed, to a location that is approximately 2-6 feet from the shed and approximately 1-2 feet from the fence line;
 - (2) Establish an electrical connection from the light pole to the green junction box on the school building and cover the electrical trench with asphalt; and
 - (3) Provide the School with a license to access the Property at a mutually agreeable time as necessary to maintain the light pole and lights;
- iii) Relocate the school fence east of the Annex Building so that said fence is adjacent to the Property and, subject to approval by the appropriate District authorities, remove the dying tree cluster and plant sod on the area east of the Annex Building that was previously enclosed by the fence;
- iv) Replace air filters at the School twice during the construction period, once after the completion of excavation work and once after the completion of construction;
- v) Work with the general contractor for the Project to minimize the impact of any portable toilets located along I Street SW on the School playground; and
- vi) Work collaborative and collegially with the PTA to address noise and vibration impacts during the annual PARCC testing period during April and May.

Exhibit C

Draft Letter in Support

April __, 2019

D.C. Zoning Commission
441 4th Street NW, Suite 200-S
Washington, DC 20001
zcsubmissions@dc.gov

Re: Z.C. Case No. 17-21 – PUD and Map Amendment for 501 I Street SW

Dear Members of the Commission:

On behalf of the Amidon-Bowen PTA, we write in support of the above-referenced application for The Bard development as proposed by Erkiletian Development Company and Shakespeare Theatre Company.

The Applicant has addressed the PTA's issues and concerns regarding the project, including through measures outlined in the MOU between the Applicant and the PTA. In particular, the Amidon-Bowen PTA appreciates the Applicant's commitment to fund after-school programs and related facility improvements for the Amidon-Bowen Elementary School. The PTA requests that the Commission adopt this commitment as a condition of approval of the application.

The PTA also wishes to thank the Commission for its continued attention and consideration of the issues and concerns of the Amidon-Bowen Elementary School community.

With best wishes,

Allison Harvey
Co-PTA President

Rose Shelton
Co-PTA President