

Attachment D

TNA Submission: CONSTRUCTION MANAGEMENT ISSUES

December 17, 2018

This document is divided between **(A) a critique of the ANC MOU** and **(B) a suggested Neighbors' alternative Construction Management Agreement.**

A. CRITIQUE OF ANC CONSTRUCTION MANAGEMENT AGREEMENT (MOU)

The ANC Construction Management Agreement (Memorandum of Understanding), which was not available in a timely manner before the November 14, 2018 hearing before the Board of Zoning Adjustment, raises several concerns for adjacent neighbors. All page and item numbers under (A) herein refer to the ANC MOU.

1. Page 1, Understanding of the Parties, First Whereas. The agreement refers to Sunrise as a “contract purchaser.” It is a basic element in the consideration of the case whether a “contract purchase” can ask for variances.
2. Page 2, Parking1a and 1c. The agreement states that “Sunrise shall provide a minimum of 66 automobile spaces in a below-grade parking garage” and states that “Sunrise shall ensure enough onsite spaces are available for staff, contractors (including those hired by residents), visitors and will endeavor to ensure they are easily accessed to minimize offsite parking.”

Although asked many times, Sunrise has only provided the number of FTE’s not the number of actual full and part-time employees and has not provided any numbers regarding visitors or private aides. Since they operate 325 facilities, these numbers have to be available to Sunrise. Without these numbers immediate availability, how and when will the garage be modified so that there is “sufficient off-street parking spaces for all employees, residents, and visitors...” is made available as it required under the CCRC required condition at 11-U DCMR § 203.1 (f) (4). The burden is on the Applicant to show that they meet this condition.

3. Page 3, Limits on the Intensity. We note that although the church is prohibited from having a for-profit child development center. They are not prohibited from having a non-profit child development center, which the neighbors would support. Although the fact that there would not be room to locate a playground outdoors may eliminate this opportunity.
4. At page 4, item 9, the agreement references “large buses” with a “capacity of 49 passengers or more.” This is the first mention of buses coming to the Sunrise/WABC site. How many buses are expected? How often are they expected? Why would they be coming to the site? Where will they be parking when not dropping off or picking up at the site?

5. "Deliveries will be limited to a 30-foot truck or smaller." See page 4 item 10d of the Neighbors' Alternative below and, for more discussion on what a 30-foot truck looks like, see Attachment C submitted by TNA on December 17, 2018.
6. Page 5, number 13 stipulates that rooftop terrace events can occur Sunday through Thursday 8am to 10pm and on Friday and Saturday these hours are extended to 8am to 11pm. This is a residential neighborhood; these hours should be curtailed to no more than 9am to 9pm.
7. Page 5, number 14 stipulates that Sunrise will have 24-hour lighting at the main entry, foyer and front parlor facing Alton Place homes. It says the lights shall be dimmed at 10 pm. These and any street lighting of the curb cut or truck ramp should be dimmed or extinguished no later than 9 pm. This is a residential neighborhood.
8. Page 6, number 18c, states that there will be no parking on the North side of Yuma Street on Sundays for three to four car-lengths along the WABC-Sunrise site. The neighbors are opposed to this offsite parking. The proposed project is supposed to be self-contained and before it is built, street parking is being devoted to uses on the site. If this is allowed, it should be limited to 10am to 1pm on Sunday.
9. Page 7, number 24e, before Sunrise donates an additional \$5,000 to be distributed by the ANC, the neighbors who brought any suit to enforce the RPP prohibition should be repaid for any court costs or related expenses arising from such a suit or suits.
10. Page 7, number 25, Construction Plans. The ANC agreement stipulates that the ANC shall be notified of any construction plans before construction begins. The neighbors strongly urge that the neighbors within 500 feet of the site shall be informed immediately of any construction plans at least one month before construction begins. ANC 3E is not a good conduit for communicating with the neighbors. To buttress that neighbors should be informed directly, on page 8, number 28, the neighbors are included in any notification of changes in the construction plans. Neighbors within 500 feet is a more appropriate radius than 200 feet given the massive nature of this project.
11. Page 7, number 26 references "**blasting and pile driving**" if neither of these are going to occur that should be clearly and unequivocally stated. If neither are going to occur, specifically what method or methods will be used? What are the vibration implications of the alternative method or methods?

Note that at page 8, number 27c says "Sunrise will not use pile drivers. Sunrise will ensure that any alternatives methods used will generate less vibrations than pile driving." With the integrity of neighbors' homes in the balance, something more specific than "generate less" should be required.

For some background: The recently released WMATA document dated September 18, 2017, authored by **GeoConcepts Engineering, Inc., pages 1 – 2**, provides cautions regarding the soil structure that must be overcome:

“Groundwater level observations were made in the field during drilling and 24 hours after completion of the test borings. During the field investigation, groundwater was recorded at depths ranging from approximately 24.5 feet to 34.5 feet, or EL 362.4 feet to EL 253.5 feet. (this is likely an error as the math reflects it should be 353.5 feet). After 24 hours, the test borings were recorded as dry, with borehole cave-in depths ranging from 16.5 feet to 22.5 feet.

The existing soils underlying the site exhibit low to moderate shear strength and high compressibility characteristics. When considering the magnitude of the probable column loads, the calculated settlement for conventional spread foot foundations bearing directly upon the existing soils will be unacceptable for the proposed construction.

However, spread footings may be used to support the building when founded on soils improved by aggregate piers.

Aggregate pier systems are design-build systems and are installed under various trade names. Typically, these elements are constructed by the replacement method by pre-drilling a nominal 30-inch diameter hole into the subsurface soils to the design depth. Subsequently, crushed stone is placed in the hole in lifts and until the hole is filled to the ground surface. Upon completion of the aggregate pier installation conventional spread foundations can be constructed in accordance with commonly accepted methods. We estimate that treatment at this site with aggregate piers will increase the allowable bearing capacity for the design of spread foundations to 4,000 psf with a maximum allowable total settlement less than 1-inch.

Aggregate piers can also be installed by the displacement method depending on the site conditions. Displacement (driven) aggregate piers are a ground improvement technique that involves creating a cavity in the ground using specially designed equipment. The cavity is filled with aggregate in layers and each layer is subjected to a compaction process, and the process is repeated. This technique may be preferable to the replacement method in that it doesn't generate spoils.”

Comment based on the above text: The existing soil may be made unstable during excavations as evidenced by the borehole observations. Their engineer sites the existing soils to be unacceptable for conventional spread footings and suggested using aggregate piers to provide better stability. Concrete piers would provide even greater stability and can be measured for strength during construction.

With exposed sides, the boreholes caved in 10 - 17 feet in 24 hours and the water drained from the holes. This reflects a large amount of underground aquifer movement in a relatively short time period. It also demonstrates that without substantial engineered shoring prior to excavation, there will be subsurface ground movement that could impact the surrounding properties.

12. Page 7, number 27 references “vibration monitoring.” Sunrise did not provide any detail on December 10, 2018 as to how they would implement this.

All of number 27 should be rewritten. The developer should not be the party determining any damage caused by their actions. An independent third party should be hired by the developer with approval by the neighboring properties to benchmark the adjoining properties prior to any construction and at least 2-10 years after completion.

A non-intrusive method of benchmarking the properties would be the laser survey location of significant points on each property such as corners of walls, windows, doors, etc. The results of this digital laser scan of the properties could be digitally compared to scans at later dates. Such laser scans can be done without entering neighbors’ homes and provide a precise basis for comparison before and after construction.

The results of such laser survey or scan must be provided to the neighbors both when done prior to construction and when done on a regular basis during the 10 years after construction is complete.

See the alternative construction plan provided below for more details on how these issues should be addressed.

13. Page 7, number 29, construction hours. Please see the suggested construction management plan, provided below, where hours are addressed at paragraph 2.d.
14. Page 9, number 38. Why does WABC and its trustees or members have no liability under the ANC proposed agreement? WABC is a party to the case before the BZA.

B. NEIGHBORS' SUGGESTED ALTERNATIVE PLAN

DEVELOPMENT AND CONSTRUCTION MANAGEMENT PLAN

3920 Alton Place, N.W., Washington, DC

Sunrise Senior Living, Wisconsin Avenue Baptist Church and all their agents, including construction companies and subcontractors (the "Developer") must mitigate any adverse impact on all properties within 500 feet of 3920 Alton Place, NW, Washington, DC (the "Adjacent Property"), which are owned by the "Adjacent Owners", that may result from construction activity related to the Developer's plan to construct a senior living facility and church building and related improvements at 3920 Alton Place, N.W. (the "Project").

The Developer and the Adjacent Owners shall work together in accordance with this Development and Construction Management Plan (the "**Plan**") to mitigate disturbances during construction, including noise, traffic, vibrations, air pollution, and other adverse effects from construction.

1. Communication.

a. Developer Representative. The Developer shall designate a representative (the "Representative") to be the key contact during the period of construction of the Project for the interaction with the Adjacent Property. The Representative shall have a local office and the Representative or his/her designee shall be accessible during all business hours (including hours in which construction activity is occurring on the Developer's property). At any time, construction activity is occurring on the Developer's property, the Representative or his/her designee if not available on-site, shall be available by telephone, or by e-mail to receive complaints or other communications from any of the Adjacent Owners within 500 feet.

b. Duties of the Developer's Representative. The Representative and his/her designee shall be able to answer questions and receive comments about the site activities, address any concerns that Adjacent Owners might have throughout the construction process, and have authority to remedy promptly violations of this Development and Construction Management Plan and enforce its provisions. The Representative, designee and emergency contact shall:

- (i) receive notice of violations of this Development and Construction Management Plan;
- (ii) respond as soon as possible, to the person who has reported the violation, and to the Adjacent Owners' designee (described below);
- (iii) act to remedy the violation as soon as possible; and
- (iv) contact the Adjacent Owners' designee (defined below) and relate the complaint, remedy and time frame for resolution of the problem.

c. Adjacent Owners' designee(s). The Adjacent Owners shall have the right from time to time to designate a or several contact person(s) who shall have the authority to act on behalf of the Adjacent Owner or Owners. **St. Ann's** shall designate a contact person, who shall receive all communications sent to all other Adjacent Owners. The Adjacent Owners' designee(s) shall receive and disseminate information from the Developer to the Adjacent Owners. The Developer shall provide to the Adjacent Owners and their designee and keep updated, the names

of and pertinent information about the Representative and/or his/her designee (*i.e.*, home phone number, cell phone number, and e-mail address, as appropriate), as well as the name and telephone number of a person designated by Developer to contact in case of emergency during hours in which no construction activity is occurring. These shall be readily available to the Adjacent Owners and their designee(s). Developer shall maintain a list of all Adjacent Owners within 500 feet, including home phone number, cell phone number, and e-mail address, and shall notify same regarding purchase of insurance as described in Subsection 2 (g) as well as any known dates of construction stages, including but not limited to, razing of the existing building.

d. Electronic Communication. The Developer and its Representative shall work with the Adjacent Owners and their designee to maintain an email list of all owners within 500 feet in order to provide construction updates and notices as well as facilitate communication and discussion among the Adjacent Owners.

e. Monthly Construction Updates. The Developer and/or its Representative shall provide periodic construction progress reports and/or updates, and other regular communication, not less than once a month in writing to the Adjacent Owners and their designee.

2. Construction. The Developer shall require that all its personnel and vendors, including supply and service vendors, shall comply with all applicable District of Columbia Municipal Regulations applicable to hours of work, noise, dirt, trash, and public health and safety. The following is a discussion of construction-related issues and shall be binding on the Developer, its subcontractors and any successors and/or assigns of the Developer.

a. Permits. The Developer shall secure all permits that are required to complete the Project. All plans and permits shall be on-site as required under the DC Construction Code. Developer shall perform demolition of the current building and the construction of the Project at its sole cost and expense, in a good, safe, and workmanlike manner, in accordance with generally accepted excavation and construction practices in the District of Columbia (with special consideration given that the demolition and construction activities will be done in close proximity to single family homes, including historic homes), all applicable District of Columbia laws and regulations, and all permits. All contractors hired by Developer to perform work will be reputable, bonded as required by law, and meet all applicable professional and trade standards in the District of Columbia.

b. Site Management.

- (i) The Developer shall erect and maintain construction fencing and barricades in order to screen and secure the site during the construction process. This activity is covered by a separate Crane Swing, Tie Back, and Monitoring Easement Agreement between the Developer and individual Adjacent Owners.
- (ii) The Developer shall locate any construction trailer(s) on the site at 3920 Alton Place, N.W., subject to District of Columbia approval, so as to minimize impacts on Adjacent Owners. If such approval is not granted, such trailer(s) shall be located to minimize neighborhood impacts, but in no event shall be located on Alton Place, Yuma Street or 39th Street, N.W. If there is insufficient space on the site at 3920 Alton Place, any and all construction trucks, trailers or cars relating to the construction project or its

5 employees shall be parked on Reservation 399, the NPS land that Sunrise is landscaping after construction is complete.

- (iii) The Developer intends to utilize the 3920 Alton Place site as the loading area for construction. Under no circumstances shall any part of Alton Place, Yuma Street or 39th Street, N.W. be used as a loading area. Workers employed at 3920 Alton shall not park on Alton Place, Yuma Street or 39th Street. Alton Place, Yuma Street or 39th Street, N.W. shall not be closed in whole or in part to accommodate construction at 3920 Alton Place. If there is insufficient space on the site at 3920 Alton Place, any and all construction trucks, trailers or cars relating to the construction project or its 150 employees shall be parked on Reservation 399, the NPS land that Sunrise is landscaping after construction is complete.

c. Cleanliness. The Developer shall remove construction-related rubbish and debris as reasonably necessary during the construction period during the normal construction workday and during periods of weekend construction work. Removal shall not occur before 8 A.M. or after 5 P.M. Developer shall use its best efforts to minimize dust on neighboring properties. Dust and debris shall be removed from the Developer's property on an as-needed basis. The Developer shall monitor and police the construction site daily to ensure cleanliness. The Developer commits to wash the exterior facades of Adjacent Owners' properties that face the Project site both within 30 days after the completion of demolition work and within 30 days after the completion of all construction. Developer shall hire a private company to monitor and control the rodent population during construction.

d. Work Hours.

- (i) **Start Times.** Construction workers shall not be allowed to congregate in within 500 feet of 3920 Alton Place NW or start construction work until 8:00 AM on weekdays and on 9:00AM on Saturday, Eastern Standard Time (EST) or Eastern Daylight Time (EDT), whichever is in effect.
- (ii) **Evening Work.** The Developer shall cease noise-producing construction work by 5:00 PM EST/EDT on weekdays.
- (iii) **Saturday Work.** The Developer shall only undertake noise-producing construction work between 9:00 A.M. and 4:00 P.M. EST/EDT on Saturdays. Notwithstanding the foregoing, the Developer shall be permitted to undertake such work before 8 A.M. and after 4 P.M. EST/EDT if commercially necessary, and it obtains approval of all Adjacent Owners within 500 feet, which permission shall not be unreasonably denied, provided, that, except in an emergency, the Representative shall notify all Adjacent Owners and their designee of such work at least 48 hours in advance of such work. No construction work shall be permitted on Sundays.
- (iv) **Noise.** The Developer shall not permit activity on the Developer's property that requires the movement of heavy vehicle traffic, which generates sound

levels in excess of sixty decibels (60 db) prior to 8:00 AM or after 5:00 PM on weekdays and prior to 9AM or after 4:00 PM on Saturday.

(v) **Trash and Deliveries.** Deliveries or pickup related to the construction of the Project, including trash, shall not take place before 8:00 AM or after 5:00 PM.

(vi) **After-Hours Work.** The Developer commits not to seek any after-hours permit for construction work, unless such permit is necessary to public safety or health, and the Representative shall notify all Adjacent Owners and their designee of the time and date of all after-hours work at least 48 hours in advance of such work.

e. Contractors and Subcontractors. The Developer shall require that all contractors and subcontractors be contractually required to follow the terms of, and comply with, this Development and Construction Management Plan. The Developer shall also require that all contractors and subcontractors use only licensed vehicles and drivers and that they comply with all DC traffic laws and regulations. Developer will construct a chain link or other fencing around the perimeter of the construction area and will maintain it in a good workmanlike manner until the issuance of a certificate of occupancy for the Project. All construction materials and equipment, including construction storage, trailers, and dumpsters, will be secured inside this fence on the 3920 Alton Place lot. Developer will lock all motorized vehicles when not in use. All building materials (i.e., brick, lumber, etc.) will be stacked, and any loose fill such as gravel or sand will be covered in accordance with industry standards and applicable District of Columbia laws and safety regulations.

f. Traffic, Loading, and Parking.

(i) Truck queuing and routing shall be coordinated with the D.C. Department of Transportation.

(ii) **Street, Sidewalk and Alley Closures Prohibited.**

(a) The Developer shall not seek to close or otherwise limit vehicular or pedestrian access to Alton Place, Yuma Street or 39th Street, N.W.

(b) The Developer shall take all necessary steps to assure that Alton Place, Yuma Street and 39th Street, N.W are not used for parking of vehicles by the Developer, its contractors or subcontractors or other vehicles associated with the Project. During construction, all such vehicles should be parked on National Park Service Reservation 399, which is subsequently to be landscaped by Developer per agreement with Developer.

(c) The Developer and any Representative of the Developer shall act promptly and expeditiously to address any violations of this subsection.

g. Developers' Demolition, Excavation, Vibration and Construction Liability

Developer shall not use pile driving for any purpose and must inform neighbors in at least three months in advance of any construction as to what alternative method developer plans to utilize. As part of that notification there shall be a detailed written explanation of what the impact will be of from the method selected.

(i) Developer shall purchase a commercial liability insurance policy (covering bodily injury, personal injury, and property damage) in the amount not less than Fifty Million Dollars (\$50,000,000.00), which shall provide coverage for any and all damages from demolition of the existing building, excavation or construction, including vibrations, relating to the development at 3920 Alton Place, NW. Such insurance shall be primary as to claims arising out of or relating to the project. Such insurance will cover all contractors, including subcontractors at the site, including architects and engineers. All of the insurance obtained pursuant to this provision will be issued by an insurance carrier that is licensed in the District of Columbia to issue the above insurance policies and which has a rating by A.M. Best of at least "A-." Such insurance shall remain in effect a minimum of three years following granting of a certificate of occupancy for any facility constructed at 3920 Alton Place, NW. This commercial liability insurance policy shall cover all properties within 500 feet, including **St. Ann's**, for any such damage. This commercial liability insurance policy will be separate from and in addition to any arrangement for indemnification made by Sunrise to WMATA for any damage done to the WMATA Red Line Tunnel that is located diagonally under the lot at 3920 Alton Place. -Any payments made under such policy shall be made to the Adjacent Owners not to the Developer, any subcontractors or any owner or subsequent owner of 3920 Alton or any facilities occupying that site. Evidence of purchase of such insurance shall be provided to all Adjacent Owners as described in Subsection 1(c).

(ii) Developer shall pay for a private third party qualified structural engineer to evaluate all properties within 500 feet of 3920 Alton Place, NW. Prior to the beginning of any construction, the Developer shall present to the Adjacent Owners the qualifications of said engineer, who shall be selected only after Adjacent Owners approve of the selection. Payment by the Developer of said engineer and production of any reports shall not be paid from the insurance policy.

(iii) A report based on observations prior to initiation of any construction at 3920 Alton shall be completed regarding the above described engineering evaluation and distributed to all owners within 500 feet of 3920 Alton Place, to the Developer and to the company providing the commercial liability insurance. The third-party engineer referenced in (ii) above shall benchmark the adjoining properties within 500 feet prior to any construction and at least 2-10 years after completion. A non-intrusive method of benchmarking the properties would be the laser survey location of significant points on each property such as corners of walls, windows, doors. This method using a digital laser scan of the properties could be digitally compared to scans at later dates. Such laser scans or surveys can be done without entering neighbors' homes and provide a precise basis for comparison before and after

construction. The results of such laser survey or scan must be provided to the neighbors both when done prior to construction and when done on a regular basis during the 10 years after construction is complete

(iv) Developer shall provide a report in response to said evaluation describing all construction damage mitigation procedures that Developer shall be utilizing to limit or prevent any such damage. Prior to initiation of demolition or construction, Developer shall provide a vibration monitor to each owner within 500 feet of 3920 Alton Place, NW. Provision of said vibration monitor does not replace the requirement for laser surveying or scanning described in (iii) above.

(v) The private third party qualified structural engineer selected under subsection (ii) of this section shall compile a follow up report within 30 days of completion of construction detailing what changes are detected since the original report. Upon completion, this report shall be distributed immediately to all owners within 500 feet of 3920 Alton Place, to the Developer and to the company providing the commercial liability insurance.

(vi) Nothing herein shall preclude Adjacent Owners from taking photos or videos of their property before and after construction and providing said photos or videos as evidence as proof of construction-related damage.

(vii) In the event that Adjacent Owners and Developer fail to reach agreement under this Subsection, the Complaint and Arbitration procedures provided in Section 3 shall apply.

(viii) Any disputes in achieving a remedy through payment to adjacent owners from the commercial liability insurance policy described in (i) of this section shall be submitted for expeditious resolution to the arbitration procedures provided in Section 3.

3. Complaint Procedure. The following procedure is provided to facilitate resolution of complaints by Adjacent Owners that have not been resolved working with the Representative.

- a. **Initial Complaint to Designated Developers' Representative.** An initial complaint of a violation shall be made by the affected Adjacent Owner or Adjacent Owners or the Adjacent Owners' designee to the Representative for resolution. The Representative shall confirm receipt of the complaint within 24 hours and shall use good faith efforts to respond to the affected Adjacent Owner(s) and address the complaint in a prompt and commercially reasonable manner.
- b. **Presentation to Developer.** If the problem is not resolved by the Representative within 48 hours from the time of complaint, then the complaint shall be presented by the Adjacent Owner(s) or his/her designee to the Developer for resolution. The Developer shall use good faith efforts to resolve the issue. As part of such effort, the Developer shall consider directing its agents and/or general contractor to alter or modify its operations in order to avoid repetitive violations.

- c. **Arbitration.** If the complaint has not been resolved to the satisfaction of the Adjacent Owner or Owners, said Adjacent Owner or Owners may elect to initiate an arbitration. If arbitration is elected, the following provisions apply:
- (i) The Developer and the Adjacent Owner or Owners shall appoint an Arbitrator from time to time by mutual consent who shall interpret and enforce this Development and Construction Management Plan. If initially, or on subsequent occasions, the parties cannot agree on an arbitrator, the arbitrator shall be chosen by the parties from three names supplied by the American Arbitration Association and in accordance with the ranking given them by the Developer and the Adjacent Owner or Owners. The appointment shall be renewable annually by consent, but the Arbitrator shall continue to serve until his successor is selected and qualified.
 - (ii) On as expeditious a schedule as possible, but no later than 30 days after the filing of a complaint, the Arbitrator shall conduct a proceeding where, with minimum formality, the Arbitrator shall hear and determine the complaints, decide whether relief shall be granted and issue an appropriate order. The ruling of the Arbitrator shall be made within 30 days after conclusion of the hearing and shall be binding and conclusive and shall not be subject to appeal. It may be entered by any party as a judgment under D.C. Code §§ 16-4310, 4311 or 4312 and be enforceable through the Superior Court of the District of Columbia as provided by D.C. Code § 16-4313, as amended from time to time.
 - (iii) **Fines.** If the Arbitrator finds against the Developer, it may impose penalties payable to the Adjacent Owner or Owners under the following guidelines:
 - (a) For a substantial violation (that is, other than a minor non-compliance) a fine of up to \$1,000 per infraction for the first three infractions in any one calendar year; up to \$2,000 per infraction for each of the next three infractions per year; and up to \$4,000 per infraction for each subsequent infraction.
 - (b) The term “fine” is meant to be money paid not as a penalty, but as liquidated damages. The fines are not a penalty, it being agreed between the Developer and the Adjacent Owners, both individually and collectively, that the exact amount of damages is impractical to ascertain and that the schedule amounts are a reasonable estimate of the damages that an Adjacent Owner or Owners shall incur as a result of such violations of this Development and Construction Management Plan. The fines shall be paid by check delivered to the designee of the Adjacent Owners within thirty (30) days of the Arbitrator giving notice of the violation(s) and the amount of fine(s).

- (c) Failure of the Developer to pay such fines within thirty (30) days shall cause the amount of any fines to double.
- (iv) **Fees.** If the arbitrator rules against the Developer in a substantial element, the Arbitrator's fees and the legal fees of the Adjacent Owners shall be paid by the Developer. If such a proceeding results in a ruling in favor of the Developer, the Arbitrator's fees shall be paid one-half by the Adjacent Owner or Owners who sought arbitration and one-half by the Developer, with each party bearing its own legal fees. However, if the arbitrator determines that the position of the Adjacent Owner or Owners was frivolous, the Arbitrator may impose the Arbitrator's fees and the Developer's legal fees on the Adjacent Owner or Owners for results not covered here, the Arbitrator shall decide in accordance with the general intent of this paragraph and his or her decision shall be binding.
- d. The referral of a matter to Arbitration does not limit any common law or statutory rights or remedies of any parties to this Development and Construction Management Plan, including specific performance, in court, specifically the Superior Court of the District of Columbia or the United States District Court for the District of Columbia, available to Adjacent Owners, and relating to damages sustained to person or property that are attributable to the activities of the Developer and any of its agents, including but not limited to contractors and subcontractors related to the construction of the Project. If successful in any such suite, Adjacent Owners shall be compensated by the Developer, Sunrise for any reasonable attorney fees.

NOTE: In *St Mary's v. Hillel*, the court stated that "... St Mary's structural engineer, ... agreed that the best way to monitor the Hillel's demolition and construction to prevent future damage would be through 'a very good and strong construction management agreement'; the construction management plan which the (Zoning) Commission has required Hillel to follow has strong monitoring and surveying provisions, as well as mandates that Hillel's contractor have a commercial liability insurance policy in the amount of \$25,000,000.00.

The concern in *Hillel* was the structural integrity of St. Mary's church. In the instant case there is also a church, St. Ann's Catholic Church across the circle. Most of the neighboring homes are approximately 100 years old - having been built when the neighborhood was known as Armesleigh Park. Several of those within 200 feet, however, are older. The 200-foot designation overlaps with the Grant Road Historic District, with pre-Civil War houses, as well as the Curran house on the corner of Alton Place and 39th Street that was built in 1890. "The Rest" at 4343 39th Street is one house beyond the 200-foot mark and is on the D.C Inventory of Historic Places. The five houses facing 39th Street that share a property line with the lot in question were built in 1942 by Architect Joseph H. Abel, who designed many Washington residences as well as over 100 apartment buildings, including the Shoreham.

Attachment D Addendum: Recently released WMATA document dated September 18, 2017, authored by GeoConcepts Engineering, Inc.