

BENNING COMMUNITY BENEFITS AGREEMENT

This Community Benefits Agreement (“**Agreement**”) is provided as of this _____ day of June, 2017 by 3443 Benning LLC (“**Benning**”).

1. Benning has submitted an application to the District of Columbia Zoning Commission (“**Zoning Commission**”) for review and approval of a Consolidated Planned Unit Development and Zoning Map Amendment (collectively a “**Consolidated PUD**”) as Z.C. Case No. 16-20 (the “**Case**”) for construction of a multi-family building (the “**Project**”) located on Square 5017 and including Lots 839, 840, 841, and 842, and a portion of the public alley abutting Lots 839 and 840 (collectively, the “**Property**”);
2. Benning has also submitted an application to the Office of the Surveyor of the District of Columbia for closure of a portion of the public alley abutting Lots 839 and 840 in order to facilitate the construction of the Project (“**Alley Closing**”);
3. Advisory Neighborhood Commission 7D (the “**ANC**”) is a governmental advisory board whose purpose includes gathering and communicating feedback from residents that are directly affected by government action, including actions of the Zoning Commission, which affects their community;
4. The ANC has passed a resolution at a duly noticed meeting authorizing it to accept and approve this Agreement; and
5. Benning and the ANC share a mutual goal of maximizing the benefits of the proposed Consolidated PUD and Alley Closing for the residents of the immediate area and the District of Columbia.

Therefore, in consideration for the mutual agreements and covenants set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Benning and ANC 7D agree as follows:

- A. Upon approval of this Agreement, Benning make the following changes to the Consolidated PUD:
 1. Change the proposed Zoning Map Amendment associated with the Case to the MU-5-A Zone District, in lieu of the MU-7 Zone District sought in the initial application for the Consolidated PUD;
 2. Reduce the amount of the project set aside for households earning up to 30% of the Area Median Income (“**AMI**”) (such setaside, the “**30% AMI Setaside**”) from 20% of the Project to a range of 5% to 20% of the Project, and request that the Zoning Commission grant Benning flexibility to determine the final amount of the 30% AMI Setaside based on the final financing schedule for the Project. Further commitments related to the 30% AMI Setaside are set forth in Section C.1.
- B. Upon approval of this Agreement, Benning shall propose that the Zoning Commission adopt the following measures as conditions of the Consolidated PUD:
 1. Prior to issuance of a building permit for the Project, Benning shall execute a Development and Construction Management Plan, with terms substantially similar to those proposed in Exhibit A;
 2. Prior to issuance of a building permit for the Project, Benning shall host a job fair in coordination and in partnership with the ANC, Ward 7 Business Partnership, District of Columbia Department of Employment Services and District of Columbia Department of Small and Local Business Development, to identify qualified candidates for construction job openings. ;

3. Prior to the issuance of a certificate of occupancy for the Project, Benning shall ensure that future residents of the Project are prohibited from participation in the District Department of Transportation's Residential Parking Permit Program through a lease provision or similar mechanism;
 4. Prior to issuance of a certificate of occupancy for the Project, Benning shall install (1) security camera equipment intended to help monitor the neighborhood surrounding the project and (2) exterior lighting to support the effectiveness of the cameras and to act as a general deterrent to criminal behavior. Draft plans for the location of security cameras and lighting shall be provided by Benning to ANC 7D and River Terrace Community Organization ("RTCO") for review and comment. Benning shall work with ANC 7D and RTCO to address and incorporate comments into the security camera and lighting plan, to the extent feasible, to achieve community safety goals. Benning shall provide the Metropolitan Police Department access to data from such cameras to assist in improving neighborhood safety;
 5. Prior to issuance of a certificate of occupancy for the Project, Benning shall establish a shuttle service plan for the future residents of the Project that will provide transportation to and from typical convenience destinations (e.g. a grocery store, pharmacy, and direct access to a Metrorail or DC Streetcar station). The shuttle service shall provide a minimum of bi-weekly trip service for a minimum of 10 passengers.
 6. Prior to issuance of a certificate of occupancy for the Project, Benning shall construct a community room as a part of the Project that is consistent with the plans approved as a part of the Case. Direct access to the community room shall be provided for use by members of the River Terrace community provided they follow the procedures outlined in Exhibit B, Community Room Guidelines for use by Local Community Members and Members of the ANC 7D.
 7. At the earliest point of approval authorized by DHCD, incorporate notification to the existing residents of River Terrace, and ANC 7D into the marketing plan for the affordable housing selection for the Project.
 8. Prior to issuance of a certificate of occupancy for the Project, provide RTCO with a contribution in the amount of \$47,000 to support ongoing community beautification and community gathering activities.
- C. Upon approval of this Agreement, Benning shall use reasonable and good faith efforts to undertake the following measures:
1. Prior to finalizing the financing schedule for the Project, Benning shall return to ANC 7D and coordinate with members of RTCO to finalize Benning's strategy for mix of affordable units to be proposed, based on final criteria to be established by the District Department of Housing and Community Development ("DCHD") in the relevant Notice of Funding Availability (the "NOFA") which will be a function of the financing schedule for the project. Should the NOFA criteria enable the flexibility of reducing the amount of the 30% AMI Setaside without unduly affecting the viability of the funding application, Benning will adjust its application to minimize the 30% Setaside and provide units at the higher end of the income bands, where financially feasible.
 2. Following the issuance of a certificate of occupancy for the Project, Benning shall make the existing parking lot located at 3443 Benning Rd NE available as surplus parking to serve the residents of the Project or visitors to the Project, until the property is either developed or sold to an owner who is not directly associated with the Neighborhood Development Company, or one of its subsidiaries;

3. Prior to issuance of a certificate of occupancy for the Project, Benning shall solicit a car sharing company to locate at least one car sharing vehicle on site;
4. Prior to issuance of a building permit for the Project, Benning shall secure a letter of intent with a health and wellness service provider to deliver on-site review and advisory services for neighborhood residents so that they can identify and obtain referrals to full service health and wellness opportunities. The letter of intent shall outline terms regarding the type of review and advisory services to be provided, and the general frequency of their provision at the Project.
5. Prior to the issuance of a certificate of occupancy for the Project, Benning shall prepare a list of services (e.g., exercise classes) that will be provided to Project occupants but may be accessed by neighborhood residents, provided that Project occupants will have first priority to receive said services and the building operator may charge neighborhood residents for said services.

D. Upon approval of this Agreement, ANC 7D shall:

1. Issue a letter withdrawing its objections and stating its support for the Consolidated PUD to the Zoning Commission in the form attached as Exhibit C;
2. Issue a letter of support for the Alley Closing to the Office of the Surveyor in the form attached as Exhibit D;
3. To the extent requested by Benning, affirmatively support the Consolidated PUD and Alley Closing before the Zoning Commission, Council for the District of Columbia (“**Council**”), and other agencies and entities involved in the approvals;
4. Take no action to undertake, support, or further any filing of, as an organization or in each ANC Commissioner’s capacity as a person, an appeal of the Zoning Commission’s approval of the Consolidated PUD to the District of Columbia Court of Appeals;
5. Oppose any application, administrative proceeding, or agency action related to the Consolidated PUD or Alley Closing, including any challenge to a building permit, certificate of occupancy, or other entitlement issued by a D.C. agency.

ANC 7D acknowledges and agrees that the final terms and conditions of the PUD, including the modifications and commitments set forth in Sections A and B of this Agreement that Benning will propose to be incorporated into the PUD, are subject to the final determination and approval of the Zoning Commission.

This Agreement constitutes the entire agreement between the parties. This Agreement may be amended and/or updated, if necessary, upon later phases of Benning’s redevelopment to correspond to changing needs of the community. Any amendment or revision to this Agreement shall be in writing and mutually agreed upon by all parties involved.

Benning may without the consent or approval of the ANC assign its responsibilities and rights under this Agreement to an assignee (“Assignee”), which may include without limitation, an institutional lender providing financing for the Project, another entity affiliated with Benning, or any purchaser of the real property upon which the Project is located. The Project associated with such an assignment is referred to herein as the “Transferred Project.” In the event of an assignment of this Agreement to an Assignee, Assignee shall assume all responsibilities and rights hereunder without the need for amendment hereto, all references to Benning or 3443 Benning LLC shall be deemed to refer to the Assignee with respect to the Transferred Project, and Benning shall have no further rights and responsibilities under this Agreement with respect to the Transferred Project

This Agreement shall have no effect in the event (i) the Zoning Commission does not approve the Project, as submitted, (ii) the Alley Closing is not approved by the Council and recorded in the records of the Office of the Surveyor, or (iii) Benning elects, in its sole discretion, to decline to commence construction of the Project or to halt, permanently or temporarily, completion of the Project.

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EXHIBIT A

3450 EADS STREET, NE PLANNED UNIT DEVELOPMENT DEVELOPMENT AND CONSTRUCTION MANAGEMENT PLAN

3443 Benning LLC (the “**Developer**”) seeks to mitigate any adverse impact on the surrounding neighborhood resulting from construction activity related to the Developer’s plans to construct a five-story multi-family residential building with related site improvements (the “**Project**”) at 3450 Eads Street, NE (the “**Property**”) pursuant to a planned unit development.

1. **Communication**

a. **Developer’s Representative.** The Developer shall designate a representative to be the primary point of contact during the period of construction of the Project for interaction with the owners of property within 200 feet of the Property and Advisory Neighborhood Commission (“ANC”) 7D.

The Developer’s representative (the “**Representative**”) shall have a local office and shall be accessible during all business hours. At any time construction activity is occurring on the Property, the Representative or his/her designee shall be available on-site or by telephone to receive communications from the surrounding community. The name and work telephone number of the Representative or his/her appointed designee shall be conspicuously posted on the Property and shall be readily available to members of the community. In addition, a name and telephone number of a person designated by the Developer to contact in case of emergency during hours in which no construction activity is occurring shall be readily available to members of the community.

b. **Duties of the Developer’s Representative.** The Representative and his/her designee shall be available and able to answer questions and receive comments about the site activities, address any concerns members of the community might have throughout the construction process, and have authority to remedy promptly violations of this Plan and enforce its provisions. The Representative, designee and emergency contact shall:

- (i) Receive notice of violations of this Plan;
- (ii) Respond as soon as possible, to the person who has reported the violation, and to the Single Member District representative of ANC 7D, or their designee; and
- (iii) Act to remedy the violation as soon as possible.

2. **Neighboring Structure Protection** Benning shall, within six months of the issuance of the PUD order for the Case, initiate the completion of a geotechnical analysis of the property. In preparing the scope Benning shall require that the geotechnical analysis explicitly consider, based on the proposed means of construction for the building, the potential for negative impacts to surrounding residential properties located on Eads Street, NE between 34th Street and 36th Street NE (the “**Eads Properties**”).

Should conditions be identified, as a result of the geotechnical analysis, that could result in damage to the Eads Properties during construction, Benning shall retain an engineer to prepare a plan to mitigate any potential threats to the Eads Properties. This plan may include recommendations for a monitoring plan in accordance with good engineering practice. Benning shall cover the cost associated with the geotechnical analysis and any property damage mitigation plan and associated monitoring actions.

The geotechnical analysis, recommendations for mitigating structural damage to the Eads Properties, and any structural monitoring plan and associated monitoring actions shall be prepared or performed by a qualified professional engineer licensed to complete work within the District of Columbia.

Benning shall share the initial geotechnical analysis report, and any subsequent recommendations and any proposed property damage mitigation plan in a timely manner for review by members of the community through RTCO and individual property owners who, at the recommendation of the associated professional engineer, should be contacted directly.

Should the professional engineer recommend direct contact with an individual property owner, for any reason, the issue shall be a civil matter and shall be dealt with between Benning and the property owner.

If, as a result of the analysis and the implementation of the property damage mitigation plan, damage to an adjacent property does occur, this shall also be a civil matter between Benning and the relevant property owner. Benning shall be liable for any expenses associated with property damage to the Eads Properties caused by its employees, contractors or agents in connection with the construction to occur at the Property.

3. **Construction** The Developer shall require that all of their 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 general contractor and all subcontractors.

a. **Permits:** The Developer shall secure all permits that are required to complete the Project. All plans and permits for the Project shall be kept on the Property or as otherwise required under the DC Construction Code.

b. **Site Management:**

(i) The Developer shall erect and maintain construction fencing and barricades in order to screen and secure the Property during the construction process. The Developer and its contractors shall work with community members and the Department of Consumer and Regulatory Affairs (“DCRA”) to maintain temporary storm water management systems throughout the Project’s construction until such time as the permanent facilities are constructed, approved and functioning such that there shall be no adverse water impacts on the adjacent neighborhood.

- (ii) A minimum amount of lighting, directed away from residential properties, shall be provided on the Property at night. Such lighting shall be sufficient to provide necessary security and to comply with federal and municipal safety standards.

c. **Traffic and Construction Control Plan:** Prior to the start of construction, the Developer shall provide ANC 7D and the River Terrace Civic Organization for review and comments, a draft Site Utilization Plan for construction detailing construction staging and truck routing. The Developer shall work with ANC 7D to address and incorporate comments to the Site Utilization Plan, to the extent feasible, that mitigate community concerns. In preparing the Site Utilization Plan, the Developer shall prioritize the use of Benning Road, NE and the alley to the North of the Property for construction traffic, in order to minimize potential negative impacts to the surrounding residential community. At each construction entrance, a flagman, as required, shall be positioned to direct the flow of construction traffic and to maintain the public's safety.

d. **Construction Parking:** On street parking of construction workers shall be prohibited. On-site parking shall be made available to construction workers; otherwise, workers shall be required to park off-site at parking lots under the control of the Developer or to use mass transit pursuant to a list of such parking lots provided to the Developer's general contractor by the Developer. The general contractor shall coordinate off-site parking with its subcontractors to eliminate parking by construction personnel on adjacent residential streets. The Developer shall include a statement in its contract with the general contractor that parking by construction personnel and subcontractors in areas not specifically designated for parking is prohibited.

e. **Cleanliness:** The Developer shall remove rubbish and construction debris continuously during the construction period during the normal construction workday. In addition, the Developer shall daily (or more often as required to ensure cleanliness) monitor and police the construction site and area immediately surrounding the Property. All excavation or back fill trucks shall be covered before proceeding from the Property onto city streets. Dust and debris shall be removed from the Property on an as needed basis. The Developer shall also provide monthly street sweeping of Eads Street, NE throughout the duration of construction.

f. **Work Hours:** All work hours shall comply with DCRA guidelines. No construction activity shall occur on Sundays without approval from DCRA. In the event the general contractor seeks to obtain an off-hours work permit the Developer shall notify ANC 7D of the duration of the work and provide a two (2) week advance notice when the work shall occur.

g. **Contractors and Subcontractors:** The Developer shall require that all contractors and subcontractors be contractually required to follow the terms of, and comply with, the policies set forth in this Plan. The Developer shall also require that all contractors and subcontractors use only licensed vehicles and drivers and they comply with all DC traffic laws and regulations.

h. **Traffic, Loading, and Parking:**

- (i) Specific truck queuing and routing shall be determined in coordination with the DC Department of Transportation during the public space permit review process of the Developer's Traffic Control Plan, and outlined in the Site Utilization Plan provided to ANC 7D, in accordance with Section 2. c. above.
- (ii) A flagperson shall be assigned to expedite movement of construction related traffic, if any consistent traffic backups occur on any of the streets adjacent to the Property.
- (iii) No construction related parking shall be permitted on the adjacent neighborhood streets.

4. **Security.** The Developer's general contractor shall be responsible for providing adequate security for areas within the limits of construction. The Developer's general contractor shall notify the D.C. Metropolitan Police Department prior to the start of construction and provide a point of contact to ensure proper communication and security coverage. The Developer shall also provide afterhours security and/or security cameras as needed throughout the duration of construction.

5. **Compliance with Codes:** In the event that there is a conflict between this Plan and the Construction Codes of the District of Columbia, the Developer shall be permitted to comply with the applicable code(s) without violating the terms of this Plan.

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EXHIBIT B

3450 EADS STREET - COMMUNITY ROOM GUIDELINES FOR USE BY LOCAL COMMUNITY MEMBERS AND MEMBERS OF THE LOCAL ANC 7D

3443 Benning LLC (“Benning”), offers to ANC 7D and members of the River Terrace community the opportunity to use the proposed community room to be located at 3450 Eads Street NE, the subject of DC Zoning Commission Case No. 16-20, for purposes of public events that are intended to serve members of the local community.

In providing this space, Benning, through the operation of the building, will absorb the costs required to cover cleaning, electricity, security, heating, air conditioning, and ventilation needed for events.

The following are the specific conditions and entitlements that will be associated with the community’s use of the space.

1. Use of the community room will not be limited by day of the week, but events may not start before 9:00 am (including set-up) and must end by 9:00 pm with the space to be vacated by 9:30 pm.
2. The space will be available on a first come first serve basis after the programming of recurring events hosted by the building operator for the residents and recurring events established by the community.

In other words, the building operator shall establish a schedule of regular weekly events when the space will be reserved for programming to serve residents of the building. The community shall also be entitled to establish its own regular events schedule - up to two, 3 hour long events, per month - where the space will be set-aside for their use.

The days and times of the recurring events of the community may change as long as notification of changes to the recurring dates is provided at least 60 days in advance of the first event where the date and/or time of the event is to be shifted.

3. Where the community wishes to host an event outside of a recurring event, notice will need to be provided to the building operator, in a timely manner: 15 days in advance of the event. Reservations shall be made with Benning’s building operator, via e-mail, telephone, or in person.
4. Access to the community room shall be facilitated by one of the following means:
 - a. During regular building operation hours, when management staff is on duty, a community member who has reserved the space may coordinate directly with building management for access.
 - b. Should an event start or end, outside of regular building operations hours, or occur on a day where building management is not located at the site, a community member who has reserved the space shall coordinate with either the

current ANC Single Member District Commissioner for 7D04, or the Treasurer or President of the River Terrace Community Organization.

5. The current ANC Single Member District (SMD) Commissioner for 7D04, or the Treasurer or President of the River Terrace Community Organization shall gain access to the community room through digital key fobs that will allow them to access the space, on behalf of other community members. These key fobs shall be passed between duly elected representatives when re-elections occur.

Where the SMD Commissioner or the relevant RTCO representative is responsible for providing access to an event, they will also be responsible for supervising events, ensuring that the nature of the event is consistent with the intended purpose of the room and that the room is secured upon completion of the event and left in an orderly condition.

6. Events hosted within the community room shall be community related. The room shall not be used for any form of commercial enterprise, sales, or fundraising activities, nor shall it be used for personal purposes of community members (e.g., hosting a birthday party, wedding, or other similar event). No alcoholic beverage consumption shall be permitted at any form of event.

A generally accepted list of events to be used for guidance by the management, and community members, includes, but is not necessarily limited to, dance or exercise classes (e.g., Yoga or Zumba), theatre rehearsal, community meetings (e.g., RTCO regular meeting or sub-committee meetings), club meetings (e.g., a knitting club or chess club) or, community celebrations. While the space may be used by religious institutions, for secular events, the community room shall not be used for the purpose of a place of worship. Should a permitted event type conflict with normal building operations due to noise, or other secondary affect, building management shall be entitled to use their discretion to prohibit particular times or days when an event may be held to ensure conflicts are minimized.

7. When reserving the community room space, community members shall be required to provide a full list of details regarding their event: purpose, expected attendance, time for set-up, time of event, time for take-down, and the nature of the event.
8. Should any conflict result from these guidelines, between the community and building management, Benning shall act as the arbiter working with the ANC 7D04 SMD Commissioner and ANC 7D President, and the President of RTCO.

Exhibit C

ADVISORY NEIGHBORHOOD
COMMISSION 7D

June __, 2017

Anthony Hood, Chairman
D.C. Zoning Commission
Office of Zoning
441 4th Street, N.W., Suite 210
Washington, DC 20001

Re: Letter of Support for Z.C. Case No. 16-20 (“Project”) – 3443 Benning LLC

Dear Chairman Hood and Members of the Commission:

At its _____ General Meeting ANC 7D voted to adopt the negotiated Community Benefits Agreement and support the project proposed by 3443 Benning LLC regarding Zoning Case No. 16-20. This resolution rescinds ANC 7D's unwillingness to support case 16-20, which was established via vote at its April 19, 2017 Special Meeting.

ANC 7D approved this resolution by a vote of __ - __ - __ at a duly noted public meeting on _____, 2017 with a quorum. The commissioners present were: _____

The meeting was held in accordance with ANC Statutes that stipulates at least seven (7) days notice be given; Residents of the ANC 7D region were notified of the meeting via community listservs, social media flyers and phone calls.

This meeting was held following the Zoning Commission hearing of May 4, 2017. At that time, the Zoning Commission requested that the applicant continue discussions with the community to address issues raised during public testimony. The ensuing dialogue led to a community benefits agreement which addressed the issues raised by ANC 7D and members of the River Terrace neighborhood, where the project is located.

Advisory Neighborhood Commission (ANC 7D) the “ANC”) hereby withdraws its request for party status in opposition to the above-referenced Project.

Sincerely,

Sherice A. Muhammad
ANC 7D Commission, Chair

Exhibit D

ADVISORY NEIGHBORHOOD
COMMISSION 7D

_____, 2017

Mr. Roland F. Dreist, Jr. Office
of the Surveyor
1100 4th Street, SW, 3rd Floor
Washington, D.C. 20024

Re: SO-16-24507 (alley closing in Square 3017, abutting lots 839 and 840)

Dear Mr Dreist:

Advisory Neighborhood Commission 7D supports the above referenced alley closing application.

Approval of the application was made at the _____ General Meeting of ANC 7D where members voted to approve this resolution by a vote of __ - __ - __ at a duly noted public meeting on _____, 2017 with a quorum. The commissioners present were: _____

The meeting was held in accordance with ANC Statutes that stipulates at least seven (7) days notice be given; Residents of the ANC 7D region were notified of the meeting via community listservs, social media flyers and phone calls.

Sincerely,

Sherice A. Muhammad
ANC 7D Commission, Chair