

MEMORANDUM OF UNDERSTANDING
BETWEEN ANC 3E AND WISCONSIN OWNER LLC
FOR DEVELOPMENT AT 4620-4624 WISCONSIN AVENUE NW

This Memorandum of Understanding (the "**MOU**" or "**Agreement**") is made this 20th day of September, 2017 by and between Wisconsin Owner, LLC, a District of Columbia limited liability company ("**Developer**") or its successors and assigns, and Advisory Neighborhood Commission 3E ("**ANC 3E**" or the "**ANC**"). Developer and the ANC are collectively referred to herein as the "**Parties.**"

UNDERSTANDING OF THE PARTIES

WHEREAS, Developer, an affiliate of Urban Investment Partners, is the owner or contract purchaser of the property located at 4620-4624 Wisconsin Avenue NW (Square 1732, Lots 45 and 49) in the District of Columbia (the "**Property**" or "**Subject Property**");

WHEREAS, the Subject Property is within the boundaries of ANC 3E, and District of Columbia law designates the ANC to represent the community in planned unit development ("**PUD**") and related proceedings;

WHEREAS, Developer has applied for approval of a PUD (the "**Application**") and related Zoning Map Amendment from the D.C. Zoning Commission ("**ZC**") in Case No. 16-26 (the "**ZC Case**"), and the Map Amendment requests the Commission to rezone the Subject Property from MU-4 to MU-7;

WHEREAS, Developer intends to adaptively reuse and expand the existing improvements into a new mixed use building with ground floor retail and approximately 140-150 residential units (the "**Project**"), as shown on the plans included in Exhibit 30 of the record of the Z.C. Case (the "**Proposed Plans**");

WHEREAS, Developer has agreed to certain restrictions, benefits and mitigation measures in exchange for support by the ANC of the PUD;

NOW THEREFORE, provided that ANC 3E supports the Project and the ZC Case ("support" shall be indicated by a majority vote of the ANC on a resolution or motion recommending approval of the ZC Case), Developer agrees to the following:

PUBLIC BENEFIT: RETAIL USES

1. Restaurant. Developer will reserve a minimum of 3,500 square feet of retail space within the Project solely for use by a full-service restaurant (“Restaurant Space”). A “full-service restaurant” shall mean a “Restaurant” as defined in the Zoning Regulations, where food is (1) delivered to the tables by a server; (2) paid for after consumption; and (3) served on non-disposable plates with non-disposable cutlery. The parties agree that a guaranteed full-service restaurant at the Property is of substantial value to the community.
2. Restaurant Venting. Developer shall run any kitchen exhaust venting for eating and drinking establishments within the Project to the roof of the Project, so as to minimize the impact of odors on the neighbors to the Property.
3. Restricted Uses: The following uses, even though permitted within the MU-7 Zone District as a matter of right, with special exception approval by the Board of Zoning Adjustment, or otherwise, will not be permitted on the Subject Property: sexually-oriented business establishment; a check-cashing establishment; a pawnbroker; a bank; a nightclub; a mattress store; a convenience store such as 7-Eleven; a professional office; a drug store such as CVS; and any “chain” retail, service, or food service establishment (a “chain” being defined as a business with either at least 10 stores within the District of Columbia or at least 50 stores nationwide). Notwithstanding the foregoing, the Parties agree that the ANC may approve a prospective tenant otherwise prohibited in this paragraph that the ANC believes would provide substantial value for the community. Such approval shall be granted by the ANC only by a formal resolution.

OTHER PUBLIC BENEFITS

4. LEED Certification: Developer commits to design the Project to meet the certification requirements at the Gold level under the LEED 2009 rating system.
5. Affordable Housing: Developer commits to provide 10% of the gross residential area at the Project for affordable dwelling units (“ADUs”), and all ADUs at the Project will be provided at an affordable level of 60% of the Area Median Income. Developer warrants that at least one of the affordable units shall have two bedrooms.
6. Chesapeake House: Developer commits to renovation of the Chesapeake House (“**House**”) so that it may be used as a community-serving amenity space for the residents of ANC 3E. To facilitate this use:

- a. Developer will provide an in-kind donation to renovate the House, which is owned by the National Park Service (“NPS”), to a “warm, lit shell” condition, for use as a community-serving space for residents of ANC 3E (“Work”).
 - b. Developer requires confirmation that ANC 3E’s proposed community-serving use of the House will be permitted by NPS prior to the commencement of the Work. Developer will take all reasonable steps to facilitate a collaborative process among ANC 3E, NPS, and other stakeholders, to be led by ANC 3E, with the goal of reaching agreement on a use of the House as community-serving space prior to the commencement of the Work.
 - c. ANC 3E acknowledges the importance of reaching consensus on the proposed community-serving use of the House prior to the commencement of the Work. ANC 3E will take all reasonable steps to work collegially and cooperatively with Developer, NPS, and other stakeholders to reach agreement on the use of the property within six months after the date of this agreement, so that Developer will have sufficient time to secure all necessary approvals and commence construction in order to meet the anticipated delivery date of the Work, which is prior to the issuance of a certificate of occupancy for the Project.
 - d. If Chesapeake House has not been opened for a community-serving space for the residents of ANC 3E before a certificate of occupancy is issued for the Project, Developer shall consult with the ANC regarding a substitute amenity, and shall take all reasonable steps to seek modification of the PUD to substitute said amenity, which shall be of equivalent or better value to the community. The parties agree that Chesapeake House being opened for a community-serving use is of substantial value to the community.
7. Undergrounding Utilities: Developer will “underground”, or cause to be undergrounded, the existing above-ground utility lines along Wisconsin Avenue in front of the Property. “Undergrounding” means the construction of underground vaults; installation of the utility lines presently located above ground on existing utility poles and other appurtenant equipment in those vaults; re-connection of said lines to the building; and removal of all utility poles, in cooperation with PEPCO and other utility providers using the poles, such as Comcast and/or RCN. Developer will additionally make all reasonable efforts to obtain permission from the owners of the remaining three lots on the block to permit Developer to Underground the utility lines in front of those lots, and will Underground said lines if it receives such permission. As part of such efforts, Developer will share with the ANC all communications it has with representatives of the owners of the remaining three lots. If the owner of the property adjoining the Subject Property will permit Developer to underground

utilities in front of its property (“**Adjoining Property**”), Developer agrees to underground the utilities at least to the end of the Adjoining Property, regardless of whether the owner of the next property will permit undergrounding in front of its property.

8. Brandywine Street Closure and Park:

- a. Developer will close the segment of Brandywine Street NW between 42nd Street NW and River Road NW in accordance with the recommendation contained in the Rock Creek West Livability Study, attached as Exhibit A.
- b. Developer shall seek approval to turn the new three-way “T” intersection of 42nd Street and Brandywine Street into an all-stop intersection, and shall construct and install signage and striping as required.
- c. Developer will design and construct a new park on the closed street segment and adjacent triangular park. The design and use of the park shall be developed based on input from ANC 3E, and the design and construction of the park and any related streetscape improvements shall be subject to review and approval by the appropriate District public space permitting authorities. The concept design for the park attached at Exhibit B, is intended to illustrate the minimum specifications for the new park. Developer also agrees to design and construct modifications to safely and effectively route pedestrians, bicyclists, and vehicles around and through the new park (such as modifications to crosswalks and curb extensions) as DDOT may direct as part of approval of the new park.
- d. Developer shall maintain the park or fund such maintenance for the life of the Project.
- e. If Developer cannot deliver said traffic configuration changes and park to the community before a certificate of occupancy is issued for the Property, Developer shall consult with the ANC regarding a substitute amenity, and shall take all reasonable steps to seek modification of the PUD to substitute said amenity, which shall be of equivalent or better value to the community. The Parties agree that the traffic configuration changes and park are of substantial value to the community.

9. Streetscape Improvements: The PUD shall improve the public space area along the street frontage of the building, as shown Pages L-1 to L-3 of the Proposed Plans, which will include the following: street trees and landscaped tree boxes, street lights, bike racks, benches and seat walls, stairs and railings, paving, and landscaping. The design and

construction of the streetscape improvements shall be subject to review and approval by the appropriate District public space permitting authorities.

TRAFFIC MITIGATION EFFORTS

10. Loading Management Plan: Developer will cause its traffic consultant, Wells + Associates, to prepare a Loading Management Plan for the Project, which Developer will implement.
11. Residential Permit Parking: The Property is located on Wisconsin Avenue, NW, within a block that is neither listed nor 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: (1) place a clause in emphasized type in all leases 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, to the full extent permitted by law; (2) oppose any effort by residents or others to add the Subject Property to the list of properties eligible for RPPs; and (3) should Developer sell any units at the Subject Property, Developer will add a covenant that runs with the land to the deed for the units prohibiting Residents from applying for or obtaining RPPs.
12. TDM Measures: Developer will implement the transportation demand management measures at the PUD as listed in the Applicant's Comprehensive Transportation Report included as Exhibit 17B of the record in the Z.C. Case and as shown on the Proposed Plans: designate a member of the property management team as the Transportation Management Coordinator, who shall be responsible for ensuring that transportation information is disseminated to the tenants of the Project; include information on transportation programs and services on the property management website; include a real-time electronic transportation information display in a common, shared space in the building; provide at least sixty (60) convenient and covered bicycle parking spaces within the Project as shown on the Proposed Plans; and provide at least five (5) electric vehicle charging stations as shown on the Proposed Plans

LIMITATIONS ON FUTURE DEVELOPMENT

13. Height Limitation. To the extent that Developer or its subsidiaries or affiliates acquire the rights to and redevelop any of all of the adjacent properties at 4626, 4632, and 4652-54 Wisconsin Avenue NW (the "**Adjacent Properties**"), Developer agrees to limit the height of any development to no more than six stories plus a penthouse level.

14. Undergrounding Utilities. Should Developer or its subsidiaries or affiliates redevelop the Adjacent Properties, Developer shall underground the utilities along the remainder of the 4600 block of Wisconsin Avenue, to Chesapeake Street, in connection with such redevelopment.

EFFECT OF AGREEMENT

15. Conditions. Developer shall propose each of the above terms as specific, enforceable conditions of approval of the PUD. If the Zoning Commission does not for any reason include a term as a specific, enforceable condition of approval of the PUD, Developer nonetheless commits to comply with the term.
16. 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 PUD, then this Agreement shall be null and void.

MISCELLANEOUS

17. 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 8 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.
18. Trash Removal: Developer, or its tenants, will promptly remove all trash and debris from the public space located between the property line and the adjacent curb in front of the Project.
19. 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.
20. 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.
21. Headings: Section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this agreement.
22. Enforcement: If a majority vote of the ANC determines that Developer has not fulfilled its obligations under this Agreement, then the ANC shall be permitted to take all necessary legal action to enforce this Agreement. The parties agree to work in good faith prior to taking any

legal action to enforce the Agreement. The parties further agree that any legal action taken to enforce this Agreement shall be pursuant to the Zoning Regulations (i.e. to the Zoning Administrator with appeals to the Board of Zoning Adjustment, or as otherwise provided by law).

- 23. Entire Agreement: This Agreement constitutes the entire Agreement between the Parties hereto, and no party is liable to the other or bound in any manner by express or implied warranties, guarantees, promises, statements or representations pertaining to the subject matter hereof unless such warranties, guarantees, promises, statements, or representations are expressly and specifically set forth herein.
- 24. Choice of Law: All parts of this Agreement shall be governed by and construed in accordance with the laws of the District of Columbia.
- 25. Modifications: Modifications, waivers, and consents regarding this Agreement shall only be binding if in writing and signed by both Parties.
- 26. 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.

Wisconsin Owner LLC,
a District of Columbia limited liability company

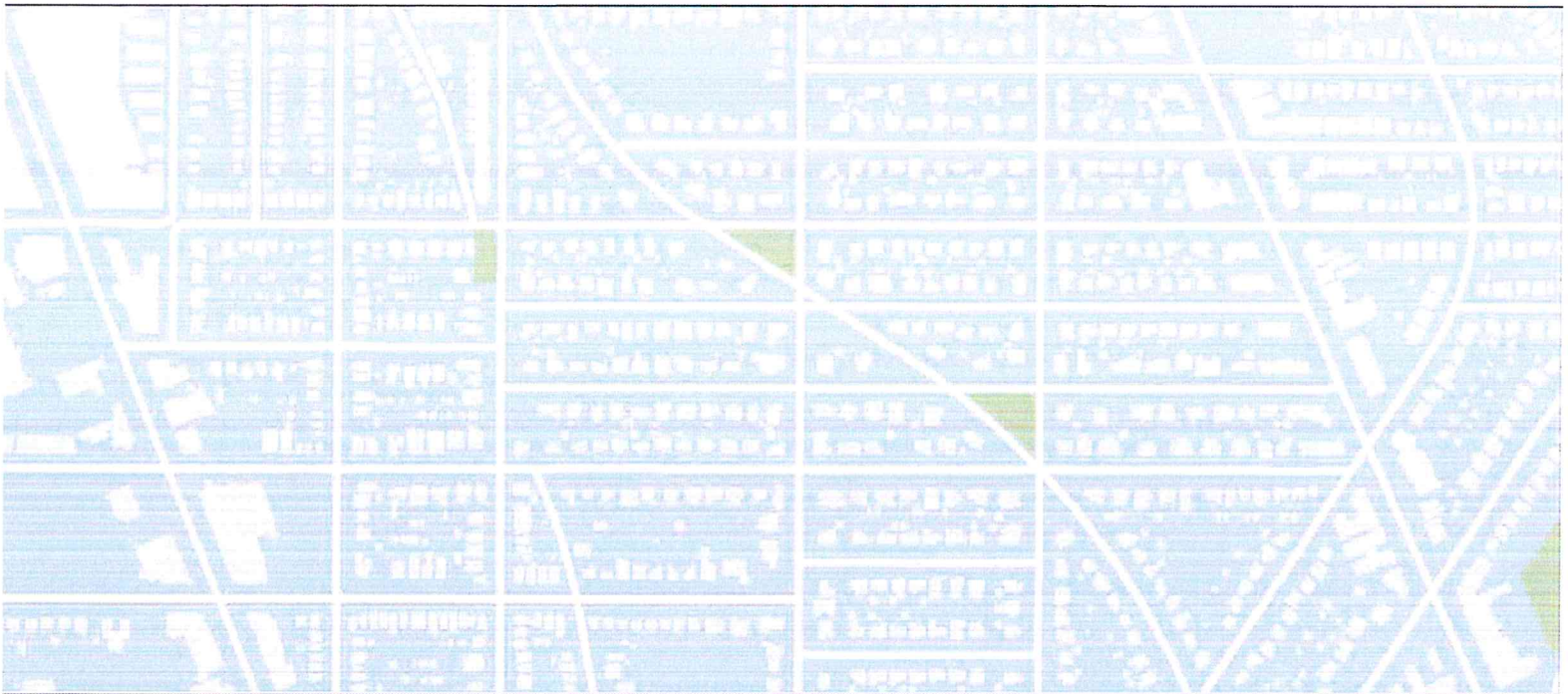
By: Brook Katzen
Name: Brook Katzen
Title: VP of Development

Advisory Neighborhood Commission 3E

By: _____

Rock Creek West II Livability Study

Final Report
February 2011



Expected Impacts

- The addition of a centerline should reduce vehicle speeds due to the visual narrowing of the roadway.
- The curb extensions could discourage cut-through traffic by narrowing the roadway at intersections and reducing the turning radii. Eventually the curb extensions could change the behavior of both local and cut-through vehicular traffic.
- Bicycle sharrows could improve cyclist safety and increase cyclist volumes.

42nd Street and Brandywine Street

Comments: 15

Issues

This is an intersection with an awkward configuration because of its proximity to River Road. Many residents reported that morning commuters typically make a fast right turn from River Road onto 42nd Street and fail to yield at the intersection with Brandywine Street. Still others reported speeding along Brandywine Street, as it provides a direct connection east to Wisconsin Avenue and Wilson High School. Many of the intersections are stop-sign controlled.

Final Recommendation (see Figure 31)

- Because it has limited utility and is awkwardly configured, remove the segment of Brandywine Street between 42nd Street and River Road, and replace it with green space and potentially a LID treatment.

Expected Impacts

- This recommendation removes the awkward intersection. The addition of green space offers an opportunity for placemaking and increases the pervious surface and potential for low-impact development. It is expected that there would be additional left turns from eastbound Brandywine Street to northbound 42nd Street, but these would likely remain at low volumes.



Figure 31: 42nd Street and Brandywine Street Recommendation

Exhibit B

