

## **Construction Management Agreement – 3900 Wisconsin Avenue, NW**

This Construction Management Agreement (“Agreement”) outlines the framework the parties will follow for the duration of the construction of a mixed-use project at 3900 Wisconsin Ave. NW (the “Project”). The Agreement addresses such things as communication, how to deal with the impacts of the construction, how to handle complaints and more. The parties who participated in generating these rules and regulations include the McLean Gardens Condominium Association (“McLean Gardens”) and NASH- Roadside 3900 Wisconsin, LLC (“Roadside”) and ANC3C. All parties, the Contractor (and its subcontractors), ANC representatives and the Neighborhood Advisory Committee will be given a copy of this Agreement and shall comply with its provisions for the success of the Project. In addition, Roadside shall comply with all applicable District of Columbia and federal rules and regulations whether or not they have been expressly referenced in this Agreement. McLean Gardens and Roadside have collectively developed the contents of this Agreement.

### **1. CONSTRUCTION**

#### **Definitions**

The Neighborhood Advisory Committee (NAC) shall include the McLean Gardens engineer or another designee selected by the McLean Gardens Board of Directors, the representative for ANC3C06, a member of the McLean Gardens Condominium Association Board of Directors, and two community members to be selected by the McLean Gardens Board of Directors.

Roadside Development is the authorized representative of NASH-Roadside 3900 Wisconsin, LLC.

#### **Communication**

- o The NAC will identify a member to serve as a construction liaison/community representative (the “Liaison”) as well as a secondary contact.
- o Roadside will also identify a primary contact to serve as a liaison to the NAC. Roadside will also designate secondary and tertiary contacts in the event the primary liaison or secondary contact are unavailable for any reason.
- o Roadside will provide the Neighborhood Advisory Committee with a construction update via an in-person meeting held on an as-needed basis (as agreed upon by Roadside and the NAC). The update shall contain: 1) information about construction activities since the last report; and 2) a look ahead of upcoming construction activities during the next month and the potential effects on the neighborhood. If the parties agree a meeting is not necessary, Roadside will provide the NAC with a written construction update every two weeks.
- o The Neighborhood Advisory Committee will disseminate the information to the community via the neighborhood listserv. In addition, the McLean Gardens Condominium Association office staff will distribute the information by email to residents, and the ANC3C will post the updates on its website.

- o Roadside will maintain construction fencing around the property, which will contain information regarding how and where to find project updates (website address, contact information, etc.)
- o The meeting schedule for the Roadside/NAC meetings will be shared with the community through joint Roadside– Neighborhood Advisory Committee communications.
- o If any additional material construction activities not included in the above-mentioned reports are required that may affect McLean Gardens, Roadside will communicate those to the Neighborhood Advisory Committee Liaison and the ANC3C06 representative within 48 hours of learning about them.
- o Roadside shall maintain a project page section on its 3900 Wisconsin website with a description of the project, a schedule, and any additional information important to the neighborhood about construction activities.
- o All complaints/concerns during construction shall be consolidated by the NAC Liaison and directed to the Roadside representative by the NAC Liaison.
- o McLean Gardens shall create a group email address for the NAC. Residents with complaints should send details of the complaint to that email address or call the McLean Gardens office: (202) 966-9780. The office staff shall notify the NAC liaison.
- o The NAC liaison shall communicate all complaints to Roadside.
- o Roadside shall be reasonably accessible during business hours via email or cell. For emergencies, such as loss of property or safety issues, Roadside shall be reasonably accessible at any time via email or cell.
- o If Roadside receives a complaint from the neighborhood, Roadside will alert the NAC.
- o Roadside shall report immediately all emergency matters that have a material impact on the neighborhood to the Neighborhood Advisory Committee Liaison and the ANC3C06 representative. A material impact is one that affects health, safety or property.

### **Work Hours**

- o Construction is allowed when permitted by D.C. regulations, which allows for construction from 7 a.m. to 7 p.m. Monday-Saturday. There will be no construction deliveries outside the construction hours allowed by D.C. regulations. On Saturday, work hours shall be permitted as follows:
  1. All above grade exterior work, except demolition, may commence at 7 a.m. on the portion of the property that is north of the line that generally follows the south face of the existing building to remain and the north face of the new buildings to be constructed along the shared property line with McLean Gardens (see attached Exhibit A);
  2. All exterior demolition work and excavation on all portions of the property may commence no earlier than 8 a.m.;
  3. All below grade work that is not related to excavation, pouring of concrete and work inside enclosed spaces on all portions of the property may commence at 7 a.m.

### **Parking**

- o Contractors and subcontractors working on the project shall not be allowed to park their vehicles in the neighborhood. Roadside shall enforce this restriction to the extent practicable. Contractors will park company vehicles on site if construction allows. Once the garage is operational, Roadside will make such garage available for contractor parking as space permits, except that once the garage is open to the public such parking shall be available in a dedicated area as permits subject to standard garage fees.
- o If there is not enough space in the parking garage for contractors once the garage is open to the public, then Roadside and its contractors will seek alternative nearby parking to the extent that is available.
- o All construction and delivery vehicles will come through Wisconsin Avenue site accesspoints without exception.

### **Traffic**

- o Construction vehicles shall not travel through the neighborhood to get to the site.
- o Construction-related vehicles shall not stage at the construction site before 7 a.m. except that Roadside will establish a staging zone on the northern access road of the site where such staging will be permitted.
- o Roadside shall coordinate with the District Department of Transportation (DDOT) and Upton Street Associates, LLC to the extent possible.
- o Flagmen shall be provided to facilitate traffic and the safe arrival and departure of construction vehicles.
- o All loads on dump trucks shall be covered, and all excavation, concrete and dump trucks will be cleaned as necessary before leaving the site to minimize any gravel or dirt from leaving the construction site.
- o Pedestrian movement on the sidewalks surrounding the construction area shall be maintained and Roadside shall abide by all District of Columbia rules and regulations regarding maintaining safe accommodations for pedestrians and bicyclists.
- o The 39<sup>th</sup> Street entrance to the property shall be gated and remain locked except in the event of an emergency.
- o Roadside shall develop a Traffic Management Plan in coordination with DDOT that shall be shared with ANC 3C and the McLean Gardens Condominium Association. ANC3C, the McLean Gardens Condominium Association and Roadside shall post the plan on their websites.

### **Site Management**

- o Roadside shall provide a safe, secure and efficient site with controlled access.
- o Roadside shall be required to provide wheel washing stations on site to prevent the accumulation of dirt and other refuse on the streets surrounding the Project site.
- o Roadside shall use industry standard means and methods to control dust during construction.
- o All sidewalks adjacent to the site for the duration of the Project shall be maintained except for temporary closures during public space work.
- o All construction materials and equipment, including construction storage, trailers, and dumpsters, shall be secured nightly on the site with construction fencing.
- o Roadside shall lock all motorized equipment and vehicles, stack any building materials (i.e., brick, lumber, etc.), and comply with the D.C. approved erosion and sediment control plan daily.

### **Cleanliness**

- o Roadside shall require cleaning of rubbish, open dumpsters, and food and drink containers that have been secured in closed trash bins (if any), and construction debris during the normal construction workday and any other periods of work.
- o Roadside shall locate portable toilets away and out of sight from immediate neighbors. Portable toilets shall be serviced regularly, not less than each week, during approved construction hours.
- o Trucks carrying debris, excavation materials, or fill will meet all DDOT requirements.
- o Removal and replacement of dumpsters shall occur regularly and only during approved construction hours. Once the garage is operational, dumpster service from inside the garage may occur outside the hours of construction, but not between the hours of 11 p.m. and 4 a.m.
- o Roadside shall ensure that any streets immediately adjacent to the construction site that serve as construction routes are kept clean of dirt and any trash and debris resulting from construction activities.
- o Roadside shall require the implementation of a mutually agreeable rodent control plan for the project site which shall include a rodent inspection prior to the start of demolition activities, preventive measures as well as on-call removal services.
- o Roadside shall meet all DOEE erosion and sediment control standards per the approved plan.

### **Noise**

Roadside will abide by the D.C. Noise Control Act, which sets maximum noise levels for construction activities. Roadside will employ noise mitigation measures such as the drilling of pile foundations rather than driving piles, limiting work hours for certain construction activities on weekends, restricting construction vehicle access to Wisconsin Avenue, and staging away from the shared property line.

### **Light Pollution**

Roadside shall ensure that light from the construction site will not shine directly into McLean Gardens residents' windows. Any lighting – such as nighttime security lighting – will be directed away from the neighborhood.

### **Hazardous Materials/Blasting**

- o Roadside shall install settlement and crack monitoring sensors in McLean Gardens buildings 1-6 (3801, 3807, 3815, 3823, 3831, 3839, 3847, 3855, 3863, 3871, 3879, 3887 and 3895 Rodman Street NW, and 3801, 3811, 3821, 3800, 3810, 3820, 3830, 3840 and 3850 39<sup>th</sup> St. NW) prior to demolition and other construction related activities that may cause movement, cracking, settlement or seismic activity. In addition to settlement and crack monitoring sensors, Roadside shall also install vibration monitors in up to three mutually agreed to locations along the property line.
- o Roadside will coordinate with the McLean Gardens Operations Manager to establish reporting thresholds and a reporting schedule for settlement and crack monitoring sensor results. The reports will be prepared by Roadside's engineering consultant and will contain recorded data benchmarked against the established reporting thresholds.
- o Roadside shall conduct preconstruction surveys of structures and improvements to determine the condition of the McLean Gardens buildings 1-6 before demolition begins so that Roadside may monitor them for any settlement/cracking/movement during

construction as provided above. Roadside shall share with McLean Gardens Condominium Association and the NAC the survey results.

- o Individual unit owners in buildings 1-6 may also elect and are encouraged to allow Roadside to conduct a preconstruction survey of unit interiors so that Roadside may monitor them for any settlement/cracking/other damage during construction.
- o Roadside shall keep detailed records documenting work done to ensure compliance with all laws.
- o If hazardous or toxic materials, including underground storage tanks, are identified and need to be abated or removed, removal and resident notification – shall be conducted in compliance with a D.C. Department of Energy and Environment-approved Corrective Action Plan and other applicable DOEE rules and regulations.
- o Upon request by the NAC, Roadside will share quarterly reports filed with DOEE in connection with any open Leaking Underground Storage Tank (LUST) case to the extent that sharing same is not prohibited by any agreement to which Roadside may be a party.
- o If any hazardous or toxic substances are used in conjunction with construction work, other than those typical of construction activity (i.e., gasoline, diesel, propane, etc.), such substances shall be used only if they can be used safely and in compliance with all applicable federal and D.C. laws.
- o Although Roadside has no plans to do blasting, should blasting be required during the construction project, Roadside shall notify the Neighborhood Advisory Committee and the ANC3C06 representative at least 48 hours before the commencement of blasting activities. Roadside also shall provide written notification via door-to-door fliers to residents who live in buildings within 200 feet of the property. In no event shall blasting activities occur on a Saturday.
- o Roadside shall give at least 72 hours' notice to the ANC3C06 representative and the Neighborhood Advisory Committee before commencement of pile-driving activities, if any.

## **DAMAGE CLAIMS**

- o If the McLean Gardens buildings, surface improvements or resident vehicles parked on McLean Gardens property sustain any damage as a result of Roadside's demolition or construction activities, Roadside shall pay for all associated repair costs.
- o If the buildings cannot be occupied during repairs for damage resulting as provided in the immediately preceding sentence, Roadside shall compensate the neighbors for the reasonable costs of alternative lodging and reasonable per diems.
- o If there is a claim for damage, the damaged party shall report such damage to Roadside. Within 10 days, Roadside, Roadside's contractor and the damaged party shall meet to resolve in good faith any such damage claim and complete a plan of action to remediate such damage. The plan of action shall include the timeframes for repair and designate the party responsible for such repair. If and to the extent the parties cannot agree on the plan of action, then the parties shall seek the opinion of an independent third party.

## **ENFORCEMENT**

## **Complaints**

- o Roadside is committed to the speedy resolution of disputes with neighbors.
- o Complaints will be handled as outlined in the Communication section.
- o Any construction-related complaint that cannot be resolved within one week of the Roadside-designated contact person receiving the complaint shall be referred to the Neighborhood Advisory Committee.
- o The Neighborhood Advisory Committee shall make recommendations to assist with resolution.
- o Roadside shall make known the provisions of this Agreement to all contractor personnel at and around the site.

## **AMENDING THE AGREEMENT**

Any amendment to this Agreement must be in writing signed by all the parties hereto. No action or failure to act by any party hereto shall constitute a waiver of a right or duty afforded them under the Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

**Authorization, Non-Assignment.** Each of the Parties to this Agreement represents and warrants to each of the other Parties that the signatory on behalf of each Party is authorized to sign for and bind that party, and that they are the sole holders of the claims alleged herein and have not assigned or transferred the rights to any claim that is the subject of this Agreement.

**Severance of Unenforceable Provisions.** If any provision or part of any provision of this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision or part thereof had never been contained herein, but only to the extent of its invalidity, illegality, or unenforceability.

**Choice of Law.** This Agreement shall be interpreted, construed and enforced according to District of Columbia law, without regard to choice of law principles and venue for any disputes that arise out of or relate to this Agreement will be in the District of Columbia.

**Counterparts, Interpretation.** This Agreement may be executed in counterparts and each counterpart shall be and constitute a part of this Agreement and all counterparts taken together shall constitute the Agreement, and be binding and effective on all Parties. Signature pages may be detached from the counterparts and attached to a single copy of this document to physically form one document. Electronic signatures are accepted as effective under the provisions of the Uniform Electronic Transactions Act.

**Entire Agreement.** This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set

forth herein. No other communications (written or oral) or documents shall be construed as a part of or used for interpretation of this Agreement.

**EXHIBIT A:**

Saturday Work Zone Buffer