

COMMUNITY BENEFITS AGREEMENT

BETWEEN ADVISORY NEIGHBORHOOD COMMISSION 6B, INCLUDING ITS PLANNING AND ZONING COMMITTEE'S STREET AND ALLEY-CLOSING SUBCOMMITTEE, AND CLEAR PLAINS, LLC, INCLUDING ITS AFFILIATES AND ASSIGNS

Advisory Neighborhood Commission 6B (the “**ANC**”), including its Planning and Zoning Committee's Street and Alley-Closing Subcommittee (the “**Subcommittee**”), and Clear Plains, LLC, a Delaware limited liability company, its affiliates and assigns (collectively, the “**Applicant**”, and, together with the ANC and its Subcommittee, the “**Parties**”), enter into this Community Benefits Agreement (the “**Agreement**”, or the “**CBA**”) on May 1, 2024 (as the Subcommittee), and May 14, 2024 (as the ANC), to specify community benefits related to Applicant’s request to close a portion of the alley system in Square 762 (S.O. File No. 23-01974).

Whereas, pursuant to DC Official Code § 9-202.01, “The Mayor may close all or part of any street and alley which is determined by the Council to be unnecessary for street or alley purposes,” and

Whereas, on January 30, 2023, Applicant applied to close a dead-end portion of the existing alley system in Square 762, which has a width that varies approximately between 10 and 12 feet and is not currently used or relied upon for any transportation purpose (the “**Application**”),

Therefore, for the promises below and other valuable consideration, the Parties agree as follows:

ARTICLE I

Additional Definitions

1. “Abutting Properties” means the buildings at 205 3rd Street, SE (Lot 814, Square 762) and 207 3rd Street, SE (Lot 26, Square 762).
2. “Alley” means the portion of the public right-of-way alley in Square 762 (known as Lincoln Court), bounded by lots 58, 843, 842, 839, and 823, that Applicant proposes to close.
3. “Alley Closing Legislation” means the DC Council bill that orders the closing of the Alley pursuant to S.O. File No. 23-01974.
4. “Alley Closing Plat” means the plat recorded in the records of the DC Surveyor’s Office that officially closes the Alley and reverts the land area as private property.
5. “Alley System” means the alley in Square 762 (known as Lincoln Court), exclusive of the Alley.
6. “Building” means any of the buildings identified under the definition of “Development.”
7. “Committee” means ANC 6B’s Planning and Zoning Committee.
8. “Courtyard” means Applicant’s proposed courtyard as part of the Development, a portion of which would consist of the closed Alley that would revert to Applicant as private property.

9. "DC" means the District of Columbia.
10. "DDOT" means the District Department of Transportation.
11. "Development" means the buildings and any proposed improvements that include the properties located in Square 762 at (a) Lot 0843, 231 Pennsylvania Avenue, SE; (b) Lot 0842, 229 Pennsylvania Avenue, SE; (c) Lot 0823, 203 3rd Street, SE, Rear; and (d) Lot 0839, 233 Pennsylvania Avenue, SE.
12. "HPRB" means DC's Historic Preservation Review Board.
13. "Property" means the land and improvements described in the definition of "Development," and any associated open space owned by Applicant or its ownership successors.

ARTICLE II

ANC Support

1. Within one week after both Applicant and the Chair of the Subcommittee sign this Agreement, the Subcommittee will transmit its endorsement to the Committee.
2. Within one week after the ANC votes to endorse this Agreement, the ANC will send a letter, supporting the Application, conditioned on this Agreement, to the DC Office of the Surveyor for inclusion in S.O. File No. 23-01974, and provide copies of the letter both to Applicant and to DC's Ward Six Councilmember.
3. Until the DC Council votes to approve or reject the alley closing, a representative of the ANC will periodically contact DC's Ward Six Councilmember to urge Council approval of the alley closing.

ARTICLE III

Binding on Subsequent Property Owners

Except for Article IX, Applicant will make this Agreement binding on subsequent owners of the Property, or any part thereof, by including this Agreement in any covenant related to the sale or transference of the Property.

ARTICLE IV

Governing Law, Previous Agreements, Modifications Only in Writing, Severability

1. Applicable federal law and the laws of the District of Columbia govern this Agreement.
2. This Agreement supersedes and terminates any prior agreements or understandings, oral, written, or implied, between the Parties. However, prior understandings may aid in interpreting this Agreement.

3. Only written agreement of all Parties or their successors, agreed to by a vote of the ANC, can modify this Agreement.

4. Should a statute, regulation, or court decision invalidate any provision of this Agreement, that statute, regulation, or court decision will not affect any other provision, and leave those other provisions fully enforceable. The Parties intend the severability of any provision rendered invalid.

ARTICLE V

Storage and Removal of Trash and Recycling

1. Applicant will construct an airconditioned, rodent-proof trash room and an airconditioned, rodent-proof recycling room, both inside the Building.

2. Applicant will store, in those rooms, all trash and recyclables generated by occupants and users of the Building.

3. Applicant will remove all trash and recyclables from the Courtyard by 9:00 p.m. every day, or--for events in the Courtyard that end after 9:00 p.m.--immediately following those events.

ARTICLE VI

Applicant Contributions and Schedule

In part exchange for ANC support of the Application, Applicant will make a total contribution in the amount of \$100,000 to the Capitol Hill Community Foundation. Applicant will condition its contribution upon the Capitol Hill Community Foundation's promise to use it to benefit organizations based in ANC 6B.

Applicant will contribute the funds pursuant to the following schedule:

1. Within one week after the Subcommittee votes to recommend that the Committee support the CBA and the Application, Applicant will make a \$10,000 contribution to the Capitol Hill Community Foundation.

2. Within one week after the ANC votes to support the CBA and the Application, Applicant will make an additional \$15,000 contribution to the Capitol Hill Community Foundation.

3. Within one week after the Alley Closing Legislation becomes DC Law, Applicant will make the remaining \$75,000 contribution to the Capitol Hill Community Foundation.

ARTICLE VII

Construction Management Plan

1. Before commencing construction, Applicant will work with the ANC to enter into a Construction Management Plan to address construction traffic, community communication, site management, cleanliness, rodent control, work hours, and other construction-management issues.
2. Applicant will ensure that construction traffic is consistent with a DDOT-approved Transportation Management Plan.
3. For construction-related vehicles that use the Alley System to access the Property, Applicant will require that construction-related vehicles access the Alley System only directly from and to the C Street, SE entrance.
4. Applicant will provide contact information to the owners of property adjacent to the Development to address concerns that arise during construction on the Property.

ARTICLE VIII

Vehicle Access by Public Agencies and Private Companies

1. Operated by Public Agency: Applicant will submit a request to the Department of Public Works (DPW), as well as to any other public agency it learns will access the Development via the Alley system, to direct its drivers to access the Alley System only directly from and to the C Street, SE entrance.
2. Operated by Private Company or Individual.
 - (a) If Applicant contracts with a private company or an individual for trash removal from, service for, or deliveries to the Development, Applicant will include a requirement in its contract that vehicles provided by the private company or individual must access the Alley System only directly from and to the C Street, SE entrance.
 - (b) Regarding vehicles operated by a private company or individual with which Applicant has not contracted, but that access the Development via the Alley System, Applicant will urge that company or individual to access the Alley System only directly from and to the C Street, SE entrance.

ARTICLE IX

Restrictions on Use of Abutting Properties

1. Use Restrictions Dependent on Zoning and Land-Use Designations. The Abutting Properties are not part of the Application; however, so long as Applicant owns or reacquires the Abutting Properties, the following terms are in effect:

- (a) 205 3rd Street, SE (Lot 814 in Square 762). As long as its current zoning and land-use designations on the Comprehensive Plan Future Land Use Map (FLUM) remain in place, Applicant will only use 205 3rd Street, SE in accordance with its current zoning designation (RF-1/CAP).
- (b) 207 3rd Street, SE (Lot 26 in Square 762). Applicant does not own 207 3rd Street, SE, but if Applicant reacquires 207 3rd Street, SE, and as long as its current zoning and land use designation on the Comprehensive Plan FLUM remain in place, Applicant will only use 207 3rd Street, SE in accordance with its current zoning designation (RF-1/CAP).

2. No Attempt to Change Zoning or Land Use Designations of Abutting Properties. For the Abutting Properties, Applicant will not submit, or cooperate or assist in submitting, a Zoning Map amendment application to change the current zoning (RF-1/CAP), or actively pursue, or cooperate or assist in pursuing, a change to the Comprehensive Plan FLUM, which currently designates the Abutting Properties in the Moderate Density Residential land use category.

ARTICLE X

Use of Courtyard

- 1. Applicant's Hours of Operation. Starting with the date of signing of this agreement by Applicant and Chair of the Subcommittee, Applicant and any lessee will only use the outdoor areas of the Courtyard under their control from 7:00 a.m.–12:00 a.m. (midnight) Sundays through Thursdays, and 7:00 a.m.–1:00 a.m. Fridays and Saturdays; provided, that, if a ground-floor lessee obtains a valid license to serve alcohol in the Courtyard, the hours of that license will control the lessee's hours of operation in the Courtyard.
- 2. Tenant's Use of Courtyard. If and after the Alley Closing Legislation becomes DC Law and the Alley Closing Plat is recorded, Applicant will offer a ground floor lessee a portion of the Courtyard for its use as part of its lease.
- 3. Contingent Public Access. If, by two (2) years after the Alley Closing Legislation becomes DC Law and the Alley Closing Plat is recorded, Applicant still has no retail lessee for 231 or 233 Pennsylvania Avenue, SE, Applicant will open the Courtyard to public access on Saturdays and Sundays from 7 a.m. until 12 midnight. Applicant may, however, implement and post rules of conduct to ensure orderly public use of the Courtyard.
- 4. ANC 6B's Use of Courtyard. If and after the Alley Closing Legislation becomes effective and the Alley Closing Plat is recorded and within three months after substantial completion of Courtyard renovation, Applicant will make the Courtyard available for use by the ANC, its committees, subcommittees, and task forces (collectively, "ANC

Bodies”), and by mutually agreed upon ANC 6B community groups which the ANC designates from time to time, subject to the following limitations:

- (a) The ANC may use, or designate a community group to use, the Courtyard a total maximum of six (6) times per calendar year.
- (b) Applicant has the right to disallow use based on the date or time of the projected use; in particular, neither the ANC nor any designated community group may interfere with Applicant’s lessee’s regular business operations or Applicant’s or Applicant’s lessee’s use of the Courtyard for a previously scheduled event.
- (c) Applicant may withhold approval of use by an ANC-designated community group for good cause, including, but not limited to, for having previously caused damage or left the Courtyard in an unkempt manner, provided that Applicant may not unreasonably withhold approval.

ARTICLE XI

Use of Interior Building Space for Community Meetings

1. For meetings by ANC Bodies. Starting six (6) months after the ANC votes to endorse this Agreement, Applicant will make interior Building space, of at least a capacity of 20 people, 20 chairs, and a means of Building access, available for use as a community meeting space by the ANC Bodies; provided that:

- (a) Before the Alley Closing Legislation becomes DC law and the Alley Closing Plat is recorded, and even after that if necessary to accommodate substantial Building renovations, Applicant may substitute equivalent indoor space elsewhere in ANC 6B.
- (b) If, by eight (8) years after the ANC votes to endorse this Agreement, the Alley Closing Legislation is not yet DC law, on that eight-year anniversary Applicant’s obligations under this section will terminate.

2. For meetings by ANC 6B community groups. Starting one (1) month after the Alley Closing Legislation becomes DC law and the Alley Closing Plat is recorded, Applicant will make interior Building space, of at least a capacity of 20 people, 20 chairs, and a means of Building access, available for use as a community meeting space by ANC 6B community groups that (a) the ANC designates and that (b) Applicant approves for such use; provided that, if necessary to accommodate substantial Building renovations, Applicant may substitute equivalent indoor space elsewhere in ANC 6B.

3. Applicant’s obligations under this article are subject to the following additional limitations:

- (a) Applicant guarantees no more than total use, for the ANC Bodies and ANC 6B community groups combined, of interior meeting space for a total of twelve (12) times per calendar year; provided, that Applicant in its sole discretion may permit additional use.

(b) Applicant has the right to disallow any proposed use based on its proposed date or time; in particular, neither the ANC Bodies nor the ANC 6B community groups may interfere with Applicant's lessee's regular business operations or Applicant's or Applicant's lessee's use of interior space for a previously scheduled event.

ARTICLE XII

Security Cameras

Within twelve (12) months after the ANC votes to endorse this Agreement, and to follow current DC public policy to deter and solve crimes, Applicant will install security cameras that capture the portion of the Alley System that is adjacent to the Development and entrance to the Courtyard.

ARTICLE XIII

Public Space and Safety Improvements

Within twelve (12) months after the ANC votes to endorse this Agreement, Applicant will construct the following improvements:

1. Subject to approval by DDOT, install a blind-corner mirror that captures the portion of the Alley System that is adjacent to the Development and entrance to the Courtyard; and
2. Subject to approval by DDOT, HPRB, and any other District agency with approval authority, mount additional lighting on the Property to illuminate the Courtyard and the Courtyard entrance from the Alley System.

ARTICLE XIV

Rodent Control

Applicant will maintain in perpetuity a rodent-abatement contract for the Property, and include, in any contract to sell the Property or any part thereof, a requirement that any successor in title maintain a rodent-abatement contract for the Property.

ARTICLE XV

Privacy Fence

In its application to the HPRB for final approval, Applicant will propose a privacy fence of at least seven (7) feet in height on the roof of the portion of the Building currently located at 203 3rd Street, SE Rear. If HPRB grants final approval and the DC Zoning Administrator approves the seven-foot fence, Applicant will construct a fence of that height.

ARTICLE XVI

Effective Dates

The following provisions take effect at the following times and on the following conditions:

1. Article I (titled, “**Additional Definitions**”): Immediately upon signing of this Agreement by Applicant and the Chair of the Subcommittee.
2. Article II (titled, “**ANC Support**”): According to the terms of Article II.
3. Article III (titled, “**Binding on Subsequent Property Owners**”): At any time Applicant enters into any agreement related to sale or transference of the Property.
4. Article IV (titled, “**Governing Law, Previous Agreements, Modifications Only in Writing, Severability**”): Immediately upon signing of this Agreement by Applicant and the Chair of the Subcommittee.
5. Article V (titled, “**Storage and Removal of Trash and Recycling**”): Article V section (3) will take effect immediately upon signing of this Agreement by Applicant and the Chair of the Subcommittee. The rest of article V will take effect immediately upon substantial completion of the Development.
6. Article VI (titled, “**Applicant Contributions and Schedule**”): According to the terms of Article VI.
7. Article VII (titled, “**Construction Management “Plan”**”): Immediately upon signing of this Agreement by Applicant and the Chair of the Subcommittee.
8. Article VIII (titled, “**Vehicle Access by Public Agencies and Private Companies**”): Immediately upon signing of this Agreement by Applicant and the Chair of the Subcommittee.
9. Article IX (titled, “**Restrictions on Use of Abutting Properties**”): According to the terms of Article IX.
10. Article X (titled “**Use of Courtyard**”): According to the terms of Article X.
11. Article XI (titled, “**Use of Interior Building Space for Community Meetings**”): According to the terms of Article XI.
12. Article XII (titled, “**Security Cameras**”): According to the terms of Article XII.
13. Article XIII (titled, “**Public Space and Safety Improvements**”): According to the terms of Article XIII.
14. Article XIV (titled, “**Rodent Control**”): At a reasonable time after signing of this Agreement by Applicant and the Chair of the Subcommittee.
15. Article XV (titled, “**Privacy Fence**”): When Applicant applies to the HPRB for final approval.

In witness hereof, the Parties hereto have duly executed and delivered this Agreement as of the date first written above.

**ANC 6B PLANNING AND ZONING
SUBCOMMITTEE**

ANC 6B

By: _____
Name: Frank D'Andrea
Title: Chair

By: _____
Name: Edward Ryder
Title: Chair

APPLICANT

Clear Plains, LLC,
a Delaware limited liability company

By: _____
Name: Edward Corrigan
Title: President